

MOTION INFORMATION STATEMENT

Docket Number(s): 10-2905-cr; 11-479-cr Caption [use short title] _____

Motion for: intervening and unsealing docket Roe v. United States

10-2905-cr, 11-470-cr

Set forth below precise, complete statement of relief sought:

This is a motion to intervene. Intervenor moves to:
(1) intervene; (2) unseal the entirety of the Second
Circuit's docket; and (3) unseal all docket entries.

MOVING PARTY: Forbes Media LLC and Richard Behar

Plaintiff Defendant
 Appellant/Petitioner Appellee/Respondent

OPPOSING PARTY: _____

MOVING ATTORNEY: Jay Ward Brown

[name of attorney, with firm, address, phone number and e-mail]

OPPOSING ATTORNEY: _____

Levine Sullivan Koch & Schulz, L.L.P.

Phone: (202) 508-1136

1899 L Street, NW, Suite 200

Email: jbrown@lskslaw.com

Washington, D.C. 20036

Court-Judge/Agency appealed from: N/A (The proceedings below occurred in the district court for the E.D.N.Y.)

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
 Yes No (explain): _____

Opposing counsel's position on motion:
 Unopposed Opposed Don't Know

Does opposing counsel intend to file a response:
 Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date: _____

Signature of Moving Attorney:

[Signature] Date: 3/22/2017

Service by: CM/ECF Other [Attach proof of service]

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? Yes No

Has this relief been previously sought in this Court? Yes No

Requested return date and explanation of emergency: _____

Note regarding opposing counsel's position:

the United States counsel does not oppose standing,
but does oppose unsealing; Doe's counsel did not
respond after being notified of the motion. See FN 8.

CERTIFICATE OF SERVICE

I hereby certify that I caused this document to be electronically transmitted to the clerk's office by emailing a pdf of this document and the accompanying papers to newcases@ca2.uscourts.gov, copying all registered parties this 22nd day of March, 2017. In addition, I hereby certify that I caused copies of this document and the accompanying papers to be mailed to all registered parties by United States mail this 22nd day of March, 2017.


Jay Ward Brown

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

RICHARD ROE, <i>ET AL.</i> ,)	
)	
Appellants,)	
)	
v.)	Nos. 10-2905-cr, 11-479-cr.
)	
UNITED STATES OF AMERICA, <i>ET AL.</i> ,)	
)	
Appellees.)	
)	
)	
)	
)	

FRAP 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, I, the undersigned counsel of record for Forbes Media LLC certify that, Forbes Global Media Holdings Inc., a BVI entity, is Forbes Media LLC’s sole parent corporation and owns 100% of Forbes Media LLC.

Dated: March 22, 2017



Jay Ward Brown
LEVINE SULLIVAN KOCH
& SCHULZ, LLP
1899 L Street, NW, Suite 200
Washington, D.C. 20036
(202) 508-1136
jbrown@lskslaw.com

Attorney for Forbes Media LLC

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

RICHARD ROE, <i>ET AL.</i> ,)	
)	
Appellants,)	
)	
v.)	Nos. 10-2905-cr, 11-479-cr.
)	
UNITED STATES OF AMERICA, <i>ET AL.</i> ,)	
)	
Appellees.)	
)	
)	
)	
)	

**MOTION BY FORBES MEDIA LLC AND RICHARD BEHAR FOR LEAVE TO
INTERVENE AND TO UNSEAL JUDICIAL RECORDS**

Jay Ward Brown
LEVINE SULLIVAN KOCH
& SCHULZ, LLP
1899 L Street, NW, Suite 200
Washington, D.C. 20036
(202) 508-1136
jbrown@lskslaw.com

John Langford, supervising attorney
Eric Brooks, law student intern
Brandon Sadowsky, law student intern
MEDIA FREEDOM AND INFORMATION
ACCESS CLINIC
ABRAMS INSTITUTE
Yale Law School
P.O. Box 208215
New Haven, CT 06520
Phone: (203) 436-5831
Fax: 212-850-5299
john.langford@ylsclinics.org

Attorneys for Intervenors

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

BACKGROUND 2

A. Sater’s 1998 Prosecution..... 2

B. Sater’s Known Connections to President Trump..... 4

C. Unsealing Sater’s Criminal Prosecution 6

D. Unsealing the Related Civil Contempt Docket..... 8

E. Remaining Sealed and Missing Documents and Entries On This Court’s
Docket..... 9

ARGUMENT 10

I. INTERVENORS HAVE STANDING TO INTERVENE FOR THE
LIMITED PURPOSE OF ASSERTING THE PUBLIC’S FIRST
AMENDMENT AND COMMON LAW RIGHTS OF ACCESS..... 10

II. THE PUBLIC HAS A RIGHT OF ACCESS UNDER THE FIRST
AMENDMENT TO THIS SEALED AND MISSING RECORDS IN THIS
PROCEEDING 11

A. The public’s constitutional right of access plainly extends to the
documents at issue here 11

1. *There is a history and logic of access to appellate proceedings
and records* 12

2. *The right of access to appellate briefing, appendices, motions,
and procedural filings derive from, and are necessary
corollaries of, the public’s right of access to appellate
proceedings* 13

B. The government cannot meet its burden of demonstrating that the
public’s right of access to the records is overcome 14

III. THE RECORDS ARE SUBJECT TO THE COMMON LAW RIGHT OF
ACCESS 16

CONCLUSION..... 17

TABLE OF AUTHORITIES

Cases	Page(s)
<i>ABC, Inc. v. Stewart</i> , 360 F.3d 90 (2d Cir. 2004).....	14, 15
<i>In re Application of Herald Co.</i> , 734 F.2d 93 (2d Cir. 1984).....	15
<i>In re Applications to Unseal 98 CR 1101(ILG)</i> , 568 F. App’x 68 (2d Cir. 2014)	7, 8
<i>Gambale v. Deutsche Bank AG</i> , 377 F.3d 133 (2d Cir. 2004).....	15
<i>Gifford v. Gibb</i> , 67 U.S. 2 (1862).....	12
<i>Globe Newspaper Co. v. Superior Court</i> , 457 U.S. 596 (1982).....	10, 11
<i>Hartford Courant Co. v. Pellegrino</i> , 380 F.3d 83 (2d Cir. 2004).....	11, 14
<i>Lugosch v. Pyramid Co. of Onondaga</i> , 435 F.3d 110 (2d Cir. 2006).....	<i>passim</i>
<i>In re Motion for Civil Contempt By John Doe</i> , No. 12-mc-0557 (BMC), 2016 WL 3460368 (E.D.N.Y. June 22, 2016)	8
<i>In re N.Y. Times Co.</i> , 828 F.2d 110 (2d Cir. 1987).....	13, 14, 16
<i>In re Application of N.Y. Times Co. to Unseal Wiretap & Search Warrant Materials</i> , 577 F.3d 401 (2d Cir. 2009).....	11, 12
<i>Newsday LLC v. Cty. of Nassau</i> , 730 F.3d 156 (2d Cir. 2013).....	16
<i>Press-Enter. Co. v. Superior Court</i> , 478 U.S. 1 (1986).....	11, 15, 16
<i>Richmond Newspapers, Inc. v. Virginia</i> , 448 U.S. 555 (1980).....	12, 13
<i>Roe v. United States</i> , 414 F. App’x 327 (2d Cir. 2011)	6, 7

<i>Roe v. United States</i> , 428 F. App'x 60 (2d Cir. 2011)	6, 7
<i>United States v. Amodeo</i> , 71 F.3d 1044 (2d Cir. 1995).....	13, 16
<i>United States v. Aref</i> , 533 F.3d 72 (2d Cir. 2008).....	11
<i>United States v. Index Newspapers LLC</i> , 766 F.3d 1072 (9th Cir. 2014)	13
<i>United States v. Moussaoui</i> , 65 F. App'x 881 (4th Cir. 2003)	12, 13
Other Authorities	
<i>Resources for Locating Records & Briefs of the U.S. Supreme Court</i> , Library of Congress, https://www.loc.gov/law/help/sct-records.php	12

PRELIMINARY STATEMENT

Movant Forbes Media LLC (“Forbes”) is a global media, branding and technology company, with a focus on news and information about business, investing, technology, entrepreneurship, leadership and affluent lifestyles. *See* Declaration of John Langford (“Langford Decl.”) (filed herewith) Ex. A. The company publishes *Forbes*, and *Forbes Asia*, as well as Forbes.com. Movant Richard Behar is *Forbes* magazine’s Contributing Editor of Investigations and a prize-winning journalist. *See* Langford Decl. Ex. B.

Through this motion, Forbes and Behar (together, “Intervenors”) seek to vindicate the public’s right of access to the record in this proceeding, which includes documents critical to understanding a story of pressing political consequence: President Donald Trump’s connection to Felix H. Sater, who is well known as a conduit to Russian oligarchs and organized crime. For example, on February 19, 2017, *The New York Times* reported that, just after President Trump’s inauguration, Sater played a key role in funneling a Kremlin-approved, back-channel proposal for a Ukraine-Russia peace deal through President Trump’s personal lawyer, Michael Cohen, to then-national security adviser Michael T. Flynn. *See* Langford Decl. Ex. D. The nature of Sater’s connection to President Trump’s inner circle, however, is far from clear.

From 2003 to 2010, Sater worked directly with Mr. Trump and the Trump Organization on real-estate development deals around the world out of an office in Trump Tower. By 2010, Sater’s business card identified Sater as a “senior advisor” to Mr. Trump. Yet in 2013, Mr. Trump testified that he wouldn’t recognize Sater if he were in the same room. That testimony, however, is contradicted by substantiated reports evidencing the relationship between Mr. Trump and Sater. *See, e.g.*, Richard Behar, *Donald Trump and the Felon: Inside His Business Dealings with a Mob-Connected Hustler*, *Forbes* (Oct. 3, 2016 7:59 A.M. EST),

<https://www.forbes.com/sites/richardbehar/2016/10/03/donald-trump-and-the-felon-inside-his-business-dealings-with-a-mob-connected-hustler/#6c6562f32282> (Langford Decl. Ex. C).

In light of ongoing investigations into Russian interference in the 2016 presidential election, there is significant public interest in understanding President Trump's connection to Sater and Sater's connections to Russia. Documents critical to the public's understanding sit sealed on this docket. They were sealed to conceal the fact that Sater was indicted for securities fraud in 1998 and avoided prison by cooperating with the government, and to hide the nature of that cooperation. Subsequent to the documents being sealed, however, the public has learned the details of Sater's cooperation, and any remaining interest in keeping the record in this proceeding sealed is *de minimis* and does not overcome the public's rights of access.

BACKGROUND

The broad contours of Sater's saga are well established in the public record. Sater was born in the Soviet Union in 1966. *See* Langford Decl. Ex. E. His father, Mikhael Sheferovsky, reportedly was a syndicate boss in a vast Russian criminal organization involved in trafficking nuclear material and weapons. *Id.* Sater immigrated to the United States as a child, and he began his career as a stock broker in New York City in the late 1980s. *See id.* Exs. E, F. Sater's legitimate finance career, however, was short lived. As has been widely reported, in 1991, Sater stabbed a man in the face with a broken stem of a wine glass during a bar fight, and his subsequent conviction for the offense resulted in a 15-month prison sentence and barred him from legally selling securities. *Id.* Ex. G.

A. Sater's 1998 Prosecution

As has also been widely reported, in 1993, Sater joined forces with two other men in an illegal "pump and dump" stock scheme. *Id.* Ex. F. The men would buy blocks of stock in

companies through offshore accounts; pay brokers to inflate the stock price and pawn shares off on unsuspecting brokers; and then sell their shares off at a steep profit. *Id.* To enable the operation, the trio enlisted members of the Genovese crime family for protection. *Id.* The scheme unraveled when authorities stumbled across documents outlining its operation in an abandoned locker while Sater was in Russia, but not before the trio allegedly defrauded investors of approximately \$40 million. *Id.*

On December 3, 1998, the government filed a sealed criminal information in the Eastern District of New York, charging Sater with RICO violations for his role in the pump and dump operation. Information, *United States v. Sater*, No. 98-cr-1101 (E.D.N.Y. Dec. 10, 1998), ECF No. 18. On December 10, 1998, Sater pled guilty and entered into a cooperation agreement with the government to avoid returning to prison. Opinion and Order, *In re Application to Unseal 98 Cr. 1101 (ILG)*, No. 12-mc-00150 (ILG) (E.D.N.Y. Aug. 27, 2012), ECF No. 42; *see also* Langford Decl. Ex. H (response to Senator Hatch's questions for record on nomination of Loretta E. Lynch to be Attorney General). The cooperation agreement required that the entire docket of Sater's criminal prosecution be sealed, *see* Langford Decl. Ex. H at 1, and his sentencing was postponed indefinitely. It was not until October 23, 2009, that Sater was finally sentenced to pay a fine of just \$25,000. Judgment, *United States v. Sater*, No. 98-cr-1101 (E.D.N.Y. Oct. 26, 2009), ECF No. 35.

Then-Attorney General Nominee Lynch explained that, under the agreement, Sater worked with the U.S. Attorney's Offices for the Southern and Eastern Districts of New York and the F.B.I., "providing information crucial to national security and the conviction of over 20 individuals, including those responsible for committing massive financial fraud and members of La Cosa Nostra." Langford Decl. Ex. H at 1. He also reportedly cooperated with the C.I.A. to

track down Stinger missiles on the weapons black market in Central Asia. *Id.* Exs. E, F. Just last fall, Sater himself explained that his cooperation included purchasing missiles in Afghanistan; “play[ing] a major role in President Clinton’s bombing of [Osama bin Laden’s] camp in ’98”; and hunting down terrorist operatives and coordinating bombing targets in Afghanistan after 9/11. *Id.* Ex. Q at 5.

B. Sater’s Known Connections to President Trump

While cooperating with the government, the public record shows, Sater became a managing director of a real-estate development firm called the Bayrock Group. *Id.* Ex. I. Bayrock’s offices were in Trump Tower, and, in 2003, Sater met Mr. Trump through a leasing agent for the tower. *Id.* Sater and Trump developed a friendly “rapport” through “numerous” meetings. *Id.* Ex. J. Over the next five years, Bayrock, Sater, and the Trump Organization executed real-estate licensing deals all over the country, *id.* Ex. I, during which time Sater “met with Trump and Trump’s staff ‘on a constant basis’ to discuss possible deals,” *id.* Ex. J. By 2007, Bayrock reportedly had helped finance more than \$2 billion worth of Trump-branded deals. *Id.* Ex. E.

The public record shows that Bayrock and Sater helped the Trump Organization tap into funds connected to Russian investors to fund those deals. Sater and Bayrock, for instance, helped lead the development of Trump SoHo, *id.* Exs. F, J, “broker[ing] a \$50 million investment . . . by an Icelandic firm preferred by wealthy Russians ‘in favor with’ President Vladimir V. Putin,” *id.* Ex. K.

According to Mr. Trump, Bayrock also brought potential Russian investors to Trump’s office to discuss deals all over the world, including “Trump International Hotel and Tower Moscow, Kiev, Istanbul, etc., Poland, Warsaw.” *Id.* In 2005, the Trump Organization entered a

one-year deal with Bayrock to develop a project in Moscow. *Id.* Ex. J. Sater, in turn, “located a group of interested Russian investors, as well as a possible site for a luxury high-rise.” *Id.* In addition, Sater accompanied Ivanka and Donald Trump Jr. to Moscow in 2006, where they stayed at the Hotel National Moscow opposite the Kremlin and “connect[ed] with potential partners over the course of several days.” *Id.* Exs. J, O. Sater later testified that, after trips to Russia, he would “pop [his] head into Mr. Trump’s office and tell him, you know, ‘Moving forward on the Moscow deal.’ And he would say, ‘All right.’” *Id.* Ex. C.

Sater eventually left Bayrock and joined the Trump Organization in 2010. *Id.* Ex. L. There, Mr. Trump “allowed Sater to use a business card identifying himself as a senior advisor to the Trump Organization.” *Id.* Although Sater apparently left the Trump Organization shortly thereafter, he is reported to have been working on a plan for a Trump Tower Moscow as recently as the fall of 2015. *Id.* Ex. D.

Trump, for his part, has steadily distanced himself from Sater. In a 2011 deposition, Mr. Trump acknowledged that he used to speak to Sater “for a period of time.” *Id.* Ex. P. Yet by 2013, Trump stated that “if [Sater] were sitting in the room right now, I really wouldn’t know what he looked like.” *Id.* Ex. D.

Sater, however, appears to have maintained close contact with President Trump’s inner circle. On February 19, 2017, *The New York Times* reported that Sater helped funnel a Kremlin-approved, Ukraine-Russia peace deal through President Trump’s long-time personal lawyer, Michael Cohen, to then National Security Adviser Michael Flynn. *Id.* Specifically, the *Times* reported that, after making contact with the Ukrainian lawmaker who drew up the proposal, Sater arranged an in-person meeting with Cohen and the Ukrainian lawmaker, and personally delivered the proposal to Cohen, who, in turn, left the proposal on Flynn’s desk. *Id.*

C. Unsealing Sater's Criminal Prosecution

From 1998 until 2012, the entire record in the prosecution of Sater in the Eastern District, including the docket itself, remained sealed. *Id.* Ex. H; Order and Opinion at 5, *In re Application to Unseal 98 Cr. 1101 (ILG)*, No. 12-mc-00150 (E.D.N.Y. Aug. 27, 2012), ECF No. 42. The chain of events leading to its partial unsealing began on May 10, 2010, when Frederick Oberlander, on behalf of his clients, publicly filed a civil RICO complaint against Bayrock in the Southern District. Complaint, *Kriss v. BayRock Group LLC*, No. 10-cv-03959 (S.D.N.Y. May 5, 2010), ECF. No. 1. Oberlander attached to the Complaint in that action materials that had been sealed in the earlier criminal proceeding against Sater, including: (1) Sater's presentence investigation report; (2) two proffer agreements; and (3) Sater's cooperation agreement. Days after the civil suit was filed, Judge Buchwald ordered that the Complaint and accompanying exhibits be sealed. Order, *Kriss v. BayRock Group LLC*, No. 10-cv-03959 (S.D.N.Y. May 14, 2010), ECF Nos. 2-3.

On May 18, 2010, upon motion by Sater, the judge assigned to Sater's criminal case in the Eastern District, Judge Glasser, temporarily restrained Oberlander from disseminating the documents. *See Roe v. United States* ("Roe II"), 428 F. App'x 60, 64 (2d Cir. 2011). On June 21, 2010, Judge Glasser entered a permanent injunction prohibiting the dissemination of Sater's Pre-Sentence Report ("PSR") and extended his temporary restraining order with respect to the rest of the documents. *Id.* Oberlander appealed, and the government moved to keep the appeal sealed. *Id.* at 64-65.

Following a closed hearing on February 14, 2011, this Court granted the government's request to keep the appeal under seal and temporarily enjoined Oberlander and "all who [were] in active concert or participation with [Oberlander]" from distributing or revealing the sealed

documents. *Roe v. United States* (“*Roe I*”), 414 F. App’x 327, 330 (2d Cir. 2011). The Court further remanded the case with instructions to the Chief Judge of the Eastern District to assign a judge with the limited mandate of enforcing its and Judge Glasser’s sealing orders while the panel considered the merits of Oberlander’s appeal. *Id.* at 329. Pursuant to the Court’s order, then-Chief Judge Dearie referred the case to Judge Cogan. *Roe II*, 428 F. App’x at 65.

While Oberlander’s initial appeal remained pending before this Court, Oberlander filed a letter with Judge Cogan requesting permission to disseminate certain information contained in the sealed documents, arguing that the information was public knowledge. *Id.* Shortly thereafter, the government itself moved Judge Glasser for a limited unsealing of the record in Sater’s criminal prosecution after learning that Sater’s convictions had been disclosed in a press release by the U.S. Attorney for the Eastern District. *Id.* On April 26, 2011, Judge Cogan denied Oberlander’s request, Order, *United States v. Doe*, No. 98-cr-1101(E.D.N.Y. Apr. 26, 2012), ECF No. 160, and Oberlander appealed from that decision before Judge Glasser ruled on the government’s unsealing motion.

On June 29, 2011, this Court rejected Oberlander’s claims, affirming Judge Glasser’s permanent injunction and temporary restraining order, and Judge Cogan’s order denying Oberlander’s request to disseminate publicly available information contained in the sealed documents. *Roe II*, 428 F. App’x at 68-69. The Court remanded the case with instructions to rule on the government’s March 17, 2011, motion, and to issue a final determination on whether Oberlander should be permanently enjoined from disseminating the non-PSR documents. *Id.*

On remand, however, the Clerk’s Office for the Eastern District inadvertently unsealed the criminal docket sheet and revealed Sater’s identity as well as his cooperation with the government. *In re Applications to Unseal 98 CR 1101(ILG)* (“*Roe III*”), 568 F. App’x 68, 69 (2d

Cir. 2014), *cert. denied sub nom. Palmer v. Doe*, 135 S. Ct. 1009 (2015). Shortly thereafter, Judge Glasser held a series of closed hearings with the government and Sater’s counsel on the propriety of continuing to seal Sater’s criminal case. *Id.* Following the hearings, Judge Glasser unsealed Sater’s criminal docket sheet and approximately three-quarters of the documents filed in the matter, reasoning that “the cat [was] out of the bag, the genie [was] out of the bottle.” Order and Opinion at 5, *In re Application to Unseal 98 Cr. 1101 (ILG)*, No. 12-mc-00150 (E.D.N.Y. Aug. 27, 2012), ECF No. 42; Order, *In re Application to Unseal 98 Cr. 1101 (ILG)*, No. 12-mc-00150 (E.D.N.Y. Mar. 13, 2013), ECF No. 104. Oberlander appealed, challenging both the closure of the hearings and the continued sealing of the remaining documents in the record of Sater’s criminal case. *Roe III*, 568 F. App’x at 69. This Court rejected both arguments and affirmed Judge Glasser’s order. *Id.* at 70.

D. Unsealing the Related Civil Contempt Docket

In 2012, in the midst of the proceedings described above, Sater filed a motion requesting that Judge Cogan hold Oberlander and his attorney in contempt for their actions. *See In re Motion for Civil Contempt By John Doe*, No. 12-mc-0557 (BMC), 2016 WL 3460368, at *1-2 (E.D.N.Y. June 22, 2016), *appeal docketed*, No. 16-2935 (2d Cir. Aug. 23, 2016). In response, Judge Cogan ordered the creation of a sealed docket for the contempt proceeding. *Id.* In early 2016, the Associated Press, as well as Oberlander and others, moved to unseal portions of the record in the contempt proceeding and, in May 2016, Judge Cogan created a public docket and “unsealed all but 37 documents in [the] docket.” *Id.* at *2.

After Judge Cogan unsealed that docket, Oberlander and his attorney filed a motion to which was attached as an exhibit a copy of the transcript of this Court’s February 14, 2011, hearing. Motion for Order to Show Cause for Contempt, *In re Public Documents Filed in 12 MC*

0557 *BMC*, No. 16-mc-0706 (*BMC*), (E.D.N.Y. July 8, 2016), ECF No. 205. In the now-publicly available transcript, an Assistant U.S. Attorney confirms Sater's cooperation with the government, providing even greater detail:

[Sater's] cooperation was of an extraordinary depth and breadth, almost unseen, at least in this United States Attorney's Office.

He cooperated, unlike some cooperators who cooperate within one type of organized crime family or over one type of crime, [Sater]'s cooperation runs a gamut that is seldom seen. It involves violent organizations such as Al Qaeda, it involves foreign governments, it involves Russian organized crime. And, most particularly, it involves various families of La Cosa Nostra. By that specifically I mean an individual on the ruling board of the Genovese crime family, a captain in the Bonanno crime family, a soldier in the Gambino crime family, the list goes on and on.

...

Now, at the time of the sealing in 1998 and through the beginning of 2008, [Sater] worked in a proactive capacity actively aiding grand jury investigations that involved surreptitious recordings of individuals as well as other undercover actions.

...

And his cooperation was not just the type of cooperation not to be noticed. It shut down an enterprise that shut off the valve to tens of millions of dollars.

Langford Decl. Ex. R at 12:11-13:7, 17:20-23.

E. Remaining Sealed and Missing Documents and Entries On This Court's Docket

Currently, forty-one documents are marked as sealed on this Court's docket, No. 10-2905, including: three sealed notices,¹ nine sealed motions and letter motions,² nineteen sealed

¹ ECF Nos. 1, 209, 242.

² ECF Nos. 32, 53, 55, 85, 185, 259, 262, 300, 317.

briefs and letter briefs,³ one sealed stipulation,⁴ and nine sealed appendices.⁵ In addition, many of the entries that are not marked as sealed are nevertheless not publicly accessible,⁶ and the publicly-available docket sheet contains numerous gaps.⁷

Through this motion, Intervenors, representing the press, seek access to the entirety of this Court's docket in this proceeding, and to all of the record herein.⁸

ARGUMENT

I. INTERVENORS HAVE STANDING TO INTERVENE FOR THE LIMITED PURPOSE OF ASSERTING THE PUBLIC'S FIRST AMENDMENT AND COMMON LAW RIGHTS OF ACCESS

Intervenors have standing to intervene for the limited purpose of seeking access to the record in this case. Courts have long recognized that members of the press have standing to enforce the public's qualified right of access to judicial proceedings and documents. *See, e.g., Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 609 n.25 (1982) (“[R]epresentatives of the press and general public must be given an opportunity to be heard on the question of their

³ ECF Nos. 60, 140, 179, 183, 184, 192, 201, 204, 204, 255, 256, 266, 271, 271, 286, 290, 319, 328, 335. Note that docket item 184 is not explicitly marked as sealed on the docket, but it appears that it is a corrected version of sealed entry number 179.

⁴ ECF No. 73.

⁵ ECF Nos. 141, 142, 143, 155, 156, 157, 158, 159, 160.

⁶ The only documents that are available on PACER are items 228, 325, 334, 351, 353, 357 and 358.

⁷ Approximately 173 items appear on the docket even though the last entry is numbered 376.

⁸ Pursuant to Local Rule of Appellate Procedure 27.1(b), counsel has notified counsel for all listed parties of their intent to file this motion. Counsel for Appellants consent to Intervenors' standing to pursue this motion, as well as to the relief they request. Counsel for the United States consents to Intervenors' standing to pursue this motion but not to the relief they seek. Counsel for Appellee John Doe was notified of the motion and requested further information about Intervenors and the relief they seek. Counsel for Intervenors provided that information, with the exception of Intervenors' identity, and asked whether Doe consents to Intervenors' standing and the relief Intervenors seek; counsel for Doe has not responded.

exclusion [from judicial proceedings.]” (internal marks and citation omitted)); *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 126-27 (2d Cir. 2006) (acknowledging that newspapers have right to intervene for access to sealed documents). In *United States v. Aref*, this Court confirmed that a motion to intervene is the proper procedural mechanism for the press and public to challenge sealing orders in criminal cases. 533 F.3d 72, 81 (2d Cir. 2008). Accordingly, Intervenors have standing to intervene for the purpose of enforcing the public’s right of access to the sealed records in this case.

II. THE PUBLIC HAS A RIGHT OF ACCESS UNDER THE FIRST AMENDMENT TO THIS SEALED AND MISSING RECORDS IN THIS PROCEEDING

The public has a qualified constitutional right of access to the sealed records in this docket. Under the First Amendment, “it is well established that the public and the press have a ‘qualified First Amendment right to attend judicial proceedings and to access certain judicial documents.’” *Lugosch*, 435 F.3d at 120 (quoting *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 91 (2d Cir. 2004)). Where the right of access attaches, it may only be overcome if the party opposing access demonstrates that “closure is essential to preserve higher values and is narrowly tailored to serve that interest,” and the court makes specific, on the record findings to support these conclusions. *Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 9 (1986).

A. The public’s constitutional right of access plainly extends to the documents at issue here.

To determine whether the constitutional right of access attaches to particular records, the Second Circuit has “endorsed two approaches.” *In re Application of N.Y. Times Co. to Unseal Wiretap & Search Warrant Materials*, 577 F.3d 401, 409 (2d Cir. 2009). Under the “history and logic” approach, the public’s right of access attaches to proceedings and documents “(1) that have historically been open to the press and general public, and (2) [for which] public access plays a significant positive role in the functioning of the particular process in question.” *Id.*

(internal marks and citations omitted). Under the second approach, the public’s constitutional right of access “protects access to judicial records that are ‘derived from or a necessary corollary of the capacity to attend the relevant proceedings.’” *Id.* (citation omitted). The documents at issue are subject to the public’s right of access under either approach.

1. There is a history and logic of access to appellate proceedings and records.

Appellate records and oral arguments historically have been open. Beginning as early as 1832, the Supreme Court was required to print transcripts of the records in its cases. *See Resources for Locating Records & Briefs of the U.S. Supreme Court*, Library of Congress, <https://www.loc.gov/law/help/sct-records.php> (last visited Mar. 12, 2017). Those transcripts, consisting of the entire record of the case, as well as Supreme Court briefing have long been made public. *See, e.g.*, Langford Decl. Ex. M. (transcript of Record and Briefs, *Griffing v. Gibb*, 67 U.S. 2 (1862)). Likewise, there is a history of access to appellate hearings. *E.g.*, *United States v. Moussaoui*, 65 F. App’x 881, 890 (4th Cir. 2003) (recognizing that appellate oral arguments “have historically been open to the public”). In this Court, even the oral argument in the “Pentagon Papers” case was conducted in public and widely reported, notwithstanding the government’s claim that national security interests were at stake. F. Graham, *Times Case Heard, Restraint Extended*, N.Y. Times (June 23, 1971), http://www.nytimes.com/1971/06/23/archives/times-case-heard-restraint-extended-us-action-halts-a-boston-globe.html?_r=0.

Access to appellate hearings and briefing also plays a significant positive role in the functioning of appellate courts. Public access to appellate proceedings, like public access to criminal trials, gives assurances that proceedings are conducted fairly to all concerned, discourages litigant misconduct, curbs judicial abuse, increases the quality of the proceeding, and provides significant community therapeutic value. *Cf. Richmond Newspapers, Inc. v. Virginia*,

448 U.S. 555, 570 (1980). Indeed, this Court has explained that maintaining public access “to testimony and documents that are used in the performance of Article III functions” is critical to ensuring public “confidence in the conscientiousness, reasonableness, [and] honesty of judicial proceedings.” *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995). The logic of access to appellate proceedings and records is all the more acute where, as here, the underlying trial court records and proceedings were sealed for years, walling off any public oversight for over a decade.

To Intervenors’ knowledge, the only circuits to have addressed the issue have held that history and logic dictate that the public’s constitutional right of access extends to the types of appellate records Intervenors seek. *See United States v. Index Newspapers LLC*, 766 F.3d 1072, 1097 (9th Cir. 2014) (holding that public’s right of access extends to appellate dockets and filings therein); *Moussaoui*, 65 F. App’x at 890 (“[t]here can be no question that the First Amendment guarantees a right of access by the public to oral arguments in the appellate proceedings of this court”).

2. The right of access to appellate briefing, appendices, motions, and procedural filings derive from, and are necessary corollaries of, the public’s right of access to appellate proceedings.

The public’s constitutional right of access also extends to the records Intervenors seek under this Court’s derivative approach. Under that approach, a right of access exists if “the judicial documents are ‘derived from or [are] a necessary corollary of the capacity to attend the relevant proceedings.’” *Lugosch*, 435 F.3d at 120 (citation omitted). In other words, “the constitutional right of access . . . appl[ies] to written documents submitted in connection with judicial proceedings that themselves implicate the right of access.” *In re N.Y. Times Co.*, 828 F.2d 110, 114 (2d Cir. 1987). The derivative right of access is even more robust with respect to motion papers where a court rules on the papers without a hearing. *Lugosch*, 435 F.3d at 124.

Applying the derivative approach, this Court has held that the right extends to summary judgment filings, *id.*; civil and criminal docket sheets, *Hartford Courant Co.*, 380 F.3d at 93; and pretrial motion papers, *In re N.Y. Times Co.*, 828 F.2d at 114.

Here, history and logic dictate that the public's right of access extends directly to appellate proceedings in general. *See supra* at pp. 11-13. As a result, the public has a corollary and derivative right of access to the missing entries on this Court's docket. *See Hartford Courant Co.*, 380 F.3d at 93.

In addition, the public's derivative right extends to the types of appellate briefs, appendices, motions, notices, and stipulations Intervenorers seek. The right extends to appellate briefing and appendices in an appellate proceeding for precisely the same reasons it extends to summary judgment briefings in the trial court: those documents are submitted in connection with an adjudication to which the public's right of access attaches directly. *Cf. Lugosch*, 435 F.3d at 124. The public's derivative right also extends to appellate motion papers because, like pretrial motions, access is "particularly important," given that an appellate court's ruling on motions is often based solely on the papers. *Id.* And the public's derivative right extends to procedural filings, including notices and stipulations, because, like docket sheets, those filings provide a map of appellate proceedings, endowing the public with the capacity to exercise its right of access to appellate proceedings. *Cf. Hartford Courant Co.*, 380 F.3d at 93.

For all these reasons, the public's right of access extends to the records Intervenorers seek under this Court's derivative approach.

B. The government cannot meet its burden of demonstrating that the public's right of access to the records is overcome.

Once the right of access attaches to proceedings and records, the Supreme Court "has made clear that the presumption of openness cannot easily be overcome." *ABC v. Stewart*, 360

F.3d 90, 98 (2d Cir. 2004). “[S]ealing of the documents may be justified only with specific on-the-record findings that sealing is necessary to preserve higher values and only if the sealing is narrowly tailored to achieve that aim.” *Lugosch*, 435 F.3d at 124. To demonstrate that closure is necessary, a party opposing access must demonstrate that there is “substantial probability” that disclosure will harm a compelling governmental interest. *Press Enter.*, 478 U.S. at 14-15. And even when the public’s right of access is initially overcome, courts retain power to modify a sealing order when a change of circumstances negates any compelling interest in closure. *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 140–41 (2d Cir. 2004). In light of the information about Sater made public since this Court first sealed its docket in 2011, the government cannot meet this demanding burden.

As an initial matter, the government clearly cannot demonstrate that the right of access is overcome with respect to information that remains sealed here, but which is now otherwise publicly available. This Court has made clear that a sealing order cannot stand where the information sought to be protected has been made public—“[o]nce it is public, it necessarily remains public.” *Id.* at 144 n.11; *see also In re Application of Herald Co.*, 734 F.2d 93, 101 (2d Cir. 1984). Accordingly, any information that has already been made public, either through Judge Glasser’s unsealing order below, news reports, or by the government, should be unsealed.

For example, there is no longer a compelling interest in sealing information about Sater’s plea to RICO violations and subsequent cooperation with the government, both of which are widely known. *See, e.g.*, Langford Decl. Ex. H at 1; *see also id.* Exs. E-F, I-L, R. Sater himself has publicly acknowledged his cooperation with the government, and his account is confirmed in the publically available transcript of this Court’s February 14, 2011, hearing. *See* Langford Decl. Exs. N, Q, R. Accordingly, any remaining interest in sealing information about Sater’s plea and

cooperation with the government is *de minimis* and does not overcome the public's right of access.⁹

III. THE RECORDS ARE SUBJECT TO THE COMMON LAW RIGHT OF ACCESS

This Court should also unseal the records Intervenors seek pursuant to the common law. There is an independent common law presumption of public access to any “document which is presented to the court to invoke its powers or affect its decisions.” *Amodeo*, 71 F.3d at 1050; *see also Lugosch*, 435 F.3d at 119. “[T]he weight to be given the presumption of access must be governed by the role of the material at issue in the exercise of Article III judicial power and the resultant value of such information to those monitoring the federal courts.” *Amodeo*, 71 F.3d at 1049. “[A]fter determining the weight of the presumption of access, the court must balance competing considerations against it,” including “the danger of impairing law enforcement or judicial efficiency” and “the privacy interests of those resisting disclosure.” *Lugosch*, 435 F.3d at 120 (internal marks and citation omitted). Notably, changed circumstances can alter the common-law closure calculus—so, for instance, “even where prudence might have counseled closure *ex ante*, the inquiry concerning the release of [a] transcript proceeds with the benefit of hindsight, so that release of the transcript may be required even where closing the courtroom was justified given what might reasonably have been anticipated in advance.” *Newsday LLC v. Cty. of Nassau*, 730 F.3d 156, 165 n.10 (2d Cir. 2013).

Here, the common law presumption of access attaches to the sealed documents Intervenors seek and outweighs any remaining competing considerations. Those documents were

⁹ Even if this Court were to disagree and hold that continued sealing is warranted, it would be required to make “specific on-the-record findings” that such sealing remains necessary to prevent a substantial probability of harm to a compelling governmental interest and that releasing records with redactions is not a sufficient alternative to continued closure. *Press Enter.*, 478 U.S. at 14-15; *In re N.Y. Times Co.*, 828 F.2d at 116.

material to this Court's disposition of Oberlander's appeals and are vital to the public's ability to understand the proceedings in this Court. To the extent any sealing was initially necessary, there is no longer a need for sealing that outweighs the common law presumption of access.

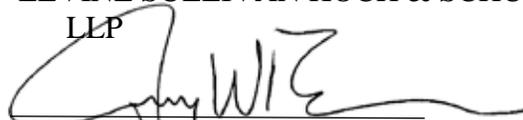
CONCLUSION

For the reasons above, Intervenor respectfully asks that this Court grant this motion to intervene, disclose all missing docket entries and unseal any documents that remain sealed on this docket.

Dated: March 22, 2017

Respectfully submitted,

LEVINE SULLIVAN KOCH & SCHULZ,
LLP



Jay Ward Brown
1899 L Street, NW, Suite 200
Washington, D.C. 20036
(202) 508-1136
jbrown@lskslaw.com

John Langford, supervising attorney
Eric Brooks, law student intern
Brandon Sadowsky, law student intern
MEDIA FREEDOM AND INFORMATION
ACCESS CLINIC
ABRAMS INSTITUTE
Yale Law School*
P.O. Box 208215
New Haven, CT 06520
Tel: (203) 436-5831
Fax: (203) 432-3034
Email: john.langford@yale.edu

Attorneys for Intervenor

* This brief was prepared by the Media Freedom and Information Access Clinic, a program of the Abrams Institute for Freedom of Expression at Yale Law School. The brief does not purport to express the School's institutional views, if any.

CERTIFICATE OF SERVICE

I hereby certify that I caused this document to be electronically transmitted to the clerk's office by emailing a pdf of this document and the accompanying papers to newcases@ca2.uscourts.gov, copying all registered parties this 22nd day of March, 2017. In addition, I hereby certify that I caused copies of this document and the accompanying papers to be mailed to all registered parties by United States mail this 22nd day of March, 2017.

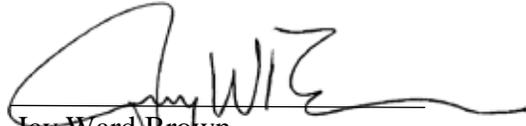

Jay Ward Brown

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This document complies with Fed. R. App. P. 27(d)(2) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f): this document contains 5,173 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because: this document has been prepared in a proportionally spaced typeface using Microsoft Word in 12-point Times New Roman font.

Dated: March 22, 2017



Jay Ward Brown
Attorney for Intervenors

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

RICHARD ROE, <i>ET AL.</i> ,)	
)	
Appellants,)	
)	
v.)	Nos. 10-2905-cr, 11-479-cr.
)	
UNITED STATES OF AMERICA, <i>ET AL.</i> ,)	
)	
Appellees.)	
)	
)	
)	
)	
)	

DECLARATION OF JOHN LANGFORD

I, JOHN LANGFORD, declare as follows:

1. I submit this declaration in support of Forbes Media LLC and Richard Behar’s motion to intervene and to unseal court records.
2. I am a supervising attorney for the Media Freedom and Information Access Clinic and co-counsel to intervenor Behar.
3. I have been admitted to the following courts and bars: New York (June 10, 2015) (N.Y. Bar No. 5348479); and the United States District Court for the Southern District of New York (September 20, 2016).
4. I am currently in good standing with all states, courts, and bars in which I am admitted.
5. Attached to this declaration are copies of fourteen published news reports or other publications, and a transcript of a judicial proceeding. The published news reports are not

offered for proof of the truth of the matters set forth in them, but as proof that the matters set forth in them were part of the public record at relevant times:

- a. **Exhibit A** is a true and correct copy of Forbes's current homepage. *Global Champions of Free Enterprise*, Forbes Media LLC, <http://www.forbesmedia.com>.
- b. **Exhibit B** is a true and correct copy of a biography of Intervenor Richard Behar. Contributor: Richard Behar, Forbes, <https://www.forbes.com/sites/richardbehar/#2de693727705>.
- c. **Exhibit C** is a true and correct copy of an article written by Contributing Editor of Investigations for *Forbes* magazine, Richard Behar. In the article, Behar documents the history of Sater's relationship with President Trump. Richard Behar, *Donald Trump and the Felon: Inside His Business Dealings with a Mob-Connected Hustler*, Forbes (Oct. 3, 2016 7:59 A.M. EST), <https://www.forbes.com/sites/richardbehar/2016/10/03/donald-trump-and-the-felon-inside-his-business-dealings-with-a-mob-connected-hustler/#6c6562f32282>.
- d. **Exhibit D** is a true and correct copy of an article that principally concerns the Russia-Ukraine peace proposal. The authors of the article discuss Sater's involvement in that plan, thereby indicating that Sater has an ongoing connection with President Trump's inner circle. The article also notes Sater's guilty plea to a "stock manipulation scheme." Megan Twohey & Scott Shane, *A Back-Channel Plan for Ukraine and Russia, Courtesy of Trump Associates*, N.Y. Times (Feb. 19, 2017), https://www.nytimes.com/2017/02/19/us/politics/donald-trump-ukraine-russia.html?_r=0.

- e. **Exhibit E** is a true and correct copy of a magazine article about President Trump’s private Russian connections. The author discusses, in part, President Trump’s relationship with Sater. The author also notes that Sater pled guilty to “stock racketeering” and later worked with the CIA and FBI. Sater, according to the article, “broker[ed] information about the black market for Stinger anti-aircraft missiles to the CIA and the FBI.” James S. Henry, *The Curious World of Donald Trump’s Private Russian Connections*, Am. Interest, Dec. 19, 2016, <http://www.the-american-interest.com/2016/12/19/the-curious-world-of-donald-trumps-private-russian-connections/>.
- f. **Exhibit F** is a true and correct copy of a *New York Times* article from 2007. This article documents Sater’s relationship with the Trump Organization—and what were then rumors about his criminal history. The article reports that Mr. Sater was indicted “in a money laundering and stock manipulation case.” And the article cites a source as sharing that Sater “pleaded guilty in 1998 [and] began cooperating with the authorities.” Charles V. Bagli, *Real Estate Executive with Hand in Trump Projects Rose from Tangled Past*, N.Y. Times (Dec. 17, 2007), <http://www.nytimes.com/2007/12/17/nyregion/17trump.html>.
- g. **Exhibit G** is a true and correct copy of an article documenting Sater’s cooperation with the government. The article also explains how Sater’s period of cooperation aligned with his real estate work with President Trump. According to the author, Sater and his associates “were arrested in [a] securities fraud scheme in 1998.” Sater is then alleged to have attempted to make a deal with the CIA to “purchase . . . Stinger missiles on the black market.” While that deal fell through,

Sater later picked up working with the U.S. government after September, 11, 2001. John Marshall, *What the CIA and FBI Knew About Trump Before 2016*, Talking Points Memo: EDBlog (Mar. 2, 2017 4:41 P.M. EST), <http://talkingpointsmemo.com/edblog/what-the-cia-and-fbi-knew-about-trump-before-2016>.

- h. **Exhibit H** is a true and correct copy of an article that features questions for the record raised by U.S. senators to Loretta Lynch, who had been nominated to serve as Attorney General. Before the nomination, Lynch served as an Assistant U.S. Attorney in E.D.N.Y. Senator Hatch asked about Sater. Lynch, in her response, explained the “cooperation agreement under which Sater pled guilty and agreed to serve as a government witness.” According to Lynch, Sater worked with the U.S. government on convicting those who engaged in financial fraud. He also worked with the government on matters of “national security.” *Nomination of Loretta E. Lynch to be the Attorney General of the United States: Questions for the Record Following a Hearing Before the S. Comm. on the Judiciary* at 1 (Feb. 9, 2015), <http://c6.nrostatic.com/sites/default/files/Lynch%20response%20to%20Hatch%20%281%29.pdf>.
- i. **Exhibit I** is true and correct copy of an article in *The Daily Beast* that concerns Sater’s role in the Ukraine-Russia backdoor deal. The article outlines Sater’s criminal history and cooperation with the U.S. government. Describing in detail his period of cooperation with the government, the authors explain the Stingers missiles plan and Sater’s efforts to provide information about Osama bin Laden. Michael Daly & Michael Weiss, *The Crook Behind the Trump-Russia ‘Peace’*

Plan, Daily Beast (Feb. 24, 2017 4:00 A.M. EST),

<http://www.thedailybeast.com/articles/2017/02/24/meet-felix-sater-the-russian-bad-hombre-who-works-with-trump.html>.

- j. **Exhibit J** is true and correct copy of an article in the *Washington Post* discussing the nature of Sater's relationship with President Trump, and how Sater may have used his connection with the then-businessman to further his business interests. The article also discusses Sater's cooperation with the government and guilty plea to racketeering charges. Rosalind S. Helderman & Tom Hamburger, *Former Mafia-Linked Figure Describes Association with Trump*, Wash. Post (May 17, 2016), https://www.washingtonpost.com/politics/former-mafia-linked-figure-describes-association-with-trump/2016/05/17/cec6c2c6-16d3-11e6-aa55-670cabef46e0_story.html?utm_term=.f2bc8b739722.
- k. **Exhibit K** is a true and correct copy of an article in *The New York Times* about Sater's relationship with President Trump, particularly as it relates to the Trump SoHo building. It discusses how Sater may have played a key role in establishing the relationship between Mr. Trump and Bayrock, one of the development partners for the building. It also tells the story of how Sater was implicated in a stock manipulation scheme and later cooperated with the government. Mike McIntire, *Donald Trump Settled a Real Estate Lawsuit, and a Criminal Case Was Closed*, N.Y. Times (Apr. 5, 2016), <https://www.nytimes.com/2016/04/06/us/politics/donald-trump-soho-settlement.html>.

1. **Exhibit L** is a true and correct copy of an article in the *Washington Post* about Sater's involvement in the Russia-Ukraine peace plan. The article notes that this involvement took place "amid increasingly intense scrutiny of the ties between Mr. Trump's team and Russia." It also notes Sater's ties to the Trump Organization, his criminal history, and his cooperation with the government. Tom Hamburger & Rosalind S. Helderman, *Amid Russia Scrutiny, Trump Associates Received Informal Ukraine Policy Proposal*, Wash. Post (Feb. 19, 2017), https://www.washingtonpost.com/politics/amid-russia-scrutiny-trump-associates-received-informal-ukraine-policy-proposal/2017/02/19/72b0b264-f6eb-11e6-be05-1a3817ac21a5_story.html?utm_term=.43b9433ec3be.
- m. **Exhibit M** is a true and correct copy of the Supreme Court's transcript of record in *Griffing v. Gibb*, 67 U.S. 2 (1862), as well as the appellant's and respondents' respective Supreme Court briefs.
- n. **Exhibit N** is a true and correct copy of a March 2, 2017, article in the *Los Angeles Times* reflecting Sater's reaction to reports that he'd helped funnel a Russia-Ukraine peace plan to Michael Flynn. The article relates that Sater told the *Los Angeles Times* in a phone interview that he was a confidential informant for the F.B.I. and U.S. intelligence, "building Trump Towers by day and hunting Bin Laden by night." Joseph Tanfani & David S. Cloud, *Trump Business Associate Led Double Life As FBI Informant — And More, He Says*, L.A. Times (Mar. 2, 2017), <http://www.latimes.com/politics/la-na-pol-sater-trump-20170223-story.html>.

- o. Exhibit O** is a true and correct copy of a *New York Times* article about Mr. Trump's pursuit of real-estate deals in Russia. The article explains that "[d]uring a trip in 2006, Mr. Sater and two of Mr. Trump's children, Donald Jr. and Ivanka, stayed at the historic Hotel National Moscow opposite the Kremlin, connecting with potential partners over the course of several days." Megan Twohey & Steve Eder, *For Trump, Three Decades of Chasing Deals in Russia*, N.Y. Times (Jan. 16, 2017), <https://www.nytimes.com/2017/01/16/us/politics/donald-trump-russia-business.html>.
- p. Exhibit P** is a true and correct copy of a *Mother Jones* article about Mr. Trump's connections to individuals connected to organized crime. The article explains that in a 2011 deposition, Mr. Trump testified that he spoke to Sater "for a period of time," but that in a 2013 deposition, Mr. Trump stated that "if [Sater] were sitting in the room right now, I really wouldn't know what he looked like." David Corn, *The Many Times Donald Trump Has Lied About His Mob Connections*, Mother Jones (Sept. 23, 2016), <http://www.motherjones.com/politics/2016/09/donald-trump-lies-about-dealings-mafia-figures>.
- q. Exhibit Q** is a true and correct copy of a *Narco News* article detailing Sater's connections to Mr. Trump. The article quotes an email from Sater to the reporter in which Sater wrote:

I was the person buying the 20 stingers [shoulder-fired missiles] in Afghanistan not Russia, on behalf of the CIA. We needed to scoop them all up. The old stingers didn't have the chip that prevented shooting them at US aircraft, and when some fell into the hands of Al-Qaeda, we needed to get the rest off the market as fast as possible. I was on the ground running an operation for US military

intelligence already, so the CIA let me run with this as well.

I developed a strong relationship with [name redacted] and we began arranging the purchase of stingers based on President Clinton's directive. As well as planning attacks and elimination of UBL [Osama bin Laden] in 1998, [a] couple of years before 9/11.

Yes I played a major role in President Clinton's bombing of UBL's camp in '98. And after 9/11, I went into overdrive on the World Trade Center bombers, their financial network, hunting for operatives still at large, etc., as well as coordination of bombing targets in Afghanistan etc. etc. etc.

Bill Conroy, *The Donald and the Snitch*, Narco News Bull.: The Narcosphere

(Sept. 27, 2016 9:52 P.M. E.S.T.),

<http://narcosphere.narconews.com/notebook/bill-conroy/2016/09/donald-and-snitch>.

- r. Exhibit R** is a true and correct copy of a transcript of the February 14, 2011, hearing in the Second Circuit referenced in the motion. Exhibit 10: Transcript of 2/14/11 Oral Argument at Second Circuit, *In re Public Documents Filed in 12 MC 0557 BMC*, No. 16-mc-706-BMC (E.D.N.Y. July 8, 2016), ECF No. 205-10.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed at New Haven, Connecticut, this 21st day of March 2017.

/s/ John Langford
John Langford

EXHIBIT A

Global Champions of Free Enterprise

56M

Monthly Unique Vistors

6.8M

Audience Readership

30M

Social Followers

Katy Perry—a platinum record-selling musician and Celebrity 100 list member.



Innovating

SINCE 1917

Forbes has evolved into a global media brand with technology at the core of our strategy. Throughout our 99-year history, we've managed to remain true to our brand's long-standing mission of championing entrepreneurial capitalism while reinventing our medium, technology and platform for the modern day audience.



agreements and more.



37

Local Licensed Editions



2,000+

Contributors & Staff Writers

We reach diverse audiences

Across All Platforms

With a wide editorial lens and iconic status in the lexicon of American media, Forbes is not just a business

magazine and website, but a media brand that documents and promotes innovation across a broad range of platforms and industries.



Digital



Mobile



Magazines



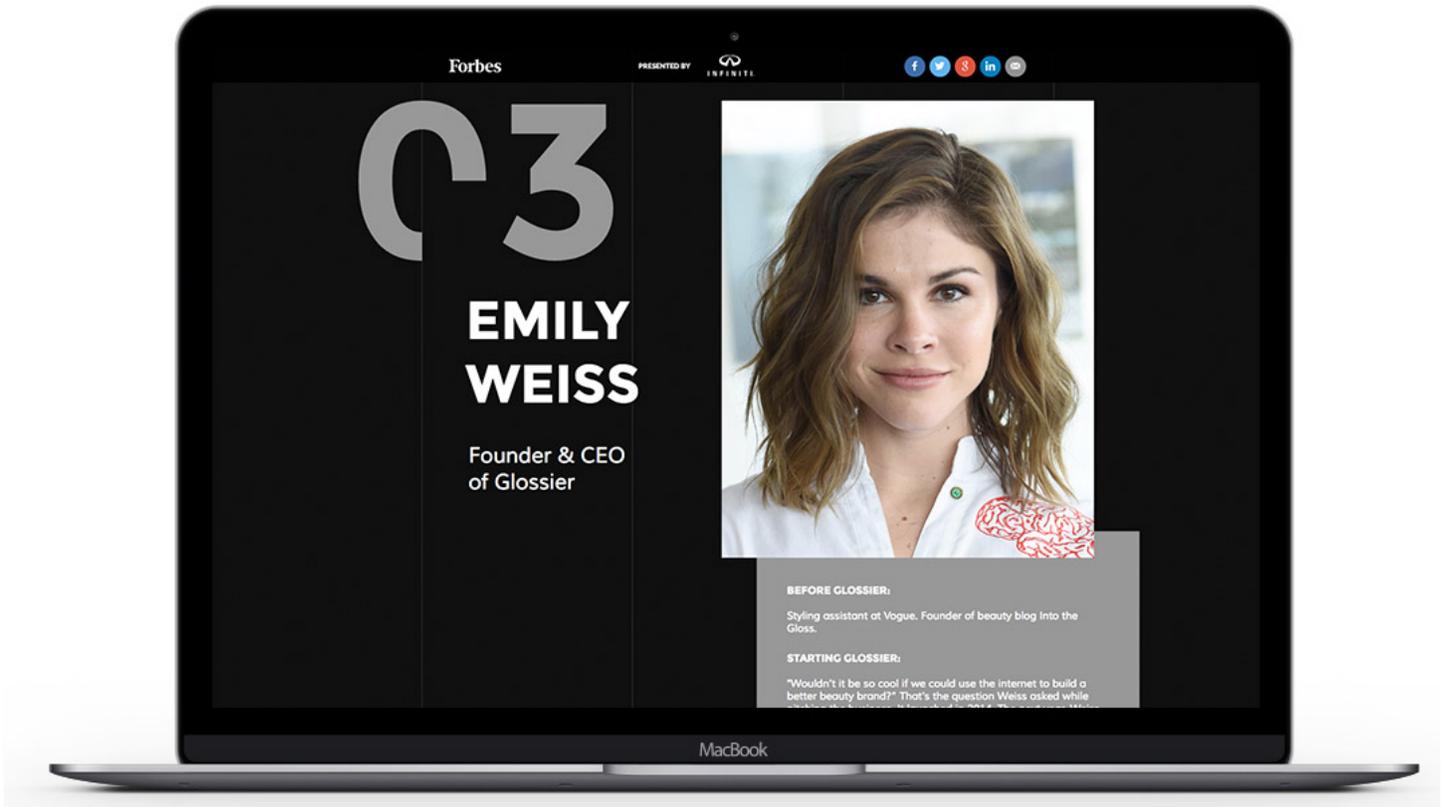
Video



Live



Business



Forbes.com traffic stands at a record-breaking 56M monthly unique visitors.

#1 in the business category for reach to the C-suite

52% of readers are A18-34

30M social media followers

More Digital →

Real Time

Activity on Forbes.com from the past 24 hours



0

Posts



0

Comments



0

Shares

Audience by Segment

 Autos

9.2M

Visitors own 2 or more vehicles

 Business

5.2M

Chief officers, business owners or business decision makers

 Energy

 Entrepreneurs

68%

Public, civic or social influencers

1.9M

Reach to entrepreneurs

 Lifestyle

\$35M+

Spend on apparel & accessories

 Marketing

2.5M

More reach to millennials than competitors

 Health

2.2M

Healthcare professionals

 Leadership

11.9M

Donated to non-profit organizations in the last 6 months

 Technology

3M

Early tech adopters

 Investing

8.1M

8.1M have a household income of \$100k+

Plan Your Campaign

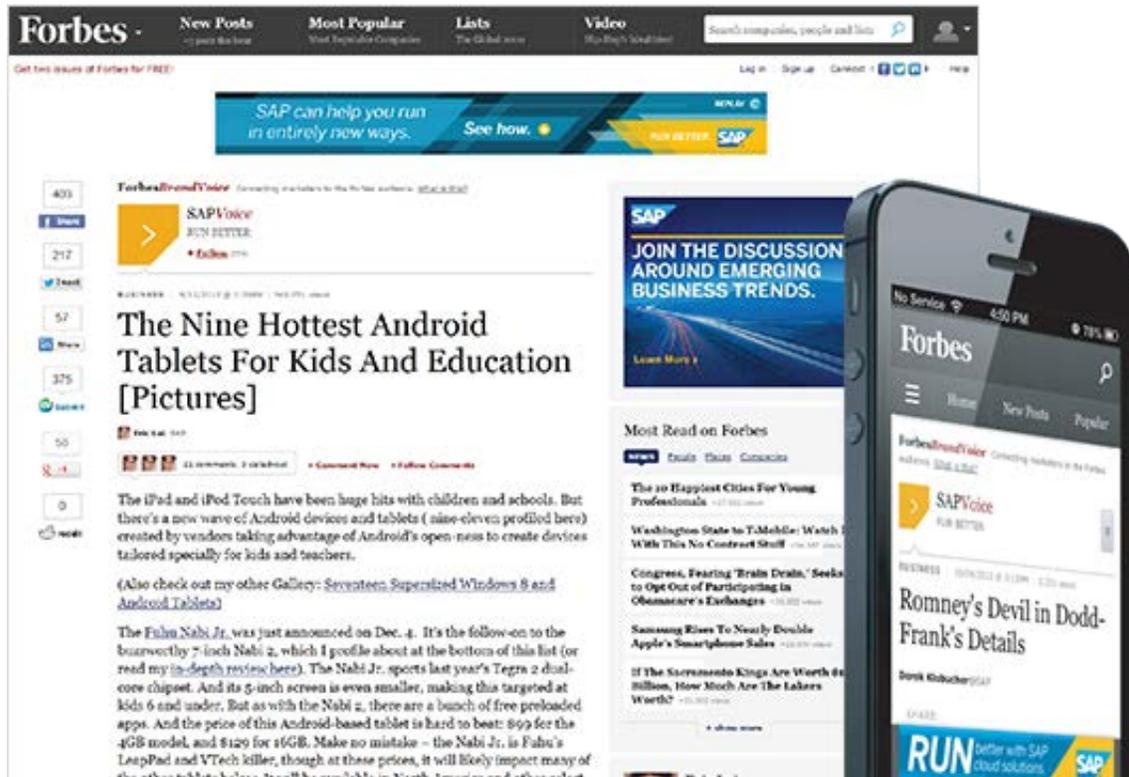
Jump to:

Editorial Calendars



GO

We provide advertisers with
Integrated Solutions



Brand Voice is an integrated platform that enables marketers to join the conversation with their own narrative and expertise.

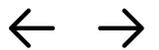
— Learn More →

The Latest at Forbes



Forbes Around the World

Spanning 68 countries and 26 languages, Forbes publishes 37 distinct international editions—providing our advertisers with extensive opportunities to reach and connect with global power players and decision makers around the world.



Stay up to date

Subscribe to our newsletter →

Sources: comScore November 2016, GfK MRI Spring 2016, Sprinklr; Digital: Sprinklr, Mobile: comScore January 2016; Magazines: GfK MRI Spring 2016; Video: YouTube, Events: Sprinklr, BrandVoice: SimpleReach July 2016; Audience by Segment: Autos: comScore January, Business: comScore January 2016, Energy: comScore May 2015, Entrepreneurs: comScore January 2016, Health: comScore January 2016, Investing: comScore January 2016, Leadership: comScore January 2016, Lifestyle: Mendelsohn 2015 (aggregate spend in the last year), Marketing & Advertising: comScore January 2016, Technology: comScore January 2016.



499 Washington Blvd.
Jersey City, NJ 07310
p: (212) 620-2200
f: (212) 206-5109

Site by
Born & Raised

[Privacy Policy](#) [Terms and Conditions](#) [Contact Us](#) [Forbes Press Room](#)

© 2017 Forbes Media LLC. All Rights reserved.

Use of this Site constitutes acceptance of our [Terms and Conditions](#) (effective June 10, 2015) and [Privacy Policy](#) (effective June 10, 2015). The material on this site may not be reproduced, distributed, transmitted, cached or otherwise used, except with the prior written permission of Forbes Media Inc.

EXHIBIT B



Contributor

Richard Behar

I'm the Contributing Editor of Investigations for Forbes magazine [FULL BIO](#) ^

I'm the Contributing Editor, Investigations, for Forbes magazine — and writing a book about Bernard Madoff, to be published by Simon & Schuster. I'm also the Editor of Mideast Dig, a global, nonprofit investigative media outlet that gets it right about Israel and the entire Middle East — and refuses to pull its punches.

(www.mideastdig.com) From 1982-2004: staffs of Forbes, Time and Fortune magazines. (Also projects for BBC News, CNN, Fast Company, FoxNews.com and PBS.) In 2005, launched Project Klebnikov, a global media alliance committed to shedding light on the Moscow murder of Forbes editor Paul Klebnikov and to furthering the investigative work that Paul began there. More than 20 major journalism awards — including George Polk (twice); Overseas Press Club (twice); Gerald Loeb; National Magazine Award; Daniel Pearl; Conscience-In-Media Award — on subjects ranging from terrorism in Pakistan to counterfeiting in China; from corporate wrongdoing on Wall Street to the Russian mob in Siberia. (Full bio at mideastdig.com and richardbehar.com) For speaking engagements: Washington Speakers Bureau.

Follow



EXHIBIT C

Donald Trump And The Felon: Inside His Business Dealings With A Mob-Connected Hustler



Richard Behar, CONTRIBUTOR

I'm the Contributing Editor of Investigations for Forbes magazine. [FULL BIO](#) ✓

Opinions expressed by Forbes Contributors are their own.

This story appears in the October 25, 2016 issue of Forbes. [Subscribe](#)



Photo credit: Finlay Mackay/Trunk Archive

Felix Sater is not a name that has come up much during the presidential campaign. That he has a colorful past is an understatement: The Russian-born Sater served a year in prison for stabbing a man in the face with a margarita glass during a bar fight, pleaded guilty to racketeering as part of a mafia-driven "pump-and-dump" stock fraud and then escaped jail time by becoming a highly valued government informant.



He was also an important figure at Bayrock, a development company and key Trump real estate partner during the 2000s, notably with the Trump SoHo hotel-condominium in New York City, and has said under oath that he represented Trump in Russia and subsequently billed himself as a senior Trump advisor, with an office in Trump Tower.



Usually such an association would ignite a political firestorm. From the Clintons' Whitewater deals to Richard Nixon's relationship with Florida banker and developer Bebe Rebozo, all the way back to 19th-century industrialist Mark Hanna's influence over William McKinley, presidential candidates have long suffered by dint of association.

Sater has been profiled in the [Washington Post](#), on ABC News and in several other outlets. But few have taken much note of him, presumably because Trump has said, under oath, that he barely knew him. "If he were sitting in the room right now, I really wouldn't know what he looked like," he said in a deposition in November 2013. Asked how many times he had ever conversed with Sater, he said, "Not many." And asked about a previous BBC interview, in which he was questioned about Sater's mafia connections, Trump said he didn't recall the interview.

This past December Trump went further: "Felix Sater, boy, I have to even think about it," Trump told AP, referring questions about Sater to his staff. "I'm not that familiar with him."

End of story? Not quite. Looking into Trump's deals, FORBES has uncovered numerous e-mails and sworn statements that indicate Sater was closer to Trump, his organization and his children than previously revealed. Additionally, FORBES has connected three billionaire oligarchs from Kazakhstan to potential deals involving Trump and Sater.

[READ: Trump And The Oligarch 'Trio'](#)

Why does this matter? The story of Sater and the one involving billionaires quietly backing the Trump-Bayrock deals speaks to a key virtue of any good businessman-- due diligence--that seems especially relevant for a candidate running on private-sector acumen and the need to do "extreme vetting" of those seeking to get into the country.



 [Gallery](#)

All The (Potential) President's Men

[Launch Gallery](#)

8 images



It wouldn't have taken much vetting to get the scoop on Sater. FORBES retained a highly regarded global-risk-assessment firm to conduct a background check, using only what was available to it in 2007--the year the Trump-Bayrock relationship was promoted. The investigative firm (it asked not to be named for fear of political repercussions) discovered many facts that we're revealing here and others that have come out before, including felony convictions and organized crime ties. Such due diligence on Sater could have been done for \$5,000.

TRUMP AND SATER



Photo: Getty Images, Peter Burka (Flickr). Design: Holly Warfield

2002 Felix Sater has testified that he joined Bayrock, controlled by Tevfik Arif, around 2002. Bayrock was based in Trump Tower. In a sworn deposition in 2008, Sater testified that he would pitch business ideas to Trump ("just me and him") and his team ("on a constant basis").

2005 FORBES has obtained a [letter to Sater](#), listed as Bayrock's "managing director," from [Donald Trump Jr.](#), which states that his father would be a partner in a proposed hotel-tower in Fort Lauderdale, Fla. The letter is cc'd to the Trump Organization's VP of development.

From: Senada Adzem
Sent: Sunday, February 13, 2005 11:52 PM
To: Felix Satter
Cc: Jody Kriss
Subject: Trump Letter

Felix,

Pls review the attached letter and forward to Don. Let me know if the last paragraph is sufficiently elaborated upon. (What kind of "partner" will be a recurring question) Jody, your comments are appreciated, as well.

Thanks!
Senada



February 11, 2005

Felix Satter, Managing Director
Bayrock Group LLC
725 Fifth Avenue, 24 Floor
New York, NY 10022

Re: Trump International Hotel & Tower, Ft Lauderdale

Dear Mr. Satter:

The Trump team has reviewed the Layouts of the Units provided by Michael Graves & Associates, dated February 2, 2005. We are very pleased with the latest changes. The layouts are approved subject to one minor change: The 605 sq. ft. studio, Unit Type A, should have a bar with bar-stools separating the kitchen from the living room.

Additionally, we suggest that in the 729 sq.ft one-bedroom, Unit Type E, the sink be moved next to the stove to eliminate one chase wall. This minor change will result in significant savings in construction costs.

In defining the Trump Organization's involvement in the project, Donald J. Trump will be named a partner, and for advertising, marketing and public relations purposes, the project will be referred to as a Donald J. Trump signature development.

Best Regards,



Donald Trump, Jr.

CC: Jill Cremer

2005 Donald Trump gave Sater and Bayrock an exclusive deal to develop a project in Russia, according to Sater's 2008 deposition. "I'd come back, pop my head into Mr. Trump's office and tell him, you know, 'Moving forward on the Moscow deal.' And he would say 'All right.'"

"I showed him photos, I showed him the site, showed him the view from the site. It's pretty spectacular."



Photo by Amy Sussman/Getty Images For The Miami Group, Shutterstock. Design: Nick DeSantis, Forbes staff

2006 Donald Trump Jr. and sister Ivanka travel to Moscow. Sater claims Donald Sr. asked him to show them around the city. "He asked if I wouldn't mind joining them and looking after them while they were in Moscow." Trump Organization general counsel Alan Garten tells FORBES it was a coincidence that all were there at the same time.

READ: Trump And The Oligarch 'Trio'

2007 In a lawsuit, the manager of a proposed Trump hotel-condo tower in Phoenix alleges that Sater threatened to have a cousin shock his testicles, cut off his legs and leave him "dead in the trunk of his car" if the manager "disclosed to any party any of [Sater's] suspected improprieties and past criminal conduct." Sater strongly denies the allegation; the case was settled.

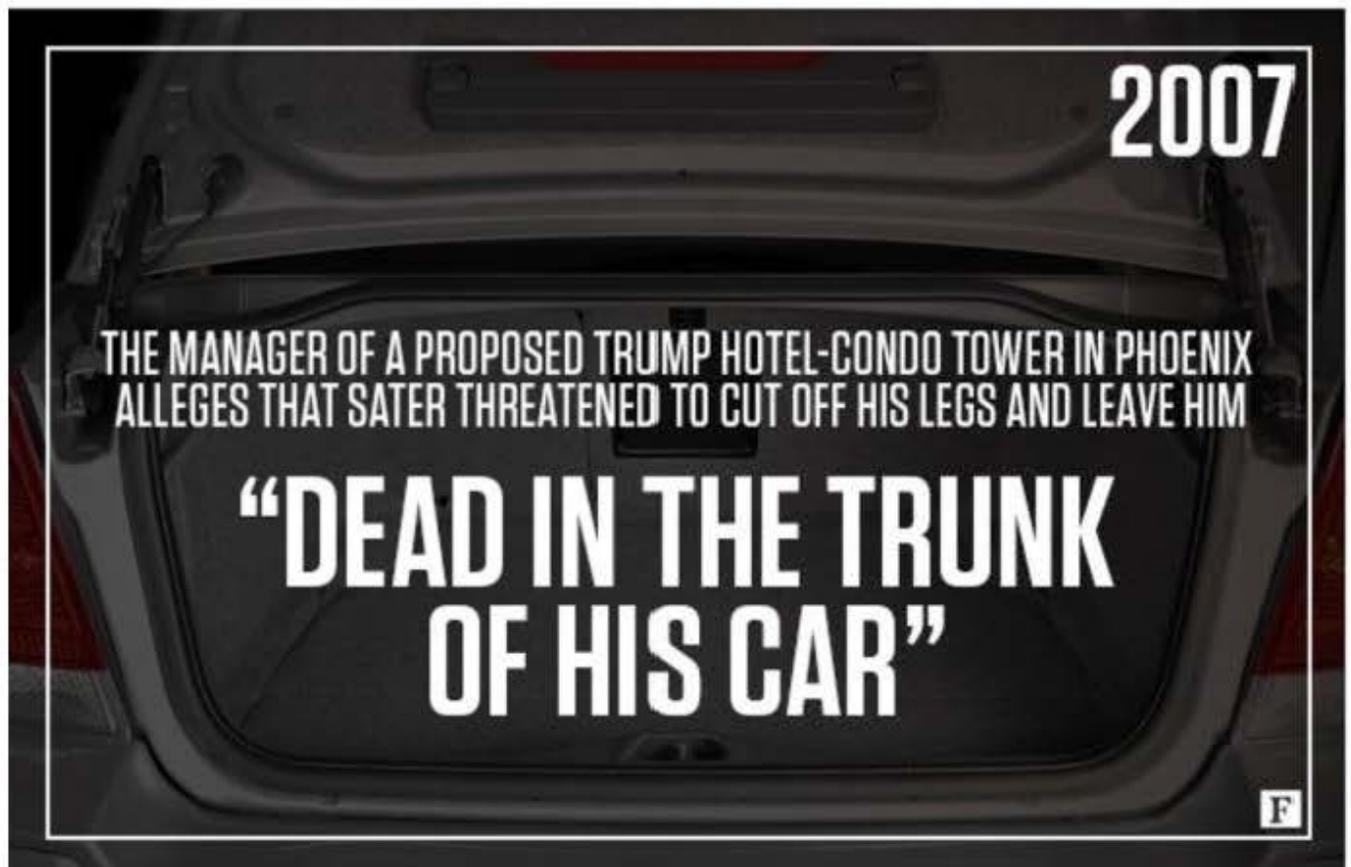


Photo: Shutterstock. Design: Holly Warfield, Forbes staff

FORBES has also obtained a May 2007 letter from Bayrock's executive vice president, Julius Schwarz, to Bayrock's chairman saying "there were at least a hundred times when the deal [\$50 million equity for Trump projects from a company in Iceland] could not have closed, among them because of the risk of discovering Felix's past." Schwarz tells FORBES that the letter is legitimate, but while he e-mailed it to his wife for her opinion, it was "never sent" to the chairman.

FORBES has also obtained a **May 2007** [letter from Bayrock's executive vice president](#), Julius Schwarz, to Bayrock's chairman saying "there were at least a hundred times when the deal [\$50 million equity for Trump projects from a company in Iceland] could not have closed, among them because of the risk of discovering Felix's past." Schwarz tells **FORBES** that the letter is legitimate, but while he e-mailed it to his wife for her opinion, it was "never sent" to the chairman.

DOCUMENT PAGES TEXT Zoom Search

https://outlook.office.com/owa/projection.aspx

Reply all Delete Junk

Re:

 **suzannesch@redacted.com**
Thu 5/31/2007, 12:12 PM
Julius Schwarz

Deleted Items

 **Arif Letter.doc**
30 KB
Download Save to OneDrive - FORBES MEDIA

----- Original Message -----
From: Julius Schwarz
Date: Thursday, May 31, 2007 11:59 am
Subject:
To: suzannesch@redacted.com

>
>
>
>
> Julius R. Schwarz
> Executive Vice President
> Bayrock Group, LLC
> Trump Tower
> 725 Fifth Avenue, 24th Floor
> New York, New York 10022
> Tel: 212-207-6650
> Fax: 646-536-8929

May 31, 2007

Mr. Tevfik Arif

Dear Mr. Arif:

There were some things that you said and did yesterday that may have been unintentional, but which has made me quite upset. You said that some people think that they do more than they really do at Bayrock. I believe you were referring to me. You also said that I should "stick to law". Both statements as they apply to me are fundamentally unfair and absolutely incorrect.

Time and again this company has almost gone under due to the past of our partners and prior dealings done before I came to Bayrock. In addition when I came here, Bayrock was not financially sound and was under water. I used every available resource I had and I worked tirelessly to ensure that this company stayed afloat. I have also repeatedly covered for Felix and Jody as a result of neither being here much of the time.

I also want to remind you of the following:

Whitestone was able to close due to me getting Apollo to step up and finance us. Then we refinanced with GMAC which is also my sole relationship. I have also spearheaded rezoning and cleaning up Whitestone, and moving forward with the design plans. This has all been my responsibility.

On Camelback we were in default under our loan when Beau left. Also we had no insurance or property management, and we had a terrible mezz loan to deal with and no cooperation from our landlord. I not only saved us from default but also refinanced out the mezz lender, got the landlord to close the fee in escrow, and even got Ernie to sign off on everything. Then we were hit with Ernie's lawsuit which threatened to disclose to the world past indiscretions of our partners and to even sue Donald Trump and claim that he has knowingly dealt with convicted felons who have in the past perpetrated consumer fraud. I had all of that sealed and got the whole litigation kicked out of court.

On Soho I have ended up making at least 80% of all business decisions and all legal decisions as well, not because I wanted to, but because there was no one else to do it at Bayrock. Jody has often been unavailable and moreover does not want to make any decisions. In fact at the beginning of this project Jody was supposed to be the point person on Soho and that was in the documents. After continually missing meetings and not participating, our partner wanted me to take Jody off and put me on as the Bayrock point person.

In Fort Lauderdale I have really attempted to quiet things with Roy, and Roy still does not want to deal with Felix or Jody.

On FL there were at least a hundred times when the deal could not have closed, among them because of the risk of discovering Felix's past, and failing to get key consents from Roy and the Fort Lauderdale lenders, as well as major tax issues. Also in the beginning FL wanted a lot of control of Bayrock and how we spent the funds. I fought against all of this even though Felix and Jody told me to cave, and I won almost everything so that now you have control over \$50 Million and FL has almost no say as to how we run our business.

Please also don't forget what I have done for Rixos and Bayrock Natural Stone, none of which has involved Felix or Jody.

You also say that I have gotten the money I wanted in the past. I don't think you realize that I am repeatedly approached by law firms and equity funds who want me to work for them. I can be

making far more than what I make here. I have stayed because I wanted to help build this company. I thought I was being appreciated for it. Also I asked from you only what money I needed to support my family and my son, who I will need to care for the rest of his life.

By setting the bonuses the way you did and by saying what you said it makes me feel that you do not appreciate what I do. For that I am very sad. I have put all of my blood, sweat and tears into this company for over 2 years. I would rather get 0 than not be appreciated for what I do. I do not embellish my actions, as that is not my way; I say it like it is.

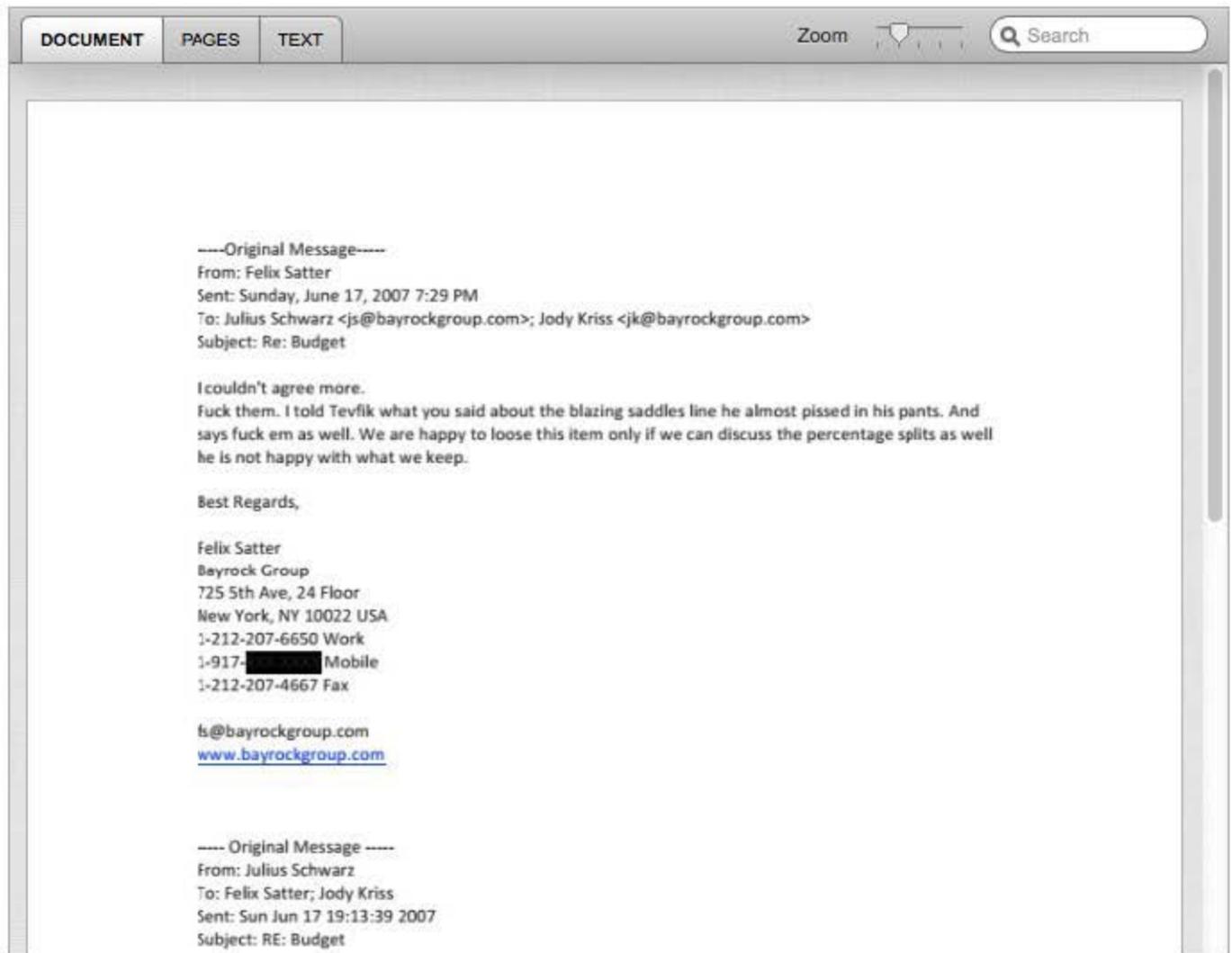
In short, I just want the appreciation and acknowledgement from you of what I have done, both verbally and financially in comparison to the other partners, not statements that I should stick to law or that I have not contributed as much as I claim to. If you want me to just stick to law, that's fine, but I do not feel that this company will function effectively.

Very truly yours,

Julius R. Schwarz



In a June 2007 e-mail chain obtained by FORBES involving Trump executives (including Donald Jr. and Ivanka), Bayrock executives (including Sater) and execs at Sapir Organization--a key Trump development partner owned by then-billionaire **Tamir Sapir**--Sater says he's dealing directly with Donald Trump and his family in a dispute: "Donald Jr. and sr [sic] are calling me to talk about us eating it. I called Ivanka and told her I was pissed about Donald throwing me under the bus to Sapir. So now the billionaires [sic] can work it out." Trump's counsel characterized the exchange as unnewsworthy.



-----Original Message-----

From: Felix Satter

Sent: Sunday, June 17, 2007 7:29 PM

To: Julius Schwarz <js@bayrockgroup.com>; Jody Kriss <jk@bayrockgroup.com>

Subject: Re: Budget

I couldn't agree more.

Fuck them. I told Tefvik what you said about the blazing saddles line he almost pissed in his pants. And says fuck em as well. We are happy to loose this item only if we can discuss the percentage splits as well he is not happy with what we keep.

Best Regards,

Felix Satter

Bayrock Group

725 5th Ave, 24 Floor

New York, NY 10022 USA

1-212-207-6650 Work

1-917- [REDACTED] Mobile

1-212-207-4667 Fax

fs@bayrockgroup.com

www.bayrockgroup.com

----- Original Message -----

From: Julius Schwarz

To: Felix Satter; Jody Kriss

Sent: Sun Jun 17 19:13:39 2007

Subject: RE: Budget

Actually he is throwing US all under the bus (which you can't be surprised about). Don't let the bastard get away with it. This is why we need to always be firm but respectful when dealing with these pig-whores.

Julius R. Schwarz

Executive Vice President

Bayrock Group, LLC

Trump Tower

725 Fifth Avenue, 24th Floor

New York, New York 10022

Tel: 212-207-6650

Fax: 646-536-8929

From: Felix Satter

Sent: Sun 6/17/2007 6:42 PM

To: Jody Kriss; Julius Schwarz

Subject: Re: Budget

From: Felix Satter
Sent: Sun 6/17/2007 6:42 PM
To: Jody Kriss; Julius Schwarz
Subject: Re: Budget

Have Alex respond or rich stay out of it its about the pref and Donald Jr and sr are calling me to talk about us eating it. I called Ivanka and told her I was pissed about Donald throwing me under the bus to Sapir. So now the billionaires can work it out. Us little folk will stay out of it.

Best Regards,

Felix Satter
Bayrock Group
725 5th Ave, 24 Floor
New York, NY 10022 USA
1-212-207-6650 Work
1-917-██████████ Mobile
1-212-207-4667 Fax

fs@bayrockgroup.com
www.bayrockgroup.com

----- Original Message -----

From: Jody Kriss
To: 'rlaltrelli@sapir.com' <rlaltrelli@sapir.com>; 'asapir@sapir.com' <asapir@sapir.com>; Felix Satter; Julius Schwarz
Sent: Sun Jun 17 17:44:18 2007
Subject: Fw: Budget

See below response from Jim

Jody L. Kriss
cell: 305-██████████
jk@bayrockgroup.com

----- Original Message -----

From: Jody Kriss

To: 'rlaltrelli@sapir.com' <rlaltrelli@sapir.com>; 'asapir@sapir.com' <asapir@sapir.com>; Felix Satter;
Julius Schwarz

Sent: Sun Jun 17 17:44:18 2007

Subject: Fw: Budget

See below response from Jim

Jody L. Kriss

cell: 305- [REDACTED]

jk@bayrockgroup.com

----- Original Message -----

From: Jim Petrus <jpetrus@trumporg.com>

To: Jody Kriss

Sent: Sun Jun 17 17:43:07 2007

Subject: RE: Budget

Hi Jody...budget was actually done at 9:30 AM but informed it was to be attached to the HMA revisions that were being discussed. Sent a note to Don to see if he is ok sending out tonight in advance of the completed docs. Will advise as soon as we hear back.

Jim

Jim Petrus

Chief Operating Officer

Trump International Hotels

725 Fifth Ave

New York, New York

10022

212 715-7227 Direct

212 688-3125 Fax

-----Original Message-----

From: Jody Kriss [mailto:jk@bayrockgroup.com]

Sent: Sunday, June 17, 2007 4:53 PM

To: Jim Petrus

Cc: Ivanka Trump; Donald Trump Jr.; rlaltrelli@sapir.com; asapir@sapir.com; Felix Satter

Subject: Budget

Jim

Per our conversation Thursday you said you would have the budget ready by 3PM Friday.

As you know we are trying to close the loan Monday and need the budget agreed to and affixed to the hma.

When can we expect to receive the budget from you?

Thanks

Jody

Jody L. Kriss

cell: 305- [REDACTED]

jk@bayrockgroup.com

In August 2007 The Trump SoHo hotel-condo project files an offering plan with New York State--it names Donald Trump and his children Don Jr. and Ivanka--to sell apartments in the building. It states that there have been "no prior felony convictions of Sponsor [the Bayrock/Sapir Organization], or any principals of Sponsor." FORBES has obtained e-mails that indicate that Sater was in fact an owner/principal in Bayrock. Sater and Bayrock deny it.

Dec. 19, 2007 Two days after a [New York Times](#) NYT +0.34% story on Sater's background, Trump was deposed in a lawsuit. Asked if he was aware that one of the principals of Bayrock had previously been convicted of both assault and securities-fraud violations, Trump responded: "Well, they represented to me that he [Sater] was not a principal--[that] he's an employee. " In a later deposition Trump stated, "I don't know who owns Bayrock."

Asked how much he interacted with Sater, Trump responded: "Not that much ... very little ... I dealt mostly with Tevfik [Arif] ... and very little with Sater." Asked if he was severing ties with Bayrock in light of learning about Sater's criminal background, Trump said: "I'm looking into it, because I'm not happy with the story. ... He changed the spelling in his name, so people trying to find things out about him were unable to."

The latter statement is questionable. In [an internal Bayrock e-mail](#) obtained by FORBES and dated almost three weeks before the Times story was published, an investigator retained by a Bayrock law firm revealed that Sater's past was easy to learn because he had simply added a second "t" in his surname ("Satter") while working at the company.

-----Original Message-----

From: Gilbert, Adam [mailto:agilbert@nixonpeabody.com]

Sent: Friday, November 30, 2007 5:41 PM

To: Julius Schwarz <js@bayrockgroup.com>; Felix Satter <FS@bayrockgroup.com>

Subject: FW: Felix Henry Sater (Search)

My skip tracer, Bob Meserve, is about the best there is. If Charles Bagli did a search on Felix Sater, this is what he would find. Please forgive Bob's penchant to editorialize. ABG

-----Original Message-----

From: Meserve, Robert

Sent: Friday, November 30, 2007 5:28 PM

To: Gilbert, Adam

Subject: Felix Henry Sater (Search)

Adam --

If you Google the name Felix Satter, you'll find references to the owner of the Bayrock Group, who's been involved in various impressive-sounding real estate deals. But if you Google Felix Sater, you'll discover references to a former securities broker with alleged ties to the Russian mob. Yet Mr. Satter and Mr. Sater appear to be one and the same person.

PrivateEye.com shows no one in the entire US named Felix Satter.

And AutoTrack indicates that the SSN you provided -- [REDACTED] -- was issued in NYS, between 1977 and 1978, to a Felix H. Sater. Mr. Sater was born in March 1966 and is AKA Haim F. Sater and Hai Ying Sater. So it's hard not to conclude that Mr. Satter is, in fact, Mr. Sater.

And, as Felix Sater, he was convicted of assault in 1993. Mr. Sater appealed that conviction, but was turned down by the First Department in February 1994, and by the Court of Appeals a month later:

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

201 A.D.2d 323; 608 N.Y.S.2d 836; 1994 N.Y. App. Div. LEXIS 1093

The People of the State of New York, Respondent, v. Felix Sater,
Defendant-Appellant.

51120

February 10, 1994, Decided

February 10, 1994, Entered

JUDGES: [***1] Murphy, P.J., Sullivan, Ross, Rubin, Tom, JJ.

OPINION

[**836] [*323] Judgment, Supreme Court, New York County (James Leff, J.), rendered March 31, 1993, convicting defendant, after a jury trial, of assault in the first degree, and sentencing him to a term of 1 1/2 to 4 1/2 years, unanimously affirmed. The matter is remitted to Supreme Court for further proceedings pursuant to CPL 460.50(5)



Photo: Will Ragozzino/Patrick McMullan via Getty Images. Design: Nick DeSantis, Forbes staff

January 2008 So was Sater a partner at Bayrock (and thus a partner with Trump)? A [January 2008 e-mail from Sater](#) obtained by FORBES indicates so. Sater wrote to two executives representing Bayrock investors in Iceland. In the e-mail, Sater says Bayrock's lawyer had informed one of its lenders that Sater was a "principal" in Bayrock. Sater, concerned that revelation could trigger a default, writes in the e-mail that Bayrock's general counsel's "head is not on straight," as just a day before his disclosure he was verbally "abused" by Trump in a meeting. Sater added that Bayrock chairman Arif is "thoroughly freaked out" by the lawyer's slip--and wants out of the company. Sater then lays out a detailed plan to create a family trust that gives him an option to buy 30% of Bayrock when the smoke clears a few years later. "By then no one will care," he wrote. In a conversation with FORBES, Sater says he doesn't recall the e-mail or its contents: "I don't remember anything like that."

From: FS [mailto:fsbayrock@yahoo.com]
Sent: 28. January 2008 02:45
To: Richard Beenstock richard@stodir.is
Cc: Örvar Kærnedst orvar@stodir.is
Subject:

Dear Richard and Orvar,

How have both of you been? I hope better than me. Anyway let me get right to the heart of the matter. On Thursday Julius told iStar that I have a large economic interest in Bayrock. This is very problematic and could cause damage. I think he did it to get me out fast, since he instantly told Richard, Tevfik and Jody about it as well as me. He then proceed to tell me to resign quickly and do the family trust thing on Monday the latest, or else the banks could start default (mostly not true). His head is not on straight after Wednesday when Trump and Sapir abused him in a meeting about him being a good lawyer but a terrible developer. Sapir trying to take advantage of the situation and take managing member status for themselves, and Donald who saw an opportunity to try and get development fees for himself since he knows we will not give it to Sapir so he figures both sides give it to him. Unfortunately Julius did not tell Richard about this meeting only the bank call. He has now told Tevfik that the banks may come after him for failure to disclose. That is not true as I have an economic interest not an undisclosed principal. He is also very upset that last week he stuck a piece of paper in front of me increasing his interests and I refused to sign it. So I guess he feels if he cant get it no one else should either. Anyway the situation may get bad and Tevfik is thoroughly freaked out and wants out.

I would like to make the following proposals to get this moving along.

1. We speed up everything to getting done this week.
2. Give Tevfik \$1 million now and \$2 million in 60 days pending full DD and obviously offset by any unknown but discovered liabilities (I don't believe there are any).

3. Take 100% of Bayrock and give my family Trust an option at some low price to exercise in 5 years into 30% equity (less Jody 6%), with participation on profit distributions during the 5 years, that way even if it has to be disclosed no one (especially current banks) cares what happens in 5 years after they get paid off. And by then no one else will care either.
4. Transfer funds from Bayrock into International Company, which i have ready to go and will describe to you tomorrow. My ownership there will also be in a family trust, with an employment contract. I am starting to get hyper sensitive to being involved as principal directly. I appreciate your support but there is no need to have to keep dealing with this nonsense. i think some time has to pass and then no one will care, now its like an open sore, and I don't want to give people like Julius the ability to try and trip me up or have these things trip you up by supporting me.
5. I resign this week after we do the paperwork and transfer employment to international.
6. We bring in Jody who is happy to help, and does not want to see Bayrock fail or the lender relationships he put in place ruined and be blamed for it. If Jody goes to the banks who he still speaks to and says FL bought out Tevfik, and Felix is no longer there, and Jody is staying for continuity purposes it will be a good thing. Even better if we have a new President in place as well. He will stay as a consultant for 2 years, full time at first, less after we hire a president. We need to have someone in the transition period who knows where everything is and understands all the players. I promised Jody a piece of my end for him to stay and help Bayrock flourish, which he helped me build from day 1. I am cutting into my end for Jody because I want to see this situation resolve fast and we can all go on to make money together. At least unlike Julius he can be trusted not to play games or double deal and all the banks know him and would be comfortable.
7. We hire Glen or bring in a high end headhunter to find a President, in the interim the rest of the team is in place and Jody will help manage the situation and help us find the right President.

He really wants to see Bayrock flourish. As do we.

Lets speak in the am about the above. I know its faster than anticipated but I don't believe the above is inconsistent with our overall plans.

I am sorry my situation is causing so much grief, but I promise you I will work very hard to make it up to you.

Thank You,
Felix

2008 According to the Washington Post, Sater's message to potential investors was simple: "Anybody can come in and build a tower. I can build a Trump Tower, because of my relationship with Trump."

READ: [Trump And The Oligarch 'Trio'](#)

2009 A former Bayrock financial analyst filed a lawsuit against Bayrock in which he claimed he had been stiffed out of a partnership interest.

Alleged the analyst: "Felix Sater was Bayrock. They paid his personal expenses, they paid his living expenses. They bought him a house. ... Felix always held himself out as owning half the company ... held himself out to everyone. And he said it to me." Sater denies this. The former employee also stated that Sater physically threatened him twice ("If you don't write this e-mail, I'll kill everyone you love," he says Sater once told him. Sater denies this.)



Photo: Shutterstock. Design: Nick DeSantis, Forbes staff

2010 For about a year Sater became a "Senior Advisor to Donald Trump" and was given a Trump Organization e-mail address, business cards and an office there. The phone number listed on his business card previously belonged to a lawyer in Trump's general counsel's office.

Summer 2016 Felix Sater contributed the maximum allowed (\$5,400) to Donald Trump's campaign. A campaign spokesperson said at the time that they were unaware of Sater's donations.

[READ: Trump And The Oligarch 'Trio'](#)



Photo: Getty Images, Shutterstock. Design: Holly Warfield, Forbes staff

July 2016 A year-old private lawsuit against Bayrock, Sater and others, filed on behalf of the state of New York, is unsealed by a New York court. It alleges that the group sought to launder as much as \$250 million of profits on Trump projects out of the country to evade taxation and hide its true foreign owners. The attorneys behind the suit, Frederick Oberlander and Richard Lerner, now tell FORBES that new information leads them to believe that Trump misrepresented his knowledge and involvement, and was a participant in the schemes. FORBES has not found any evidence of government action on the case, and Trump's attorney says the case is "completely frivolous" and believes it will be dismissed. [Sater's lawyer](#) terms the suit "false and defamatory."

DOCUMENT PAGES TEXT Zoom

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

-----X

THE PEOPLE OF THE STATE OF NEW YORK
ex rel. Qui Tam "The Bayrock Qui Tam Litigation Partnership,"
Plaintiff,

v.

BAYROCK GROUP LLC; TEVFIK ARIF; JULIUS SCHWARZ;
FELIX SATER; BRIAN HALBERG; ALEX SALOMON; JERRY
WEINRICH, SALOMON & COMPANY PC; AKERMAN
SENTERFITT LLP; DUVAL & STACHENFELD LLP;
KRAMER LEVIN NAFTALIS AND FRANKEL LLP, BRUCE
STACHENFELD; NIXON PEABODY LLP; ADAM GILBERT;
ROBERTS & HOLLAND LLP; ELLIOT PISEM; BAYROCK
SPRING STREET LLC; BAYROCK WHITESTONE LLC;
BAYROCK CAMELBACK LLC; BAYROCK MERRIMAC LLC;
And BAYROCK GROUP INC.;

Defendants.

-----X

FILED UNDER SEAL

INDEX 1010478/15

COMPLAINT

The People of the State of New York, through the above-captioned *qui tam* relator plaintiff "The Bayrock Qui Tam Litigation Partnership," a New York partnership with its office in New York County, sue the above-captioned defendants pursuant to the New York False Claims Act ("SFCA").

THE NATURE OF THIS ACTION

1. *Substantively*, this action arises out of certain defendants' knowing and fraudulent false statements and causing loss of revenue to the state and local governments by their (a) failure to account for \$100 million of income on which state and local income tax was due, causing underpayment of tax due on that sum; and (b) failure to account for and pay real estate transfer tax (RETT) on transfers of



Photo: Mark Von Holden/WireImage. Design: Nick DeSantis,Forbes staff

[UPDATED] September 2016 FORBES uncovered over 100 Internet domain names that, according to a computer security expert retained by the magazine, lead back to Sater. Some seem to be for Sater himself (Felix-Sater.com). And one touches on Trump (DealsByTrump.com), although Sater's lawyer denies any connection.

*

Richard Behar is the Contributing Editor of Investigations for Forbes magazine; the Editor of Mideast Dig; and is at work on a book about Bernard Madoff — to be published by Simon & Schuster. He can be reached at rbehar@forbes.com

 Comment on this story

SHARE:     

E*TRADE > Master the tricks of the trade. [OPEN AN ACCOUNT](#)

E*TRADE Securities, LLC

OCT 3, 2016 @ 07:57 AM 4,688 VIEWS **FORBES ON TRUMP**

Trump And The Oligarch 'Trio'



Richard Behar, CONTRIBUTOR

I'm the Contributing Editor of Investigations for Forbes magazine [FULL BIO](#) ▾

Opinions expressed by Forbes Contributors are their own.

This story appears in the October 25, 2016 issue of Forbes. [Subscribe](#)



Patokh Chodiev. Photo credit: Andrey Rudakov/Bloomberg

A full-color 28-page presentation by the Bayrock Group, produced in 2007, reveals that the equity financing and "strategic partners" for Trump projects--the Trump SoHo hotel-condo in New York as well as other proposed developments in Florida and Arizona--will come from two sources. One of the those is FL Group, a publicly traded investment company in Iceland that capsized a year later. The other listed partner is Alexander Machkevich and the Eurasia Group, which he controls with Chodiev and Ibragimov (the Trio). If Trump and the Trio have ever met, it's not apparent. Only the Trump SoHo was ever finished. Eventually Bayrock's involvement in Trump projects all but disappeared. It's unclear whether the Trio ever put money into a Trump project. The Trio did not respond to multiple requests for comment.

DOCUMENT PAGES TEXT Zoom Search



BAYROCK GROUP
REDEFINING REAL ESTATE, INVESTMENT AND DEVELOPMENT



COMPANY OVERVIEW

Page 1 of 28

PATOKH CHODIEV

Billionaire oligarchs Patokh Chodiev, Alijan Ibragimov and Alexander Machkevich have long been known as the Trio in Kazakhstan, where they built their fortunes in mining, oil and gas and banking. In the 1990s they partnered in something known as the Chodiev Group, joining with Michael Cherney, who the FBI believed was a major Russian organized-crime figure. Cherney has long denied the accusation, and a decade-long mega-probe of him by U.S. law enforcement--as well as similar probes in Israel, Spain and Switzerland--resulted in no indictments.

[READ: Donald Trump And The Felon: Inside His Business Dealings With A Mob-Connected Hustler](#)

Uzbekistan-born Chodiev, who FORBES estimates has a net worth of \$1.8 billion, was the central figure in a case involving the purchase in 1996 of real estate by the Trio and the wife of a Kazakh prime minister. The Trio claims the purchase was made on behalf of the prime minister because he wanted to keep it secret. The prime minister, Akhezan Kazhegeldin, says the purchase was never completed but alleges it was subsequently bought by individuals linked to the Kazakh regime.



 [Gallery](#)

All The (Potential) President's Men

[Launch Gallery](#)

8 images



ALEXANDER MACHKEVICH

The Moscow Times once tagged Machkevich the "secret treasurer" for Kazakh dictator Nursultan Nazarbayev's 1999 reelection campaign. In the early 2000s Machkevich, Chodiev and Ibragimov were accused of money laundering in Belgium, where prosecutors believed their funds to be of "criminal origin."

 [Comment on this story](#)



Trump And The Oligarch 'Trio'



Richard Behar, CONTRIBUTOR

I'm the Contributing Editor of Investigations for Forbes magazine [FULL BIO](#)

Opinions expressed by Forbes Contributors are their own.

This story appears in the October 25, 2016 issue of Forbes. [Subscribe](#)

Continued from page 1

The case triggered U.S. and Swiss probes of offshore bank accounts linked to Nazarbayev and other officials, but the cases were closed with no indictments. (The attorney general of Kazakhstan called the Trio "the largest investors in our economy," whose funds have been deemed legal.) Belgian authorities accused engineering giant Tractebel of paying secret commissions to the Trio for access to the Kazakh government. Tractebel filed a complaint against the Trio, alleging they committed fraud and money laundering and formed a criminal group. All the cases were settled; the Trio paid a fine to the Belgium government with no admission of guilt. FORBES estimates Machkevich's net worth at \$1.9 billion.

[READ: Donald Trump And The Felon: Inside His Business Dealings With A Mob-Connected Hustler](#)

ALIJAN IBRAGIMOV

Uzbekistan-born Ibragimov, the third member of the Trio, spends much of his time on a reported 26-cabin, \$200 million yacht. FORBES pegs his net worth at \$1.9 billion. He, too, has spent many years being investigated, without any charges being filed. In 2013 metals giant ENRC, controlled by the Trio, was probed by the U.K. government for corruption related to activities in Africa and Kazakhstan, and is still being investigated. ENRC went private, and the Trio partnered with the Kazakh government to buy up the 46% of ENRC shares they didn't already own.

UPDATE: Following publication, Patokh Chodiev told Forbes that he denies any connection to Donald Trump, the Trump Organization or Bayrock Group.

*

Richard Behar is the Contributing Editor of Investigations for Forbes magazine; the Editor of Mideast Dig; and is at work on a book about Bernard Madoff — to be published by Simon & Schuster. He can be reached at rbehar@forbes.com



Comment on this story



PAGE 2 / 2



BAYROCK GROUP
REDEFINING REAL ESTATE, INVESTMENT AND DEVELOPMENT



EXHIBIT D

POLITICS

A Back-Channel Plan for Ukraine and Russia, Courtesy of Trump Associates

By MEGAN TWOHEY and SCOTT SHANE FEB. 19, 2017

A week before Michael T. Flynn resigned as national security adviser, a sealed proposal was hand-delivered to his office, outlining a way for President Trump to lift sanctions against Russia.

Mr. Flynn is gone, having been caught lying about his own discussion of sanctions with the Russian ambassador. But the proposal, a peace plan for Ukraine and Russia, remains, along with those pushing it: Michael D. Cohen, the president's personal lawyer, who delivered the document; Felix H. Sater, a business associate who helped Mr. Trump scout deals in Russia; and a Ukrainian lawmaker trying to rise in a political opposition movement shaped in part by Mr. Trump's former campaign manager Paul Manafort.

At a time when Mr. Trump's ties to Russia, and the people connected to him, are under heightened scrutiny — with investigations by American intelligence agencies, the F.B.I. and Congress — some of his associates remain willing and eager to wade into Russia-related efforts behind the scenes.

Mr. Trump has confounded Democrats and Republicans alike with his repeated praise for the Russian president, Vladimir V. Putin, and his desire to forge an American-Russian alliance. While there is nothing illegal about such unofficial efforts, a proposal that seems to tip toward Russian interests may set off alarms.

The amateur diplomats say their goal is simply to help settle a grueling, three-year conflict that has cost 10,000 lives. "Who doesn't want to help bring about

peace?" Mr. Cohen asked.

But the proposal contains more than just a peace plan. Andrii V. Artemenko, the Ukrainian lawmaker, who sees himself as a Trump-style leader of a future Ukraine, claims to have evidence — "names of companies, wire transfers" — showing corruption by the Ukrainian president, Petro O. Poroshenko, that could help oust him. And Mr. Artemenko said he had received encouragement for his plans from top aides to Mr. Putin.

"A lot of people will call me a Russian agent, a U.S. agent, a C.I.A. agent," Mr. Artemenko said. "But how can you find a good solution between our countries if we do not talk?"

Mr. Cohen and Mr. Sater said they had not spoken to Mr. Trump about the proposal, and have no experience in foreign policy. Mr. Cohen is one of several Trump associates under scrutiny in an F.B.I. counterintelligence examination of links with Russia, according to law enforcement officials; he has denied any illicit connections.

The two others involved in the effort have somewhat questionable pasts: Mr. Sater, 50, a Russian-American, pleaded guilty to a role in a stock manipulation scheme decades ago that involved the Mafia. Mr. Artemenko spent two and a half years in jail in Kiev in the early 2000s on embezzlement charges, later dropped, which he said had been politically motivated.

While it is unclear if the White House will take the proposal seriously, the diplomatic freelancing has infuriated Ukrainian officials. Ukraine's ambassador to the United States, Valeriy Chaly, said Mr. Artemenko "is not entitled to present any alternative peace plans on behalf of Ukraine to any foreign government, including the U.S. administration."

At a security conference in Munich on Friday, Mr. Poroshenko warned the West against "appeasement" of Russia, and some American experts say offering Russia any alternative to a two-year-old international agreement on Ukraine would be a mistake. The Trump administration has sent mixed signals about the conflict in Ukraine.

But given Mr. Trump's praise for Mr. Putin, John Herbst, a former American ambassador to Ukraine, said he feared the new president might be too eager to mend

relations with Russia at Ukraine's expense — potentially with a plan like Mr. Artemenko's.

It was late January when the three men associated with the proposed plan converged on the Loews Regency, a luxury hotel on Park Avenue in Manhattan where business deals are made in a lobby furnished with leather couches, over martinis at the restaurant bar and in private conference rooms on upper floors.

Mr. Cohen, 50, lives two blocks up the street, in Trump Park Avenue. A lawyer who joined the Trump Organization in 2007 as special counsel, he has worked on many deals, including a Trump-branded tower in the republic of Georgia and a short-lived mixed martial arts venture starring a Russian fighter. He is considered a loyal lieutenant whom Mr. Trump trusts to fix difficult problems.

The F.B.I. is reviewing an unverified dossier, compiled by a former British intelligence agent and funded by Mr. Trump's political opponents, that claims Mr. Cohen met with a Russian representative in Prague during the presidential campaign to discuss Russia's hacking of Democratic targets. But the Russian official named in the report told The New York Times that he had never met Mr. Cohen. Mr. Cohen insists that he has never visited Prague and that the dossier's assertions are fabrications. (Mr. Manafort is also under investigation by the F.B.I. for his connections to Russia and Ukraine.)

Mr. Cohen has a personal connection to Ukraine: He is married to a Ukrainian woman and once worked with relatives there to establish an ethanol business.

Mr. Artemenko, tall and burly, arrived at the Manhattan hotel between visits to Washington. (His wife, he said, met the first lady, Melania Trump, years ago during their modeling careers, but he did not try to meet Mr. Trump.) He had attended the inauguration and visited Congress, posting on Facebook his admiration for Mr. Trump and talking up his peace plan in meetings with American lawmakers.

He entered Parliament in 2014, the year that the former Ukrainian president Viktor Yanukovich fled to Moscow amid protests over his economic alignment with Russia and corruption. Mr. Manafort, who had been instrumental in getting Mr. Yanukovich elected, helped shape a political bloc that sprang up to oppose the new president, Mr. Poroshenko, a wealthy businessman who has taken a far tougher stance toward Russia and accused Mr. Putin of wanting to absorb Ukraine into a new Russian Empire. Mr. Artemenko, 48, emerged from the opposition that Mr.

Manafort nurtured. (The two men have never met, Mr. Artemenko said.)

Before entering politics, Mr. Artemenko had business ventures in the Middle East and real estate deals in the Miami area, and had worked as an agent representing top Ukrainian athletes. Some colleagues in Parliament describe him as corrupt, untrustworthy or simply insignificant, but he appears to have amassed considerable wealth.

He has fashioned himself in the image of Mr. Trump, presenting himself as Ukraine's answer to a rising class of nationalist leaders in the West. He even traveled to Cleveland last summer for the Republican National Convention, seizing on the chance to meet with members of Mr. Trump's campaign.

"It's time for new leaders, new approaches to the governance of the country, new principles and new negotiators in international politics," he wrote on Facebook on Jan. 27. "Our time has come!"

Mr. Artemenko said he saw in Mr. Trump an opportunity to advocate a plan for peace in Ukraine — and help advance his own political career. Essentially, his plan would require the withdrawal of all Russian forces from eastern Ukraine. Ukrainian voters would decide in a referendum whether Crimea, the Ukrainian territory seized by Russia in 2014, would be leased to Russia for a term of 50 or 100 years.

The Ukrainian ambassador, Mr. Chaly, rejected a lease of that kind. "It is a gross violation of the Constitution," he said in written answers to questions from The Times. "Such ideas can be pitched or pushed through only by those openly or covertly representing Russian interests."

The reaction suggested why Mr. Artemenko's project also includes the dissemination of "kompromat," or compromising material, purportedly showing that Mr. Poroshenko and his closest associates are corrupt. Only a new government, presumably one less hostile to Russia, might take up his plan.

Mr. Sater, a longtime business associate of Mr. Trump's with connections in Russia, was willing to help Mr. Artemenko's proposal reach the White House.

Mr. Trump has sought to distance himself from Mr. Sater in recent years. If Mr. Sater "were sitting in the room right now," Mr. Trump said in a 2013 deposition, "I really wouldn't know what he looked like."

But Mr. Sater worked on real estate development deals with the Trump Organization on and off for at least a decade, even after his role in the stock manipulation scheme came to light.

Mr. Sater, who was born in the Soviet Union and grew up in New York, served as an executive at a firm called Bayrock Group, two floors below the Trump Organization in Trump Tower, and was later a senior adviser to Mr. Trump.

He said he had been working on a plan for a Trump Tower in Moscow with a Russian real estate developer as recently as the fall of 2015, one that he said had come to a halt because of Mr. Trump's presidential campaign. (Mr. Cohen said the Trump Organization had received a letter of intent for a project in Moscow from a Russian real estate developer at that time but determined that the project was not feasible.)

Mr. Artemenko said a mutual friend had put him in touch with Mr. Sater. Helping to advance the proposal, Mr. Sater said, made sense.

"I want to stop a war, number one," he said. "Number two, I absolutely believe that the U.S. and Russia need to be allies, not enemies. If I could achieve both in one stroke, it would be a home run."

After speaking with Mr. Sater and Mr. Artemenko in person, Mr. Cohen said he would deliver the plan to the White House.

Mr. Cohen said he did not know who in the Russian government had offered encouragement on it, as Mr. Artemenko claims, but he understood there was a promise of proof of corruption by the Ukrainian president.

"Fraud is never good, right?" Mr. Cohen said.

He said Mr. Sater had given him the written proposal in a sealed envelope. When Mr. Cohen met with Mr. Trump in the Oval Office in early February, he said, he left the proposal in Mr. Flynn's office.

Mr. Cohen said he was waiting for a response when Mr. Flynn was forced from his post. Now Mr. Cohen, Mr. Sater and Mr. Artemenko are hoping a new national security adviser will take up their cause. On Friday the president wrote on Twitter that he had four new candidates for the job.

Correction: February 19, 2017

Because of an editing error, an earlier version of this article gave an incorrect middle initial for Paul Manafort. It is J., not D.

Megan Twohey reported from New York, and Scott Shane from Washington. Michael Schwartz contributed reporting from Kiev, Ukraine.

Get politics and Washington news updates via Facebook, Twitter and in the Morning Briefing newsletter.

A version of this article appears in print on February 20, 2017, on Page A1 of the New York edition with the headline: Trump Associates Push Backdoor Ukraine Plan.

EXHIBIT E

Appeared in: *Volume 12, Number 4*

Published on: December 19, 2016

RUSSIA & THE WEST

The Curious World of Donald Trump's Private Russian Connections

JAMES S. HENRY

Did the American people really know they were putting such a “well-connected” guy in the White House?

“Tell me who you walk with and I’ll tell you who you are.”

—Cervantes

“I’ve always been blessed with a kind of intuition about people that allows me to sense who the sleazy guys are, and I stay far away.”

—Donald Trump, *Surviving at the Top*

Even before the November 8 election, many leading Democrats were vociferously demanding that the FBI disclose the fruits of its investigations into Putin-backed Russian hackers. Instead FBI Director Comey decided to temporarily revive his zombie-like investigation of Hillary’s emails. That decision may well have had an important impact on the election, but it did nothing to resolve the allegations about Putin. Even now, after the CIA has disclosed an abstract of its own still-secret investigation, it is fair to say that we still lack the cyberspace equivalent of a smoking gun.

Fortunately, however, for those of us who are curious about Trump’s Russian connections, there is another readily accessible body of material that has so far received surprisingly little attention. This suggests that whatever the nature of President-elect Donald Trump’s relationship with President Putin, he has certainly managed to accumulate direct and indirect connections with a far-flung *private* Russian/FSU network of outright mobsters, oligarchs, fraudsters, and kleptocrats.

Any one of these connections might have occurred at random. But the overall pattern is a veritable Star Wars bar scene of unsavory characters, with Donald Trump seated right in the middle. The analytical challenge is to map this network—a task that most journalists and law enforcement agencies, focused on individual cases, have failed to do.

Of course, to label this network “private” may be a stretch, given that in Putin’s Russia, even the toughest mobsters learn the hard way to maintain a respectful relationship with the “New Tsar.” But here the central question pertains to *our* new Tsar. Did the American people really know they were putting such a “well-connected” guy in the White House?

The Big Picture: Kleptocracy and Capital Flight

A few of Donald Trump’s connections to oligarchs and assorted thugs have already received sporadic press attention—for example, former Trump campaign manager Paul Manafort’s reported relationship with exiled Ukrainian oligarch Dmytro Firtash. But no one has pulled the connections together, used them to identify still more relationships, and developed an image of the overall patterns.

Nor has anyone related these cases to one of the most central facts about modern Russia: its emergence since the 1990s as a world-class kleptocracy, second only to China as a source of illicit capital and criminal loot, with more than \$1.3 trillion of net offshore “flight wealth” as of 2016.¹

This tidal wave of illicit capital is hardly just Putin’s doing. It is in fact a symptom of one of the most *epic failures* in modern political economy—one for which the West bears a great deal of responsibility. This is the failure, in the wake of the Soviet Union’s collapse in the late 1980s, to ensure that Russia acquires the kind of strong, middle-class-centric economic and political base that is required for democratic capitalism, the rule of law, and stable, peaceful relationships with its neighbors.

TOP 10 DEVELOPING WORLD CAPITAL FLIGHT SOURCE COUNTRIES
(Nominal Billions of Flight Wealth)

	2010	2014	AAGR%	Free Press?	Corruption Scandals?	Patronage Papers role?	Oil exporter?
1 China (AR)	\$1,079	\$1,952.1	9.7%	✗	✗	✗	
2 Russia	\$891	\$1,293	8.8%	✗	✗	✗	✗
3 Saudi Arabia	\$806	\$1,176	9.9%	✗	✗	✗	✗
4 Kuwait	\$691	\$900	6.8%	✗	✗	✗	✗
5 Singapore	\$486	\$766	12.0%	✗	✗	✗	
6 Korea	\$393	\$551	8.8%	✓	✗	✗	
7 Malaysia	\$328	\$445	7.9%	✗	✗	✗	
8 Venezuela	\$343	\$427	5.6%	✗	✗	✗	✗
9 Mexico	\$298	\$394	7.3%	✗	✗	✗	✗
10 Thailand	\$368	\$393	1.7%	✗	✗	✗	

Instead, from 1992 to the Russian debt

crisis of August 1998, the West in general—and the U.S. Treasury, USAID, the State Department, the IMF/World Bank, the EBRD, and many leading economists in particular—actively promoted and, indeed, helped to finance one of the most massive transfers of public wealth into private hands that the world has ever seen.

For example, Russia's 1992 "voucher privatization" program permitted a tiny elite of former state-owned company managers and party *apparatchiks* to acquire control over a vast number of public enterprises, often with the help of outright mobsters. A majority of Gazprom, the state energy company that controlled a third of the world's gas reserves, was sold for \$230 million; Russia's entire national electric grid was privatized for \$630 million; ZIL, Russia's largest auto company, went for about \$4 million; ports, ships, oil, iron and steel, aluminum, much of the high-tech arms and airlines industries, the world's largest diamond mines, and most of Russia's banking system also went for a song.

In 1994–96, under the infamous "loans-for-shares" program, Russia privatized 150 state-owned companies for just \$12 billion, most of which was loaned to a handful of well-connected buyers by the state—and indirectly by the World Bank and the IMF. The principal beneficiaries of this "privatization"—actually, cartelization—were initially just 25 or so budding oligarchs with the insider connections to buy these properties and the muscle to hold them.² The happy few who made personal fortunes from this feeding frenzy—in a sense, the very first of the new kleptocrats—not only included numerous Russian officials, but also leading gringo investors/advisers, Harvard professors, USAID advisers, and bankers at Credit Suisse First Boston and other Wall Street investment banks. As the renowned development economist Alex Gerschenkron, an authority on Russian development, once said, "If we were in Vienna, we would have said, 'We wish we could play it on the piano!'"

For the vast majority of ordinary Russian citizens, this extreme re-concentration of wealth coincided with nothing less than a full-scale 1930s-type depression, a "shock therapy"-induced rise in domestic price levels that wiped out the private savings of millions, rampant lawlessness, a public health crisis, and a sharp decline in life expectancy and birth rates.

Sadly, this neoliberal "market reform" policy package that was introduced at a Stalin-like pace from 1992 to late 1998 was not only condoned but partly designed and financed by senior Clinton Administration officials, neoliberal economists, and innumerable USAID, World Bank, and IMF officials. The few dissenting voices included some of the West's best economic brains—Nobel laureates like James Tobin, Kenneth Arrow, Lawrence Klein, and Joseph Stiglitz. They also included Moscow University's Sergei Glaziev, who now serves as President Putin's chief economic advisor.³ Unfortunately, they were no match for the folks with the cash.

There was also an important intervention in Russian politics. In January 1996 a secret team of professional U.S. political consultants arrived in Moscow to discover that, as CNN put it back then, "The only thing voters like less than

Boris Yeltsin is the prospect of upheaval.” The experts’ solution was one of earliest “Our brand is crisis” campaign strategies, in which Yeltsin was “spun” as the only alternative to “chaos.” To support him, in March 1996 the IMF also pitched in with \$10.1 billion of new loans, on top of \$17.3 billion of IMF/World Bank loans that had already been made.

With all this outside help, plus ample contributions from Russia’s new elite, Yeltsin went from just 8 percent approval in the January 1996 polls to a 54-41 percent victory over the Communist Party candidate, Gennady Zyuganov, in the second round of the July 1996 election. At the time, mainstream media like Time and the New York Times were delighted. Very few outside Russia questioned the wisdom of this blatant intervention in post-Soviet Russia’s first democratic election, or the West’s right to do it in order to protect itself.

By the late 1990s the *actual chaos* that resulted from Yeltsin’s warped policies had laid the foundations for a strong counterrevolution, including the rise of ex-KGB officer Putin and a massive outpouring of oligarchic flight capital that has continued virtually up to the present. For ordinary Russians, as noted, this was disastrous. But for many banks, private bankers, hedge funds, law firms, and accounting firms, for leading oil companies like ExxonMobil and BP, as well as for needy borrowers like the Trump Organization, the opportunity to feed on post-Soviet spoils was a godsend. This was vulture capitalism at its worst.

The nine-lived Trump, in particular, had just suffered a string of *six* successive bankruptcies. So the massive illicit outflows from Russia and oil-rich FSU members like Kazakhstan and Azerbaijan from the mid-1990s provided precisely the kind of indiscriminating investors that he needed. These outflows arrived at just the right time to fund several of Trump’s post-2000 high-risk real estate and casino ventures—most of which failed. As Donald Trump, Jr., executive vice president of development and acquisitions for the Trump Organization, told the “Bridging U.S. and Emerging Markets Real Estate” conference in Manhattan in September 2008 (on the basis, he said, of his own “half dozen trips to Russia in 18 months”):

[I]n terms of high-end product influx into the United States, Russians make up a pretty disproportionate cross-section of a lot of our assets; say in Dubai, and certainly with our project in SoHo and anywhere in New York. We see a lot of money pouring in from Russia.

All this helps to explain one of the most intriguing puzzles about Donald Trump’s long, turbulent business career: how he managed to keep financing it, despite a dismal track record of failed projects.⁴

According to the “official story,” this was simply due to a combination of brilliant deal-making, Trump’s gold-plated brand, and raw animal spirits—with \$916 million of creative tax dodging as a kicker. But this official story is hokum. The truth is that, since the late 1990s, Trump was also greatly assisted by these abundant new sources of global finance, especially from “submerging markets” like Russia

This suggests that neither Trump nor Putin is an “uncaused cause.” They are not evil twins, exactly, but they are both byproducts of the same neoliberal policy scams that were peddled to Russia’s struggling new democracy.

A Guided Tour of Trump’s Russian/FSU Connections

The following roundup of Trump’s Russo-Soviet business connections is based on published sources, interviews with former law enforcement staff and other experts in the United States, the United Kingdom, and Iceland, searches of online corporate registries,⁵ and a detailed analysis of offshore company data from the Panama Papers.⁶ Given the sheer scope of Trump’s activities, there are undoubtedly other worthy cases, but our interest is in overall patterns.

Note that none of the activities and business connections related here necessarily involved criminal conduct. While several key players do have criminal records, few of their prolific business dealings have been thoroughly investigated, and of course they all deserve the presumption of innocence. Furthermore, several of these players reside in countries where activities like bribery, tax dodging, and other financial chicanery are either not illegal or are rarely prosecuted. As former British Chancellor of the Exchequer Denis Healey once said, the difference between “legal” and “illegal” is often just “the width of a prison wall.”

So why spend time collecting and reviewing material that either doesn’t point to anything illegal or in some cases may even be impossible to verify? Because, we submit, the mere fact that such assertions are widely made is of legitimate public interest in its own right. In other words, when it comes to evaluating the probity of senior public officials, the public has the right to know about any material allegations—true, false, or, most commonly, unprovable—about their business partners and associates, so long as this information is clearly labeled as unverified.

Furthermore, the individual case-based approach to investigations employed by most investigative journalists and law enforcement often misses the big picture: the global networks of influence and finance, licit and illicit, that exist among business people, investors, kleptocrats, organized criminals, and politicians, as well as the “enablers”—banks, accounting firms, law firms, and havens. Any

particular component of these networks might easily disappear without making any difference. But the networks live on. It is these *shadowy transnational networks* that really deserve scrutiny.

Bayrock Group LLC—Kazakhstan and Tefvik Arif

We'll begin our tour of Trump's Russian/FSU connections with several business relationships that evolved out of the curious case of Bayrock Group LLC, a spectacularly unsuccessful New York real estate development company that surfaced in the early 2000s and, by 2014, had all but disappeared except for a few lawsuits. As of 2007, Bayrock and its partners reportedly had more than \$2 billion of Trump-branded deals in the works. But most of these either never materialized or were miserable failures, for reasons that will soon become obvious.

Bayrock's "white elephants" included the 46-story Trump SoHo condo-hotel on Spring Street in New York City, for which the principle developer was a partnership formed by Bayrock and FL Group, an Icelandic investment company. Completed in 2010, the SoHo soon became the subject of prolonged civil litigation by disgruntled condo buyers. The building was foreclosed by creditors and resold in 2014 after more than \$3 million of customer down payments had to be refunded. Similarly, Bayrock's Trump International Hotel & Tower in Fort Lauderdale was foreclosed and resold in 2012, while at least three other Trump-branded properties in the United States, plus many other "project concepts" that Bayrock had contemplated, from Istanbul and Kiev to Moscow and Warsaw, also never happened.

Carelessness about due diligence with respect to potential partners and associates is one of Donald Trump's more predictable qualities. Acting on the seat of the pants, he had hooked up with Bayrock rather quickly in 2005, becoming an 18 percent minority equity partner in the Trump SoHo, and agreeing to license his brand and manage the building.⁷

Exhibit A in the panoply of former Trump business partners is Bayrock's former Chairman, Tefvik Arif (aka Arifov), an émigré from Kazakhstan who reportedly took up residence in Brooklyn in the 1990s. Trump also had extensive contacts with another key Bayrock Russian-American from Brooklyn, Felix Sater (aka Satter), discussed below.⁸ Trump has lately had some difficulty recalling very much about either Arif or Sater. But this is hardly surprising, given what we now know about them. Trump described his introduction to Bayrock in a 2013 deposition for a lawsuit that was brought by investors in the Fort Lauderdale project, one of Trump's first with Bayrock: "Well, we had a tenant in ... Trump Tower called Bayrock, and Bayrock was interested in getting us into deals."⁹

According to several reports, Tefvik Arif was originally from Kazakhstan, a Soviet republic until 1992. Born in 1950, Arif worked for 17 years in the Soviet Ministry of Commerce and Trade, serving as Deputy Director of Hotel Management by the time of the Soviet Union's collapse.¹⁰ In the early 1990s he relocated to Turkey, where he reportedly helped to develop properties for the Rixos Hotel chain. Not long thereafter he relocated to Brooklyn, founded Bayrock, opened an office in the Trump Tower, and started to pursue projects with Trump and other investors.¹¹

Tefvik Arif was not Bayrock's only connection to Kazakhstan. A 2007 Bayrock investor presentation refers to Alexander Mashevich's "Eurasia Group" as a strategic partner for Bayrock's equity finance. Together with two other prominent Kazakh billionaires, Patokh Chodiev (aka "Shodiyev") and Alijan Ibragimov, Mashkevich reportedly ran the "Eurasian Natural Resources Cooperation." In Kazakhstan these three are sometimes referred to as "the Trio."¹²

The Trio has apparently worked together ever since Gorbachev's late 1980s *perestroika* in metals and other natural resources. It was during this period that they first acquired a significant degree of control over Kazakhstan's vast mineral and gas reserves. Naturally they found it useful to become friends with Nursultan Nazarbayev, Kazakhstan's long-time ruler. Indeed, State Department cables leaked by Wikileaks in November 2010 describe a close relationship between "the Trio" and the seemingly-perpetual Nazarbayev kleptocracy.

In any case, the Trio has recently attracted the attention of many other investigators and news outlets, including the September 11 Commission Report, the Guardian, Forbes, and the Wall Street Journal. In addition to resource grabbing, the litany of the Trio's alleged activities include money laundering, bribery, and racketeering.¹³ In 2005, according to U.S. State Department cables released by Wikileaks, Chodiev (referred to in a State Department cable as "Fatokh Shodiyev") was recorded on video attending the birthday of reputed Uzbek mob boss Salim Abduvaliyeva and presenting him with a \$10,000 "gift" or "tribute."

According to the Belgian newspaper *Le Soir*, Chodiev and Mashkevich also became close associates of a curious Russian-Canadian businessman, Boris J. Birshtein, who happens to have been the father-in-law of another key Russian-Canadian business associate of Donald Trump in Toronto. We will return to Birshtein below.

The Trio also turn up in the April 2016 Panama Papers database as the apparent beneficial owners of a Cook Islands company, "International Financial Limited."¹⁴ The Belgian newspapers *Het Laatste Nieuws*, *Le Soir*, and *La Libre*

Belgique have reported that Chodiev paid €23 million to obtain a “Class B” banking license for this same company, permitting it to make international currency trades. In the words of a leading Belgian financial regulator, that would “make all money laundering undetectable.”

The Panama Papers also indicate that some of Arif’s connections at the Rixos Hotel Group may have ties to Kazakhstan. For example, one offshore company listed in the Panama Papers database, “Group Rixos Hotel,” reportedly acts as an intermediary for four BVI offshore companies.¹⁵ Rixos Hotel’s CEO, Fettah Tamince, is listed as having been a shareholder for two of these companies, while a shareholder in another—“Hazara Asset Management”—had the same name as the son of a recent Kazakhstan Minister for Sports and Tourism. As of 2012, this Kazakh official was described as the third-most influential deputy in the country’s Mazhilis (the lower house of Parliament), in a Forbes-Kazakhstan article.

According to a 2015 lawsuit against Bayrock by Jody Kriss, one of its former employees, Bayrock started to receive millions of dollars in equity contributions in 2004, supposedly by way of Arif’s brother in Russia, who allegedly “had access to cash accounts at a chromium refinery in Kazakhstan.”

This as-yet unproven allegation might well just be an attempt by the plaintiff to extract a more attractive settlement from Bayrock and its original principals. But it is also consistent with fact that chromium is indeed one of the Kazakh natural resources that is reportedly controlled by the Trio.

As for Arif, his most recent visible brush with the law came in 2010, when he and other members of Bayrock’s Eurasian Trio were arrested together in Turkey during a police raid on a suspected prostitution ring, according to the Israeli daily Yediot Ahronot.

At the time, Turkish investigators reportedly asserted that Arif might be the head of a criminal organization that was trafficking in Russian and Ukrainian escorts, allegedly including some as young as 13.¹⁶ According to these assertions, big-ticket clients were making their selections by way of a modeling agency website, with Arif allegedly handling the logistics. Especially galling to Turkish authorities, the preferred venue was reportedly a yacht that had once belonged to the widely-revered Turkish leader Atatürk. It was also alleged that Arif may have also provided lodging for young women at Rixos Group hotels.¹⁷

According to Russian media, two senior Kazakh officials were also arrested during this incident, although the Turkish Foreign Ministry quickly dismissed this allegation as “groundless.” In the end, all the charges against Arif resulting from this incident were dismissed in 2012 by Turkish courts, and his spokespeople have subsequently denied all involvement.

Finally, despite Bayrock’s demise and these other legal entanglements, Arif has apparently remained active. For example, Bloomberg reports that, as of 2013, he, his son, and Rixos Hotels’ CEO Fettah Tamince had partnered to pursue the rather controversial business of advancing funds to cash-strapped high-profile soccer players in exchange for a share of their future marketing revenues and team transfer fees. In the case of Arif and his partners, this new-wave form of indentured servitude was reportedly implemented by way of a UK- and Malta-based hedge fund, Doyen Capital LLP. Because this practice is subject to innumerable potential abuses, including the possibility of subjecting athletes or clubs to undue pressure to sign over valuable rights and fees, UEFA, Europe’s governing soccer body, wants to ban it. But FIFA, the notorious global football regulator, has been customarily slow to act. To date, Doyen Capital LLP has reportedly taken financial gambles on several well-known players, including the Brazilian star Neymar.

The Case of Bayrock LLC—Felix Sater

Our second exhibit is Felix Sater, the senior Bayrock executive introduced earlier. This is the fellow who worked at Bayrock from 2002 to 2008 and negotiated several important deals with the Trump Organization and other investors. When Trump was asked who at Bayrock had brought him the Fort Lauderdale project in the 2013 deposition cited above, he replied: “It could have been Felix Sater, it could have been—I really don’t know who it might have been, but somebody from Bayrock.”¹⁸



Although Sater left Bayrock in 2008,

by 2010 he was reportedly back in Trump Tower as a “senior advisor” to the Trump Organization—at least on his business card—with his own office in the building.

Sater has also testified under oath that he had escorted Donald Trump, Jr. and Ivanka Trump around Moscow in 2006, had met frequently with Donald over several years, and had once flown with him to Colorado. And although this might easily have been staged, he is also reported to have visited Trump Tower in July 2016 and made a personal \$5,400 contribution to Trump’s campaign.

Whatever Felix Sater has been up to recently, the key point is that by 2002, at the latest,¹⁹ Tevfik Arif decided to hire him as Bayrock's COO and managing director. This was despite the fact that by then Felix had already compiled an astonishing track record as a professional criminal, with multiple felony pleas and convictions, extensive connections to organized crime, and—the ultimate prize—a virtual “get out of jail free card,” based on an informant relationship with the FBI and the CIA that is vaguely reminiscent of Whitey Bulger.²⁰

Sater, a Brooklyn resident like Arif, was born in Russia in 1966. He reportedly emigrated with his family to the United States in the mid-1970s and settled in “Little Odessa.” It seems that his father, Mikhael Sheferovsky (aka Michael Sater), may have been engaged in Russian mob activity before he arrived in the United States. According to a certified U.S. Supreme Court petition, Felix Sater's FBI handler stated that he “was well familiar with the crimes of Sater and his (Sater's) father, a (Semion) Mogilevich crime syndicate boss.”²¹ A 1998 FBI report reportedly said Mogilevich's organization had “approximately 250 members,” and was involved in trafficking nuclear materials, weapons, and more, as well as money laundering. (See below.)

But Michael Sater may have been less ambitious than his son. His only reported U.S. criminal conviction came in 2000, when he pled guilty to two felony counts for extorting Brooklyn restaurants, grocery stores, and clinics. He was released with three years' probation. Interestingly, the U.S. Attorney for the Eastern District of New York who handled that case at the time was Loretta Lynch, who succeeded Eric Holder as U.S. Attorney General in 2014. Back in 2000, she was also overseeing a budding informant relationship and a plea bargain with Michael's son Felix, which may help to explain the father's sentence.

By then young Felix Sater was already well on his way to a career as a prototypical Russian-American mobster. In 1991 he stabbed a commodity trader in the face with a margarita glass stem in a Manhattan bar, severing a nerve. He was convicted of a felony and sent to prison. As Trump tells it, Sater simply “got into a barroom fight, which a lot of people do.” The sentence for this felony conviction could not have been very long, because, by 1993, 27-year-old Felix was already a trader in a brand new Brooklyn-based commodity firm called “White Rock Partners,” an innovative joint venture among four New York crime families and the Russian mob aimed at bringing state-of-the-art financial fraud to Wall Street.

Five years later, in 1998, Felix Sater pled guilty to stock racketeering, as one of 19 U.S.-and Russian mob-connected traders who participated in a \$40 million “pump and dump” securities fraud scheme. Facing twenty years in Federal prison, Sater and Gennady Klotsman, a fellow Russian-American who'd been with him on the night of the Manhattan bar fight, turned “snitch” and helped

the Department of Justice prosecute their co-conspirators.²² Reportedly, so did Salvatore Lauria, another “trader” involved in the scheme. According to the Jody Kriss lawsuit, Lauria later joined Bayrock as an off-the-books paid “consultant.” Initially their cooperation, which lasted from 1998 until at least late 2001, was kept secret, until it was inadvertently revealed in a March 2000 press release by U.S. Attorney Lynch.

Unfortunately for Sater, about the same time the NYPD also reportedly discovered that he had been running a money-laundering scheme and illicit gun sales out of a Manhattan storage locker. He and Klotsman fled to Russia. However, according to the *New York Times*, which cited Klotsman and Lauria, soon after the events of September 11, 2001, the ever-creative Sater succeeded in brokering information about the black market for Stinger anti-aircraft missiles to the CIA and the FBI. According to Klotsman, this strategy “bought Felix his freedom,” allowing him to return to Brooklyn. It is still not clear precisely what information Sater actually provided, but in 2015 U.S. Attorney General Loretta Lynch publicly commended him for sharing information that she described as “crucial to national security.”

Meanwhile, Sater’s sentence for his financial crimes continued to be deferred even after his official cooperation in that case ceased in late 2001. His files remained sealed, and he managed to avoid any sentencing for those crimes at all until October 23, 2009. When he finally appeared before the Eastern District’s Judge I. Leo Glasser, Felix received a \$25,000 fine, no jail time, and no probation in a quiet proceeding that attracted no press attention. Some compared this sentence to Judge Glasser’s earlier sentence of Mafia hit man “Sammy the Bull” Gravano to 4.5 years for 19 murders, in exchange for “cooperating against John Gotti.”

In any case, between 2002 and 2008, when Felix Sater finally left Bayrock LLC, and well beyond, his ability to avoid jail and conceal his criminal roots enabled him to enjoy a lucrative new career as Bayrock’s chief operating officer. In that position, he was in charge of negotiating aggressive property deals all over the planet, even while—according to lawsuits by former Bayrock investors—engaging in still more financial fraud. The only apparent difference was that he changed his name from “Sater” to “Satter.”²³

In the 2013 deposition cited earlier, Trump went on to say “I don’t see Felix as being a member of the Mafia.” Asked if he had any evidence for this claim, Trump conceded “I have none.”²⁴

As for Sater’s pal Klotsman, the past few years have not been kind. As of December 2016 he is in a Russian penal colony, working off a ten-year sentence for a failed \$2.8 million Moscow diamond heist in August 2010. In 2016

Klotsman was reportedly placed on a “top-ten list” of Americans that the Russians were willing to exchange for high-value Russian prisoners in U.S. custody, like the infamous arms dealer Viktor Bout. So far there have been no takers. But with Donald Trump as President, who knows?

The Case of Iceland’s FL Group

One of the most serious frauds alleged in the recent Bayrock lawsuit involves FL Group, an Icelandic private investment fund that is really a saga all its own.

Iceland is not usually thought of as a major offshore financial center. It is a small snowy island in the North Atlantic, closer to Greenland than to the UK or Europe, with only 330,000 citizens and a total GDP of just \$17 billion. Twenty years ago, its main exports were cod and aluminum—with the imported bauxite smelted there to take advantage of the island’s low electricity costs.

But in the 1990s Iceland’s tiny neoliberal political elite had what they all told themselves was a brilliant idea: “Let’s privatize our state-owned banks, deregulate capital markets, and turn them loose on the world!” By the time all three of the resulting privatized banks, as well as FL Group, failed in 2008, the combined bank loan portfolio amounted to more than 12.5 times Iceland’s GDP—the highest country debt ratio in the entire world.

For purposes of our story, the most interesting thing about Iceland is that, long before this crisis hit and utterly bankrupted FL Group, our two key Russian/FSU/Brooklyn mobster-mavens, Arif and Sater, had somehow stumbled on this obscure Iceland fund. Indeed, in early 2007 they persuaded FL Group to invest \$50 million in a project to build the Trump SoHo in mid-town Manhattan.

According to the Kriss lawsuit, at the same time, FL Group and Bayrock’s Felix Sater also agreed in principle to pursue up to an additional \$2 billion in other Trump-related deals. The Kriss lawsuit further alleges that FL Group (FLG) also agreed to work with Bayrock to facilitate outright tax fraud on more than \$250 million of potential earnings. In particular, it alleges that FLG agreed to provide the \$50 million in exchange for a 62 percent stake in the four Bayrock Trump projects, but Bayrock would structure the contract as a “loan.” This meant that Bayrock would not have to pay taxes on the initial proceeds, while FLG’s anticipated \$250 million of dividends would be channeled through a Delaware company and characterized as “interest payments,” allowing Bayrock to avoid up to \$100 million in taxes. For tax purposes, Bayrock would pretend that their actual partner was a Delaware partnership that it had formed with FLG, “FLG Property I LLC,” rather than FLG itself.

The Trump Organization has denied any involvement with FLG. However, as an equity partner in the Trump SoHo, with a significant 18 percent equity stake in this one deal alone, Donald Trump himself had to sign off on the Bayrock-FLG deal.

This raises many questions. Most of these will have to await the outcome of the Kriss litigation, which might well take years, especially now that Trump is President. But several of these questions just leap off the page.

First, how much did President-elect Trump know about the partners and the inner workings of this deal? After all, he had a significant equity stake in it, unlike many of his “brand-name only” deals, and it was also supposed to finance several of his most important East Coast properties.

Second, how did the FL Group and Bayrock come together to do this dodgy deal in the first place? One former FL Group manager alleges that the deal arrived by accident, a “relatively small deal” was nothing special on either side.²⁵ The Kriss lawsuit, on the other hand, alleges that FLG was a well-known source of easy money from dodgy sources like Kazakhstan and Russia, and that other Bayrock players with criminal histories—like Salvatore Lauria, for example—were involved in making the introductions.

At this stage the evidence with respect to this second question is incomplete. But there are already some interesting indications that FL Group’s willingness to generously finance Bayrock’s peculiar Russian/FSU/Brooklyn team, its rather poorly-conceived Trump projects, and its purported tax dodging were not simply due to Icelandic backwardness. There is much more for us to know about Iceland’s “special” relationship with Russian finance. In this regard, there are several puzzles to be resolved.

First, it turns out that FL Group, Iceland’s largest private investment fund until it crashed in 2008, had several owners/investors with deep Russian business connections, including several key investors in all three top Iceland banks.

Second, it turns out that FL Group had constructed an incredible maze of cross-shareholding, lending, and cross-derivatives relationships with all these major banks, as illustrated by the following snapshot of cross-shareholding among Iceland’s financial institutions and companies as of 2008.²⁶



Cross-shareholding Relationships, FLG and Other Leading Icelandic Financial Institutions, 2008

This thicket of cross-dealing made it almost *impossible* to regulate “control fraud,” where insiders at leading financial institutions went on a self-serving binge, borrowing and lending to finance risky investments of all kinds. It became difficult to determine which institutions were net borrowers or investors, as the concentration of ownership and self-dealing in the financial system just soared.

Third, FL Group make a variety of peculiar loans to Russian-connected oligarchs as well as to Bayrock. For example, as discussed below, Alex Shnaider, the Russian-Canadian billionaire who later became Donald Trump’s Toronto business partner, secured a €45.8 million loan to buy a yacht from Kaupthing Bank during the same period, while a company belonging to another Russian billionaire who reportedly owns an important vodka franchise got an even larger loan.²⁷

Fourth, Iceland’s largest banks also made a series of extraordinary loans to Russian interests during the run-up to the 2008 crisis. For example, one of Russia’s wealthiest oligarchs, a close friend of President Putin, nearly managed to secure at least €400 million (or, some say, up to four times that much) from Kaupthing, Iceland’s largest bank, in late September 2008, just as the financial crisis was breaking wide open. This bank also had important direct and indirect investments in FL Group. Indeed, until December 2006, it is reported to have employed the FL Group private equity manager who allegedly negotiated Felix Sater’s \$50 million deal in early 2007.²⁸

Fifth, there are unconfirmed accounts of a secret U.S. Federal Reserve report that unnamed Iceland banks were being used for Russian money laundering.²⁹ Furthermore, Kaupthing Bank’s repeated requests to open a New York branch in 2007-08 were rejected by the Fed. Similar unconfirmed rumors repeatedly appeared in Danish and German publications, as did allegations about the supposed Kazakh origins of FLG’s cash to be “laundered” in the Kriss lawsuit.

Sixth, there is the peculiar fact that, when Iceland's banks went belly-up in October 2008, their private banking subsidiaries in Luxembourg, which were managing at least €8 billion of private assets, were suddenly seized by Luxembourg banking authorities and transferred to a new bank, Banque Havilland. This happened so fast that Iceland's Central Bank was prevented from learning anything about the identities or portfolio sizes of the Iceland banks' private offshore clients. But again, there were rumors of some important Russian names.

Finally, there is the rather odd phone call that Russia's Ambassador to Iceland made to Iceland's Prime Minister at 6:45 a.m. on October 7, 2008, the day after the financial crisis hit Iceland. According to the PM's own account, the Russian Ambassador informed him that then-Prime Minister Putin was willing to consider offering Iceland a €4 billion Russian bailout.

Of course this alleged Putin offer was modified not long thereafter into a willingness to entertain an Icelandic negotiating team in Moscow. By the time the Iceland team got to Moscow later that year, Russia's desire to lend had cooled, and Iceland ended up accepting a \$2.1 billion IMF "stabilization package" instead. But according to a member of the negotiating team, the reasons for the reversal are still a mystery. Perhaps Putin had reconsidered because he simply decided that Russia had to worry about its own considerable financial problems. Or perhaps he had discovered that Iceland's banks had indeed been very generous to Russian interests on the lending side, while—given Luxembourg's actions—any Russian private wealth invested in Icelandic banks was already safe.

On the other hand, there may be a simpler explanation for Iceland's peculiar generosity to sketchy partners like Bayrock. After all, right up to the last minute before the October 2008 meltdown, the whole world had awarded Iceland AAA ratings: Depositors queued up in London to open high-yield Iceland bank accounts, its bank stocks were booming, and the compensation paid to its financiers was off the charts. So why would anyone worry about making a few more dubious deals?

Overall, therefore, with respect to these odd "Russia-Iceland" connections, the proverbial jury is still out. But all these Icelandic puzzles are intriguing and bear further investigation.

The Case of the Trump Toronto Tower and Hotel—Alex Shnaider

Our fourth case study of Trump's business associates concerns the 48-year-old Russian-Canadian billionaire Alex Shnaider, who co-financed the seventy-story Trump Tower and Hotel, Canada's tallest building. It opened in Toronto in 2012.

Unfortunately, like so many of Trump's other Russia/FSU-financed projects, this massive Toronto condo-hotel project went belly-up this November and has now entered foreclosure.

According to an online profile of Shnaider by a Ukrainian news agency, Alex Shnaider was born in Leningrad in 1968, the son of “Евсей Шнайдер,” or “Evsei Shnaider” in Russian.³⁰ A recent Forbes article says that he and his family emigrated to Israel from Russia when he was four and then relocated to Toronto when he was 13-14. The Ukrainian news agency says that Alex's family soon established “one of the most successful stories in Toronto's Russian quarter,” and that young Alex, with “an entrepreneurial streak,” “helped his father Evsei Shnaider in the business, placing goods on the shelves and wiping floors.”

Eventually that proved to be a great decision—Shnaider prospered in the New World. Much of this was no doubt due to raw talent. But it also appears that for a time he got significant helping hand from his (now reportedly ex-) father-in-law, another colorful Russian-Canadian, Boris J. Birshtein.

Originally from Lithuania, Birshtein, now about 69, has been a Canadian citizen since at least 1982.³¹ He resided in Zurich for a time in the early 1990s, but then returned to Toronto and New York.³² One of his key companies was called Seabeco SA, a “trading” company that was registered in Zurich in December 1982.³³ By the early 1990s Birshtein and his partners had started many other Seabeco-related companies in a wide variety of locations, including Antwerp,³⁴ Toronto,³⁵ Winnipeg,³⁶ Moscow, Delaware,³⁷ Panama,³⁸ and Zurich.³⁹ Several of these are still active.⁴⁰ He often staffed them with directors and officers from a far-flung network of Russians, emissaries from other FSU countries like Kyrgyzstan and Moldova, and recent Russia/FSU emigres to Canada.⁴¹

According to the *Financial Times* and the FBI, in addition to running Seabeco, Birshtein was a close business associate of Sergei Mikhaylov, the reputed head of Solntsevskaya Bratva, the Russian mob's largest branch, and the world's highest-grossing organized crime group as of 2014, according to *Fortune*.⁴² A 1996 FBI intelligence report cited by the *FT* claims that Birshtein hosted a meeting in his Tel Aviv office for Mikhaylov, the Ukrainian-born Semion Mogilevich, and several other leaders of the Russo/FSU mafia, in order to discuss “sharing interests in Ukraine.”⁴³ A subsequent 1998 FBI Intelligence report on the “Semion Mogilevich Organization” repeated the same charge,⁴⁴ and described Mogilevich's successful attempts at gaining control over Ukraine privatization assets. The *FT* article also described how Birshtein and his associates had acquired extraordinary influence with key Ukraine officials, including President Leonid Kuchma, with the help of up to \$5 million of payoffs.⁴⁵ Citing Swiss and Belgian investigators, the *FT* also claimed that Birshtein and Mikhaylov jointly controlled a Belgian company called MAB International in the early 1990s.⁴⁶

During that period, those same investigators reportedly observed transfers worth millions of dollars between accounts held by Mikhaylov, Birshstein, and Alexander Volkov, Seabeco's representative in Ukraine.

In 1993, the Yeltsin government reportedly accused Birshstein of illegally exporting seven million tons of Russian oil and laundering the proceeds.⁴⁷ Dmytro Iakoubovski, a former associate of Birshstein's who had also moved to Toronto, was said to be cooperating with the Russian investigation. One night a gunman fired three shots into Iakoubovski's home, leaving a note warning him to cease his cooperation, according to a New York Times article published that year. As noted above, according to the Belgian newspaper *Le Soir*, two members of Bayrock's Eurasian Trio were also involved in Seabeco during this period as well—Patokh Chodiev and Alexander Mashkevich. Chodiev reportedly first met Birshstein through the Soviet Foreign Ministry, and then went on to run Seabeco's Moscow office before joining its Belgium office in 1991. *Le Soir* further claims that Mashkevich worked for Seabeco too, and that this was actually how he and Chodiev had first met.

All this is fascinating, but what about the connections between Birshstein and Trump's Toronto business associate, Alex Shnaider? Again, the leads we have are tantalizing. The Toronto Globe and Mail reported that in 1991, while enrolled in law school, young Alex Shnaider started working for Birshstein at Seabeco's Zurich headquarters, where he was reportedly introduced to steel trading. Evidently this was much more than just a job; the Zurich company registry lists "Alex Shnaider" as a director of "Seabeco Metals AG" from March 1993 to January 1994.⁴⁸

In 1994, according to this account, he reportedly left Seabeco in January 1994 to start his own trading company in Antwerp, in partnership with a Belgian trader-partner. Curiously, *Le Soir* also says that Mikhaylov and Birshstein co-founded MAB International in Antwerp in January 1994. Is it far-fetched to suspect that Alex Shnaider and mob boss Mikhaylov might have crossed paths, since they were both in the same city and they were both close to Shnaider's father-in-law?

According to *Forbes*, soon after Shnaider moved to Antwerp, he started visiting the factories of his steel trading partners in Ukraine.⁴⁹ His favorite client was the Zaporizhstal steel mill, Ukraine's fourth largest. At the Zaporizhstal mill he reportedly met Eduard Shifrin (aka Shyfrin), a metals trader with a doctorate in metallurgical engineering. Together they founded Midland Resource Holdings Ltd. in 1994.⁵⁰

As the *Forbes* piece argues, with privatization sweeping Eastern Europe, private investors were jockeying to buy up the government's shares in Zaporizhstal. But most traders lacked the financial backing and political connections to

accumulate large risky positions. Shnaider and Shifrin, in contrast, started buying up shares without limit, as if their pockets and connections were very deep. By 2001 they had purchased 93 percent of the plant for about \$70 million, a stake that would be worth much more just five years later, when Shnaider reportedly turned down a \$1.2 billion offer.

Today, Midland Resources Holdings Ltd. reportedly generates more than \$4 billion a year of revenue and has numerous subsidiaries all across Eastern Europe.⁵¹ Shnaider also reportedly owns Talon International Development, the firm that oversaw construction of the Trump hotel-tower in Toronto. All this wealth apparently helped Iceland's FL Group decide that it could afford to extend a €45.8 million loan to Alex Shnaider in 2008 to buy a yacht.⁵²

As of December 2016, a search of the Panama Papers database found no fewer than 28 offshore companies that have been associated with "Midland Resources Holding Limited."⁵³ According to the database, "Midland Resources Holding Limited" was a shareholder in at least two of these companies, alongside an individual named "Oleg Sheykhametov."⁵⁴ The two companies, Olave Equities Limited and Colley International Marketing SA, were both registered and active in the British Virgin Islands from 2007–10.⁵⁵ A Russian restaurateur by that same name reportedly runs a business owned by two other alleged Solntsevskaya mob associates, Lev Kvetnoy and Andrei Skoch, both of whom appear with Sergei Mikhaylov. Of course mere inclusion in such a group photo is not evidence of wrongdoing. (See the photo here.) According to *Forbes*, Kvetnoy is the 55th richest person in Russia and Skoch, now a deputy in the Russian Duma, is the 18th.⁵⁶

Finally, it is also intriguing to note that Boris Birshtein is also listed as the President of "ME Moldova Enterprises AG," a Zurich-based company" that was founded in November 1992, transferred to the canton of Schwyz in September 1994, and liquidated and cancelled in January 1999.⁵⁷ Birshtein was a member of the company's board of directors from November 1992 to January 1994, when he became its President. At that point he was succeeded as President in June 1994 by one "Evsei Shnaider, Canadian citizen, resident in Zurich," who was also listed as director of the company in September 1994.⁵⁸ "Evsei Schnaider" is also listed in the Panama registry as a Treasurer and Director of "The Seabeco Group Inc.," formed on December 6, 1991,⁵⁹ and as treasurer and director of Seabeco Security International Inc.," formed on December 10, 1991. As of December 2016, both companies are still in existence.⁶⁰ Boris Birshtein is listed as president and director of both companies.⁶¹

The Case of Paul Manafort's Ukrainian Oligarchs

Our fifth Trump associate profile concerns the Russo/Ukrainian connections of Paul Manafort, the former Washington lobbyist who served as Donald Trump's national campaign director from April 2016 to August 2016. Manafort's partner, Rick Davis, also served as national campaign manager for Senator John McCain in 2008, so this may not just be a Trump association.

One of Manafort's biggest clients was the dubious pro-Russian Ukrainian billionaire Dmytro Firtash. By his own admission, Firtash maintains strong ties with a recurrent figure on this scene, the reputed Ukrainian/Russian mob boss Semion Mogilevich. His most important other links are almost certainly to Putin. Otherwise it is difficult to explain how this former used-car salesman could gain a lock on trading goods for gas in Turkmenistan and also become a lynchpin investor in the Swiss company RosUrEnergo, which controls Gazprom's gas sales to Europe.⁶²

In 2008, Manafort teamed up with a former manager of the Trump Organization to purchase the Drake Hotel in New York for up to \$850 million, with Firtash agreeing to invest \$112 million. According to a lawsuit brought against Manafort and Firtash, the key point of the deal was not to make a carefully-planned investment in real estate, but to simply launder part of the huge profits that Firtash had skimmed while brokering dodgy natural gas deals between Russia and Ukraine, with Mogilevich acting as a "silent partner."

Ultimately Firtash pulled out of this Drake Hotel deal. The reasons are unclear—it has been suggested that he needed to focus on the 2015 collapse and nationalization of his Group DF's Bank Nadra back home in Ukraine.⁶³ But it certainly doesn't appear to have changed his behavior. Since 2014 there has been a spate of other Firtash-related prosecutions, with the United States trying to extradite from Austria in order to stand trial on allegations that his vast spiderweb "Group DF" had bribed Indian officials to secure mining licenses. The Austrian court has required him to put up a record-busting €125 million bail while he awaits a decision.⁶⁴ And just last month, Spain has also tried to extradite Firtash on a separate money laundering case, involving the laundering of €10 million through Spanish property investments.

After Firtash pulled out of the deal, Manafort reportedly turned to Trump, but he declined to engage. Manafort stepped down as Trump's campaign manager in August of 2016 in response to press investigations into his ties not only to Firtash, but to Ukraine's previous pro-Russian Yanukovich government, which had been deposed by a uprising in 2014. However, following the November 8 election, Manafort reportedly returned to advise Trump on staffing his new administration. He got an assist from Putin—on November 30 a spokeswoman for the Russian Foreign Ministry accused Ukraine of leaking stories about Manafort in an effort to hurt Trump.

The Case of “Well-Connected” Russia/FSU Mobsters

Finally, several other interesting Russian/FSU connections have a more residential flavor, but they are a source of very important leads about the Trump network.

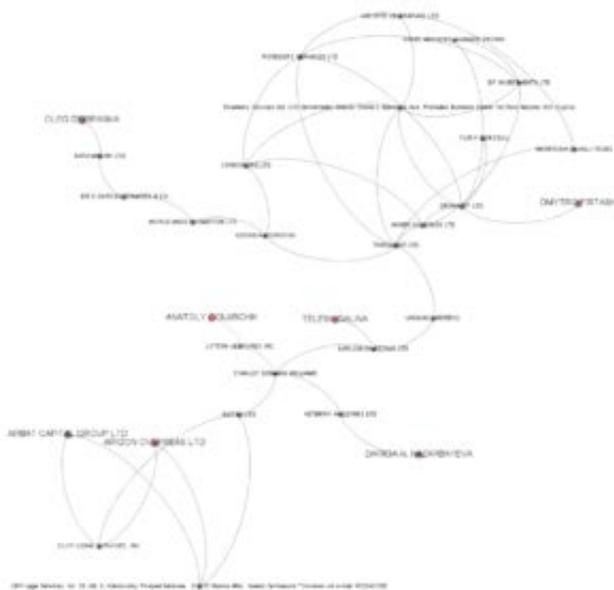
Indeed, partly because it has no prying co-op board, Trump Tower in New York has received press attention for including among its many honest residents tax-dodgers, bribers, arms dealers, convicted cocaine traffickers, and corrupt former FIFA officials.⁶⁵

One typical example involves the alleged Russian mobster Anatoly Golubchik, who went to prison in 2014 for running an illegal gambling ring out of Trump Tower—not only the headquarters of the Trump Organization but also the former headquarters of Bayrock Group LLC. This operation reportedly took up the entire 51st floor. Also reportedly involved in it was the alleged mobster Alimzhan Tokhtakhounov,⁶⁶ who has the distinction of making the *Forbes* 2008 list of the World’s Ten Most Wanted Criminals, and whose organization the FBI believes to be tied to Mogilevich’s. Even as this gambling ring was still operating in Trump Tower, Tokhtakhounov reportedly travelled to Moscow to attend Donald Trump’s 2013 Miss Universe contest as a special VIP.

In the Panama Papers database we do find the name “Anatoly Golubchik.” Interestingly, his particular offshore company, “Lytton Ventures Inc.,”⁶⁷ shares a corporate director, Stanley Williams, with a company that may well be connected to our old friend Semion Mogilevich, the Russian mafia’s alleged “Boss of Bosses” who appeared so frequently in the story above. Thus Lytton Ventures Inc. shares this particular director with another company that is held under the name of “Galina Telesh.”⁶⁸ According to the Organized Crime and Corruption Reporting Project, multiple offshore companies belonging to Semion Mogilevich have been registered under this same name—which just happens to be that of Mogilevich’s first wife.

A 2003 indictment of Mogilevich also mentions two offshore companies that he is said to have owned, with names that include the terms “Arbat” and “Arigon.” The same corporate director shared by Golubchik and Telesh also happens to be a director of a company called Westix Ltd.,⁶⁹ which shares its Moscow address with “Arigon Overseas” and “Arbat Capital.”⁷⁰ And another company with that same director appears to belong to Dariga Nazarbayeva, the eldest daughter of Nursultan Nazarbayev, the long-lived President of Kazakhstan. Dariga is expected to take his place if he ever decides to leave office or proves to be mortal.

Lastly, Dmytro Firtash—the Mogilevich pal and Manafort client that we met earlier—also turns up in the Panama Papers database as part of Galina Telesh’s network neighborhood. A director of Telesh’s “Barlow Investing,” Vasliki Andreou, was also a nominee director of a Cyprus company called “Toromont Ltd.,” while another Toromont Ltd. nominee director, Annex Holdings Ltd., a St. Kitts company, is also listed as a shareholder in Firtash’s Group DF Ltd., along with Firtash himself.⁷¹ And Group DF’s CEO, who allegedly worked with Manafort to channel Firtash’s funding into the Drake Hotel venture, is also listed in the Panama Papers database as a Group DF shareholder. Moreover, a 2006 Financial Times investigation identified three other offshore companies that are linked to both Firtash and Telesh.⁷²



Anatoly Golubchik’s Panama Papers Network Neighborhood

Of course, all of these curious relationships may just be meaningless coincidences. After all, the director shared by Telesh and Golubchik is also listed in the same role for more than 200 other companies, and more than a thousand companies besides Arbat Capital and Arigon Overseas share Westix’s corporate address. In the burgeoning land of offshore havens and shell-game corporate citizenship, there is no such thing as overcrowding. The appropriate way to view all this evidence is to regard it as “Socratic:” raising important unanswered questions, not providing definite answers.

In any case, returning to Trump’s relationships through Trump Tower, another odd one involves the 1990s-vintage fraudulent company YBM Magnex International. YBM, ostensibly a world-class manufacturer of industrial magnets, was founded indirectly in Newtown, Bucks County, Pennsylvania in 1995 by the “boss of bosses,” Semion Mogilevich, Moscow’s “brainy Don.”

This is a fellow with an incredible history, even if only half of what has been written about him is true.⁷³ Unfortunately, we have to focus here only on the bits that are most relevant. Born in Kiev, and now a citizen of Israel as well as Ukraine and Russia, Semion, now seventy, is a lifelong criminal. But he boasts an undergraduate economics degree from Lviv University, and is reported to take special pride in designing sophisticated, virtually undetectable financial frauds that take years to put in place. To pull them off, he often relies on the human frailties of top bankers, stock brokers, accountants, business magnates, and key politicians.⁷⁴

In YBM's case, for a mere \$2.4 million in bribes, Semion and his henchmen spent years in the 1990s launching a product-free, fictitious company on the still-badly under-regulated Toronto Stock Exchange. Along the way they succeeded in securing the support of several leading Toronto business people and a former Ontario Province Premier to win a seat on YBM's board. They also paid the "Big Four" accounting firm Deloitte Touche very handsomely in exchange for glowing audits. By mid-1998, YBM's stock price had gone from less than \$0.10 to \$20, and Semion cashed out at least \$18 million—a relatively big fraud for its day—before the FBI raid its YBM's corporate headquarters. When it did so, it found piles of bogus invoices for magnets, but no magnets.⁷⁵

In 2003, Mogilevich was indicted in Philadelphia on 45 felony counts for this \$150 million stock fraud. But there is no extradition treaty between the United States and Russia, and no chance that Russia will ever extradite Semion voluntarily; he is arguably a national treasure, especially now. Acknowledging these realities, or perhaps for other reasons, the FBI quietly removed Mogilevich from its Top Ten Most Wanted list in 2015, where he had resided for the previous six years.⁷⁶

For our purposes, one of the most interesting things to note about this YBM Magnex case is that its CEO was a Russian-American named Jacob Bogatin, who was also indicted in the Philadelphia case. His brother David had served in the Soviet Army in a North Vietnamese anti-aircraft unit, helping to shoot down American pilots like Senator John McCain. Since the early 1990s, David Bogatin was considered by the FBI to be one of the key members of Semion Mogilevich's Russian organized crime family in the United States, with a long string of convictions for big-ticket Mogilevich-type offenses like financial fraud and tax dodging.

At one point, David Bogatin owned five separate condos in Trump Tower that Donald Trump had reportedly sold to him *personally*.⁷⁷ And Vyacheslav Ivankov, another key Mogilevich lieutenant in the United States during the 1990s, also

resided for a time at Trump Tower, and reportedly had in his personal phone book the private telephone and fax numbers for the Trump Organization's office in that building.⁷⁸

So what have we learned from this deep dive into the network of Donald Trump's Russian/FSU connections?

First, the President-elect really is very "well-connected," with an extensive network of unsavory global underground connections that may well be unprecedented in White House history. In choosing his associates, evidently Donald Trump only pays cursory attention to questions of background, character, and integrity.

Second, Donald Trump has also literally spent decades cultivating senior relationships of all kinds with Russia and the FSU. And public and private senior Russian figures of all kinds have likewise spent decades cultivating him, not only as a business partner, but as a "useful idiot."

After all, on *September 1, 1987 (!)*, Trump was already willing to spend a \$94,801 on full-page ads in the *Boston Globe*, the *Washington Post*, and the *New York Times* calling for the United States to stop spending money to defend Japan, Europe, and the Persian Gulf, "an area of only marginal significance to the U.S. for its oil supplies, but one upon which Japan and others are almost totally dependent."⁷⁹

This is one key reason why just this week, Robert Gates—a registered Republican who served as Secretary of Defense under Presidents Bush and Obama, as well as former Director and Deputy Director of the CIA—criticized the response of Congress and the White House to the alleged Putin-backed hacking as far too "laid back."⁸⁰

Third, even beyond questions of illegality, the public clearly has a right to know much more than it already does about the nature of such global connections. As the opening quote from Cervantes suggests, these relationships are probably a pretty good leading indicator of how Presidents will behave once in office.

Unfortunately, for many reasons, this year American voters never really got the chance to decide whether such low connections and entanglements belong at the world's high peak of official power. In the waning days of the Obama Administration, with the Electoral College about to ratify Trump's election and Congress in recess, it is too late to establish the kind of bipartisan, 9/11-type commission that would be needed to explore these connections in detail.

Finally, the long-run consequence of careless interventions in other countries is that they often come back to haunt us. In Russia's case, it just has.

¹Author’s estimates; see globalhavenindustry.com for more details.

²For an overview and critical discussion, see [here](#).

³See Lawrence Klein and Marshall Pomer, *Russia’s Economic Transition Gone Awry* (Stanford University Press, 2002); see also James S. Henry and Marshall Pomer, “A Pile of Ruble,” *New Republic*, September 7, 1998.

⁴See this [Washington Post report](#), which counts just six bankruptcies to the Trump Organization’s credit, but excludes failed projects like the Trump SoHo, the Toronto condo-hotel, the Fort Lauderdale condo-hotel, and many others Trump was a minority investor or had simply licensed his brand.

⁵For example, the Swiss federal and cantonal corporate registries, available [here](#).

⁶For ICIJ’s April 2016 “Panama Papers” database of offshore companies, see [here](#).

⁷Trump’s minority equity deal with Bayrock was unlike many others, where he simply licensed his name. See this [March 2008 New York Magazine piece](#).

⁸“I dealt mostly with Tevfik,” [he said in 2007](#).

⁹[Case 1:09-cv-21406-KMW Document 408-1](#). Entered on FLSD Docket 11/26/2013. p. 15.

¹⁰[Source](#).

¹¹Bayrock reported its co-ownership of six Rixos hotels in a [2007 press release](#).

¹²See also Salihovic, Elnur, *Major Players in the Muslim Business World*, p.107, and [this Telegraph piece](#).

¹³See also [Zambia, Mining, and Neo-Liberalism](#); *Brussels Times*; and *Le Soir*.

¹⁴According to the Panama Papers database, “International Financial Limited” was registered on April 3, 1998, but is no longer active today, although no precise deregistration date is available. [Source](#).

¹⁵According to the Panama Papers, “Group Rixos Hotel” is still active company, while three of the four companies it serves were struck off in 2007 and the fourth, Hazara Asset Management, in 2013.

¹⁶[Source](#).

¹⁷See also [TurizmGüncel.com](#) and *Le Grand Soir*.

¹⁸Case 1:09-cv-21406-KMW Document 408-1. Entered on FLSD Docket 11/26/2013. p. 16.

¹⁹The exact date that Sater joined Bayrock is unclear. A *New York Times* article says 2003, but this appears to be too late. Sater says 1999, but this is much too early. A certified petition filed with the U.S. Supreme Court places the time around 2002, which is more consistent with Sater's other activities during this period, including his cooperation with the Department of Justice on the Coppa case in 1998–2001, and his foreign travel.

²⁰See *Financial Times*, *New York Times*, and *Washington Post*. Note that previous accounts of Sater's activities have overlooked the role that this very permissive relationship with federal law enforcement, especially the FBI, may have played in encouraging Sater's subsequent risk-taking and financial crimes. See here.

²¹See here, p. 13.

²²Sater's 1998 case, never formally sealed, was *U.S. v. Sater*, 98-CR-1101 (E.D.N.Y.) The case in which Sater secretly informed was *U.S. v. Coppa*, 00-CR-196 (E.D.N.Y.). See also this piece in the *Daily Beast*.

²³Source. Sater also may have taken other steps to conceal his criminal past. According to the 2015 lawsuit filed by x Bayrocker Jody Kriss, Arif agreed to pay Sater his \$1 million salary under the table, allowing Sater to pretend that he lacked resources to compensate any victims of his prior financial frauds. See *Kriss v. Bayrock*, pp. 2, 18. The lawsuit also alleges that Sater may have held a majority of Bayrock's ownership, but that Arif, Sater and other Bayrock officers may have conspired to hide this by listing Arif as the sole owner on offering documents.

²⁴See here, p. 155.

²⁵Author's interview with Sigrun Davidsdottir, Iceland journalist, London, August 2016.

²⁶See "Report of the Special Investigation Commission on the 2008 Financial Crisis" (April 12, 2010).

²⁷These loans are disclosed in the Kaupthing Bank's "Corporate Credit – Disclosure of Large Exposures > €40 mm." loan book, September 15, 2008. This document was disclosed by Wikileaks in 2009. See this *Telegraph* piece. <http://file.wikileaks.info/leak/kaupthing-bank-before-crash-2008.pdf>, p.145 (€79.5mm construction yacht loan to Russian vodka magnate Yuri Shefler's Serena Equity Ltd.); p. 208 (€45.8 mm yacht construction loan to Canadian-Russian billionaire Alex Shnaider's Filbert Pacific Ltd.).

²⁸Kriss lawsuit, op. cit.; author's analysis of Kaupthing/ FL G employees published career histories.

²⁹Author's interview with an "Iceland economist," Reykjavik, July 2016.

³⁰Source. The passage in Russian, with the father's name underlined, is as follows: "Родители Алекса Шнайдера владели одним из первых успешных русских магазинов в русском квартале Торонто. Алекс помогал в бизнесе отцу—Евсею Шнайдеру, расставляя на полках товар и протирая полы. С юных лет в Алексе зрела предпринимательская жилка. Живя с родителями, он стал занимать деньги у их друзей и торговать тканями и электроникой с разваливающимися в конце 80-х годов советскими предприятиями." "Евсею Шнайдеру" is the dative case of "Евсей Шнайдер," or "Evsei Shnaider," the father's name in Russian.

³¹The Zurich company registry reports that "Seabeco SA" (CHE-104.863.207) was initially registered on December 16, 1982, with "Boris Joseph Birshstein, Canadian citizen, resident in Toronto" as its President. It entered liquidation on May 5, 1999, in Arth, handled by the Swiss trustee Paul Barth. The Zurich company registry listed "Boris Joseph Birshstein, Canadian citizen, resident in Toronto," as the President of Seabeco Kirgizstan AG in 1992, while "Boris Joseph Birshstein, Canadian citizen, resident in Zurich," was listed as the company's President in 1993. "Boris Birshstein" is also listed as the President and director of a 1991 Panama company, The Seabeco Group, Inc. as of December 6 1991. See below.

³²Source.

³³The Zurich company registry reports that "Seabeco SA" (CHE-104.863.207) was initially registered on December 16, 1982, with "Boris Joseph Birshstein, Canadian citizen, resident in Toronto" as its President. According to the registry, it entered liquidation on May 5, 1999. See also this. The liquidation was handled by the Swiss trustee Paul Barth, in Arth.

³⁴For Seabeco's Antwerp subsidiary, see here.

³⁵"Royal HTM Group, Inc." of Toronto, (Canadian Federal Corporation # 624476-9), owned 50-50 by Birshstein and his nephew. Source.

³⁶Birshstein was a director of Seabeco Capital Inc. (Canadian Federal Incorporatio # 248194-4,) a Winnipeg company created June 2, 1989, and dissolved December 22, 1992.

³⁷Since 1998, Boris Birshstein (Toronto) has also served as Chairman, CEO, and a principle shareholder of "Trimol Group Inc.," a publicly-traded Delaware company that trades over the counter. (Symbol: TMOL). Its product line is

supposedly “computerized photo identification and database management system utilized in the production of variety of secure essential government identification documents.” See [Bloomberg](#). However, according to [Trimol’s July 2015 10-K](#), the company has only had one customer, the former FSU member Moldova, with which Trimol’s wholly owned subsidiary Intercomsoft concluded a contract in 1996 for the production of a National Passport and Population Registration system. That contract was not renewed in 2006, and the subsidiary and Trimol have had no revenues since then. Accordingly, as of 2016 Trimol has only two part time employees, its two principal shareholders, Birshtein and his nephew, who, directly and indirectly account for 79 percent of Trimol’s shares outstanding. According to the July 2015 10-K, Birshtein, in particular, owned 54 percent of TMOL’s outstanding 78.3 million shares, including 3.9 million by way of “Magnum Associates, Inc.,” which the 10-K says only has Birshtein as a shareholder, and 34.7 million by way of yet another Canadian company, “Royal HTM Group, Inc.” of Ontario (Canadian Federal Corporation # 624476-9), which is owned 50-50 by Birshtein and a nephew. It is interesting to note according to the Panama Papers database, a Panama company called “Magnum Associates Inc. was incorporated on December 10, 1987, and struck off on March 10, 1989. [Source](#). As of December 2016, TMOL’s stock price was zero.

³⁸See the case of Trimol Group Inc above. The Seabeco Group, Inc., a Panama company that was formed in December 1991, apparently still exists. Boris J. Birshtein is listed as this company’s Director and President. See “The Seabeco Group Inc.” registered in Panama by Morgan Y Morgan, 1991-12.06, with “Numero de Ficha” 254192; source [here](#) and [here](#).

³⁹As of December 2016, the [Zurich company registry](#) listed a Zurich company called “Conim Investment AG” (CH-020.3.002.334-7) was originally formed in May 1992, and in January 1995 was transferred to Arth, in the Canton of Schwyz, where it is still in existence. (CHE-102.029.498). This is confirmed by the [Schwyz Canton registry](#). According to these registries, Conim Investment AG is the successor company to two other Zurich companies, “Seabeco Kirgizstan AG,” formed in 1992, and “KD Kirgizstan Development AG,” its direct successor. [Source](#). The Swiss federal company registry also reports the following Swiss companies in which Boris J. Birshtein has been an officer and or director, all of which are now in liquidation: (1) Seabeco Trade and Finance AG (CH-020.3.002.179-4, 4/3/92-11/30/98), ; (2) Seabeco SA (CHE-104.863.207,12/16/82-5/9/99) ; (3) Seabeco Metals AG (4/3/92-6/11/96); (4) BNB Trading AG (CH-020.3.002.181-9, 1/10/92-11/19/98); and (5) ME Moldova Enterprises AG (CH-020.3.003.104-1, 11/10/92-9/16/94). All of these liquidations were handled by the same trustee, Paul Barth in Arth.

⁴⁰As of December 2016, active Birshstein companies include “Conim Investment AG” (CH-020.3.002.334-7) in the Swiss Canton of Schwyz and the Seabeco Group, Inc. in Panama.

⁴¹For example, the Zurich and Schwyz company registries indicate that the following have been board members of Birshstein companies: (1) Seabeco Trade and Finance AG: Iouri Orlov (citizen of Russia, resident of Moscow), Alexander Griaznov (citizen of Russia, resident of Basserdorf Switzerland), and Igor Filippov (citizen of Russia, resident of Basel). (2) ME Moldova Enterprises: Andrei Keptein (citizen of FSU/ Moldova; Evsei Shnaider (Russian émigré to Canada); (3) Seabeco Kirgizstan/ Conim Investment AG: Sanjarbek Almatov (citizen of Bishkek, FSU/ Kirgizstan), Toursounbek Tchynguychev (citizen of Bishkek, FSU/Kirgizstan), Evsei Shnaider (Russian émigré to Canada); (4) BNB Trading AG: Yuri Spivak (Russian émigré to Canada); (5) Seabeco Metals AG: Alex Shnaider (Russian émigré to Canada).

⁴²Charles Clover, “Ukraine: Questions over Kuchma’s adviser cast shadows,” *Financial Times*, October 30, 1999, available [here](#). See also Misha Glenny, 2009. *McMafia: A Journey Through the Global Criminal Underworld* (Vintage Books), pp. 63–5.

⁴³Clover, “Ukraine: Questions over Kuchma’s adviser cast shadows.”

⁴⁴See FBI, Organizational Intelligence Unit (August 1998), “Semion Mogilevich Organization: Eurasian Organized Crime,” available [here](#).

⁴⁵Clover, “Ukraine: Questions over Kuchma’s adviser cast shadows.”

⁴⁶Clover, “Ukraine: Questions over Kuchma’s adviser cast shadows.”

⁴⁷“Boris knows everyone,” *Toronto Star*, August 28, 1993.

⁴⁸See Zurich corporate registry for “Seabeco Metals AG” (CH-020.3.002.181-9), formed 4/3/92 and liquidated 6/11/96.

⁴⁹Source.

⁵⁰Source.

⁵¹Source.

⁵²See Kaupthing Bank, “Loan Book, September 2008,” [Wikileaks](#).

⁵³The [Panama Papers database](#) provides an address for “Midland Resources Holding Limited” that exactly matches the company’s [corporate address in Guernsey](#), as noted by Bloomberg’s corporate data base. Here are the 28 companies that are associated with Midland in database: [Aligory Business Ltd.](#);

Anglesey Business Ltd.; Blue Industrial Skies Inc.; Cl 850 Aviation Holdings Ltd.; Cl 850 Aircraft Investments Ltd.; Caray Business Inc.; Challenger Aircraft Company Limited; Colley International Marketing S.A.; East International Realty Ltd.; Filbert Pacific Limited; Gorlane Business Inc.; Jabar Incorporated; Jervois Holdings Inc.; Kerryhill Investments Corp.; Leaterby International Investments Corp.; Maddocks Equities Ltd.; Maverfin Holding Inc.; Midland Maritime Holding Ltd.; Midland River-Sea Holding Ltd.; Midland Drybulk Holding Ltd.; Midland Fundco Ltd.; Norson Investments Corp.; Olave Equities Limited; Orlion Business Incorporated; Perseus Global Inc.; Sellana Investments Global Corp.; Stogan Assets Incorporated; Toomish Asset Ltd.

⁵⁴With the address “11 First Tverskaya-Yamskaya Street; apt. 42; Moscow; Russia.”: [here](#), [here](#), and [here](#).

⁵⁵As for the Midland-related offshore vehicles still listed as active, one shareholder in two of them—Stogan Assets Incorporated and Blue Sky Industries Inc.—happens to have the same name as Russia’s Deputy Culture Minister Gregory Pirumov, reportedly arrested in March 2016 on embezzlement charges. The “Gregory Pirumov” in the Panama Papers has a registered address in Moscow (4 Beregovskaia Quay; 121059), as do the reported agent of these two companies: “Global Secretary Services Ltd. Mal. Tolmachevskiy pereulok 10 Office No.3 Moscow, Russia 119017 Attention: Katya Skupova.” See [here](#). A “Georgy Pirumov” is also listed separately in the Panama Papers as having been a shareholder in the same two companies. For what it is worth, in September 2016, one “Georgy Pirumov” was convicted in Moscow of “illegally taking over a building in Gogolevsky Boulevard,” and sentenced to 20 months in a minimum-security correctional facility. See The Investigative Committee of the Russian Federation, Sept 15, 2016. At this point, however, we need to emphasize that there is still plenty that needs to be investigated—we cannot yet confirm whether “Georgy” and “Gregory” are the same person, whether they are related, how they might be related to Shnaider’s Mineral Resources, or whether they are the same people named in the articles just noted above about criminal prosecutions.

⁵⁶Source.

⁵⁷See Schwyz canton corporate registry, “ME Moldova Enterprises AG,” CH-130.0.007.159-5.

⁵⁸See Zurich corporate registry, “ME Moldova Enterprises AG,” CH-020.3.003.104-1 (11/10/92-9/16/94).

⁵⁹See “Seabeco Group Inc.,” Panama Corporate Registry # 254192, formed 12-6-1991.

⁶⁰See “Seabeco Security Intl Inc.” Panama Corporate Registry #254206, formed 12-10-1991.”

⁶¹See footnotes 58 and 59.

⁶²Source.

⁶³See Unian Information Agency.

⁶⁴Source.

⁶⁵See Transparency International Russia.

⁶⁶A.K.A. “Tochtachunov.” See FBI, Organizational Intelligence Unit (August 1998), “Semion Mogilevich Organization: Eurasian Organized Crime.”

⁶⁷According to the Panama Papers, as of December 2016, Lytton Ventures Inc., incorporated in 2006, was still an active company but its registration jurisdiction was listed as “unknown.”

⁶⁸For Telesh’s company the director’s name is given as “Stanley Williams,” as compared with “Stanley Edward Williams” in Golubchik’s, but they have the same address. See here. Telesh’s company, Barlow Investing, was incorporated in 2004. In the PP database, as of December 2016 its status was “Transferred Out,” although its de-registration date and registration jurisdiction are unknown.

⁶⁹Westix Ltd., registered in 2005, is still active, according to the Panama Papers.

⁷⁰In the Panama Papers, Telesh’s company and Golubchik’s reportedly have the same director, one Stanley Williams. Williams is also reportedly a director of Westix, which shares its address with two other offshore companies that use corporate names that Mogilevich has reportedly used at least twice each in the past. Arbat Capital, registered in 2003, was still active as of December 2016, as was Arigon Overseas, registered in 2007.

⁷¹See the diagram below.

⁷²These three offshore companies are not in the Panama Papers database. Firtash acknowledged these connections to Telesh but still told FT reporters that he didn’t know her. The three companies identified in the report are (1) Highrock Holdings, which Firtash and Telesh each reportedly owned 1/3rd of, and where Firtash served as director beginning in 2001; (2) Agatheas Holdings, where Firtash apparently replaced Telesh as director in 2003; and (3) Elmstad Trading, a Cyprus company owned by Firtash which in 2002 transferred the

shares of a Russian company named Rinvey to Telesh and two other people: one of them Firtash's lawyer and the other the wife of a reputed Mogilevich business partner. See also [here](#).

⁷³On Mogilevich, see, for example, [this](#).

⁷⁴See also FBI, Organizational Intelligence Unit (August 1998), "Semion Mogilevich Organization; Eurasian Organized Crime," available [here](#).

⁷⁵[Source](#).

⁷⁶See [FBI](#) archives and [Slate](#).

⁷⁷David Cay Johnston, interview with the author, November 2016. Wayne Barrett, *Trump: The Greatest Show on Earth: The Deals, the Downfall, the Reinvention* (Regan Arts, 2016).

⁷⁸Johnston, interview; see also [here](#). In another interesting coincidence, the President of YBM Magnex was also reportedly a financial director of Highrock in the late 1990s, before Manafort-client Dmytro Firtash joined the company as a director in 2001. See note 151. [Source](#).

⁷⁹[Source](#).

⁸⁰[Source](#).

James S. Henry, Esq. is an investigative economist and lawyer who has written widely about offshore and onshore tax havens, kleptocracy, and pirate banking. He is the author of *The Blood Bankers* (Basic Books, 2003,2005), a classic investigation of where the money went that was loaned to key debtor countries in the 1970s-1990s. He is a senior fellow at the Columbia University's Center on Sustainable Investment, a Global Justice Fellow at Yale, a senior advisor at the Tax Justice Network, and a member of the New York Bar. He has pursued frontline investigations of odious debt, flight capital, and corruption in more than fifty developing countries, including Russia, China, South Africa, Brazil, the Philippines, Argentina, Venezuela, and Panama.

EXHIBIT F

N.Y. / REGION

Real Estate Executive With Hand in Trump Projects Rose From Tangled Past

By CHARLES V. BAGLI DEC. 17, 2007

It is a classic tale of reinvention, American style.

Born in the Soviet Union in 1966, Felix H. Sater immigrated with his family to Brighton Beach when he was 8 years old. At 24 he was a successful Wall Street broker, at 27 he was in prison after a bloody bar fight, and at 32 he was accused of conspiring with the Mafia to launder money and defraud investors.

Along the way he became embroiled in a plan to buy anti-aircraft missiles on the black market for the Central Intelligence Agency in either Russia or Afghanistan, depending on which of his former associates is telling the story.

But in recent years Mr. Sater has resurfaced with a slightly different name and a new business card identifying him as a real estate executive based on Fifth Avenue. And although he may not be a household name, one of the people he is doing business with is: Donald J. Trump.

Mr. Sater — who now goes by the name Satter — has been jetting to Denver, Phoenix, Fort Lauderdale, Fla., and elsewhere since 2003, promoting potential projects in partnership with Mr. Trump and others. In New York, the company Mr. Sater works for, Bayrock Group, is a partner in the Trump SoHo, a sleek, 46-story glass tower condominium hotel under construction on a newly fashionable section of Spring Street.

But much remains unknown about Mr. Sater, 41, and determining the truth about his past is a bit like unraveling the plot of a spy novel: Almost every character tells a different tale.

A federal complaint brought against him in a 1998 money laundering and stock manipulation case was filed in secret and remains under seal. A subsequent indictment in March 2000 stemming from the same investigation described Mr. Sater as an “unindicted co-conspirator” and a key figure in a \$40 million scheme involving 19 stockbrokers and organized crime figures from four Mafia families.

The indictment asserted that Mr. Sater helped create fraudulent stock brokerages that were used to defraud investors and launder money. Mr. Sater and his lawyer, Judd Burstein, repeatedly refused to discuss in detail his role in the stock scam.

But a onetime friend, Gennady Klotsman, who is known as Gene and who was accused with Mr. Sater as a co-conspirator, contends that they both pleaded guilty in 1998, and that Mr. Sater began cooperating with the authorities. Prosecutors are unwilling to discuss either the 1998 complaint or the 2000 indictment.

“I’m not proud of some of the things that happened in my 20s,” Mr. Sater said in an interview. “I am proud of the things I’m doing now.”

Mr. Sater, who has an untitled position at Bayrock, said he started spelling his name as Satter to “distance himself from a past” in an age when anyone can look up a name on Google. But he continues to use the name Sater on the deed to his house on Long Island.

Mr. Burstein added, “He does not hide his past, and difficulties he had, from anybody he does business with.”

But Alex Sapir, president of the Sapir Organization, a partner in Trump SoHo, said he was “not happy” to have just learned of Mr. Sater’s past on Thursday. “This is all news to me,” he said.

Mr. Trump also said he was surprised to learn of Mr. Sater’s past. “We never knew that,” he said of Mr. Sater. “We do as much of a background check as we can on the principals. I didn’t really know him very well.”

Mr. Trump said that most of his dealings with Bayrock had been with its founder, Tefvik Arif, and that his son Donald and his daughter Ivanka were playing active roles in managing the project. Neither Bayrock nor Mr. Trump has been accused of wrongdoing.

Mr. Sater has generally kept a low profile on the Trump projects, although he mingled with guests and the owners at the September party introducing Trump SoHo. Mr. Trump and Mr. Sater were also together in Loveland, Colo., in 2005, where they were interviewed by a reporter for The Rocky Mountain News about potential development deals in nearby Denver. Mr. Trump said he did not recall Mr. Sater's being there.

"They seemed to get along just fine," said Justin Henderson, a Denver developer who worked with Mr. Trump and Mr. Sater on an ultimately unsuccessful deal to build the tallest towers in Colorado. "It seemed that Mr. Trump relied heavily on Mr. Sater's opinion on certain markets."

Mr. Sater's latest transformation could prove to be a cautionary tale for Mr. Trump, who has carefully molded his image into an international brand that has extended from real estate to bottled water, men's suits, steaks, vodka, a television show and, in his latest invention, the Trump Hotel Collection.

The hotel collection, a hotel management company, includes two projects with Bayrock: Trump SoHo and Trump International Hotel and Tower in Fort Lauderdale. A third joint project, in Phoenix, is also in the works.

"Trump is a name associated with a certain cachet and bravado, I suppose, that will attract certain kinds of people," said Rita Rodriguez, chief executive of the Brand Union, a corporate branding and identity agency.

"The brand is a strategic and financial asset," she said. "It has to be taken care of very similarly to any other asset you have on your balance sheet. Anything that would detract from that could jeopardize the brand impression the brand makes."

Mr. Sater was born in the Soviet Union, the son of Rachel and Mikhail Sater, according to public records, court testimony and the federal indictment. He has said his parents, who are Jewish, moved first to Israel, then to Baltimore and finally to New York in the early 1970s to escape "religious persecution."

Mr. Sater was born Haim Felix Sater, but he once testified in court that he "Americanized" his name to Felix Henry Sater in the early 1990s.

Mr. Sater took classes at Pace University but dropped out at 18 to work at Bear Stearns. Like Mr. Klotsman, he rose quickly, moving from firm to firm selling stock.

Mr. Sater's first brush with the law came in 1991. Mr. Sater and Mr. Klotsman were at El Rio Grande, a Midtown watering hole, celebrating with a friend and eventual co-conspirator, Salvatore Lauria, who had just passed his stockbroker's exam.

Mr. Sater later told a judge that he was in a good mood, having made a quick \$3,000 in commissions that day. But he got into an argument with a commodities broker at the bar, and it quickly escalated. According to the trial transcript, Mr. Sater grabbed a large margarita glass, smashed it on the bar and plunged the stem into the right side of the broker's face. The man suffered nerve damage and required 110 stitches to close the laceration on his face.

"I got into a bar fight over a girl neither he nor I knew," Mr. Sater said in an interview. "My life spiraled out of control." Mr. Sater was convicted at trial in 1993, went to prison and was effectively barred from selling securities by the National Association of Securities Dealers.

But according to the 2000 federal indictment in the fraud case, Mr. Sater, Mr. Klotsman, Mr. Lauria and their partners gained control in 1993 of White Rock Partners, which later changed its name to State Street Capital Markets. Although the companies "held themselves out as legitimate brokerage firms," the indictment states, "they were in fact operated for the primary purpose of earning money through fraud involving the manipulation of the prices of securities."

The trio would secretly gain control of large blocks of stock and warrants in four companies through offshore accounts, the indictment said. In an illegal "pump and dump" scheme, they would inflate the value of the shares through under-the-table payoffs to brokers who sold the securities to unsuspecting investors by spreading false information about the companies. Brokers were prohibited from acting on sell orders from investors unless they found another buyer, the indictment said.

The partners would then sell large blocks of stock at a steep profit. Investors suffered substantial losses as share prices plummeted. Despite the prohibition against selling securities, a subsequent complaint by regulators at the N.A.S.D. recounted how Mr. Sater "cursed, yelled and screamed" at the firm's brokers in an attempt to motivate them. He also offered cash rewards to brokers who sold the largest block of house stocks.

At the same time, Mr. Sater, Mr. Lauria and others sought protection and help

from members of the Mafia in resolving disputes with “pump and dump” firms operated by other organized crime groups. In 1995, for instance, Edward Garafola, a soldier in the Gambino crime family, sought to extort money from Mr. Sater. Mr. Sater, in turn, got Ernest Montevicchi, a soldier in the Genovese crime family, to persuade Mr. Garafola to back off, according to the indictment.

The denouement of Mr. Sater’s career on Wall Street began in 1998 at a locker at a Manhattan Mini Storage in SoHo, where investigators discovered two pistols, a shotgun and a gym bag stuffed with a trove of documents outlining the money laundering scheme and offshore accounts of Mr. Sater and his partners. According to a law enforcement official, as well as Mr. Klotsman and another defendant in the case, Mr. Sater had rented the locker and then neglected to pay the rent. Mr. Sater denied having anything to do with the locker or the guns.

At the time investigators opened the storage locker, Mr. Sater and Mr. Klotsman had gone to Russia, where their wheeling and dealing continued, they said. Their most interesting stories, however, are hard to assess.

Mr. Sater and Mr. Klotsman tried to cut a deal with the C.I.A., according to a book co-written by Mr. Lauria, “The Scorpion and the Frog: High Times and High Crimes.” In exchange for leniency, the book said, they offered to buy a dozen missiles that Osama bin Laden had placed on the black market. The deal later collapsed.

Mr. Lauria has since renounced his book, which also details the false stock brokerage scheme, calling it largely a work of fiction. He even tried unsuccessfully to block publication. However, his co-author, David S. Barry, said he documented all the stories in the book with records and other interviews.

Mr. Klotsman said that Mr. Sater did obtain information for the United States about another set of black-market missiles, and that those efforts “bought Felix his freedom” from prison.

Mr. Sater, Mr. Klotsman and Mr. Lauria eventually returned to New York. Mr. Klotsman and Mr. Lauria agreed to cooperate with the United States attorney’s office in Brooklyn and pleaded guilty to racketeering charges in connection with the fraudulent stock brokerages, other defendants and lawyers in Mr. Sater’s case said. The information they provided helped prosecutors obtain guilty pleas from all 19 of their former cohorts, including six with ties to the mob.

Mr. Klotsman and his lawyer assert that Mr. Sater also pleaded guilty and cooperated. "Felix was one of the significant participants in the fraud," the lawyer, Alexi M. Schacht, said.

Mr. Klotsman, who grew up with Mr. Sater, now lives in a \$600-a-month apartment in Moscow. In an interview, he said he was paying the American government \$625 a month in restitution for the \$40 million lost by investors. He questioned whether Mr. Sater was paying a dime.

But Mr. Sater and his lawyer, Mr. Burstein, avoided many questions concerning his legal problems involving the Wall Street scam, including whether he pleaded guilty and cooperated. "I challenge you to find any official government document anywhere demonstrating his indictment or conviction for any crime other than the assault," Mr. Burstein said.

Mr. Sater said he joined Bayrock in 2003 at the urging of the company's founder, Mr. Arif. A neighbor of Mr. Sater's in Sands Point, on Long Island, Mr. Arif is a former economist for the Soviet government who built a chain of five luxury hotels in Turkey and Kazakhstan after the collapse of the Soviet Union.

Within a stone's throw of the Manhattan Mini Storage building, the Trump SoHo is rising rapidly at the corner of Spring and Varick Streets, another new glass tower amid the somewhat grubby industrial buildings of what had been the city's printing district. The tower has generated opposition from some local residents and preservationists.

It is, for Mr. Sater, an emblem of his new life. "I'm trying to lead an exemplary existence," he said. "Old, bad luggage is not something anyone wants to remember."

A version of this article appears in print on , on Page B1 of the New York edition with the headline: Real Estate Executive With Hand in Trump Projects Rose From Tangled Past.

EXHIBIT G

TPM EDBLOG

Opinions, Context & Ideas From The TPM Editors

What The CIA and FBI Knew About Trump Before 2016

f SHARE

TWEET

PIN-IT

Bookmark



Copyright 2016
The Associated
Press. All rights
reserved.

By **JOSH MARSHALL** Published MARCH 2, 2017, 4:41 PM EDT

116900 Views

As you've likely inferred from my recent posts I've spent a lot of time in recent days and weeks piecing together different elements of the Trump/Russia story. I've brought other colleagues into the work and plan to expand that once we have people hired for the three new investigative positions I discussed last month. Today everyone is talking

DA

Schum
Less P
Senate
Monda

HHS S
Believ
The Se
charac

Americ
Under
The An
largest

McCar
Over D
House
Monda

Schum
'Serio
Senate
Monda

about the **inexplicable news about Jeff Sessions**. But there's another dimension of the Trump/Russia story which has only become clear to me recently but which provides a critical backstory for understanding the background of this scandal and news story.

Let's go back to **the story of Felix Sater**, the Russian-American immigrant, convicted felon and longtime Trump business associate we **discussed last week**.

Let me review two separate streams of information which are critical to understanding the story. First, here are some basic and well-attested facts about Felix Sater.

Sater began his professional life as a New York City stock broker; spent 15 months in prison for stabbing a man in the face with a broken wine glass in a bar fight; and then became involved in a pump and dump penny stock scheme in association with the Gambino and Genovese crime families. When he and his associates were arrested in the securities fraud scheme in 1998, Sater tried to make a deal to save himself.

According to **reliable accounts**, what Sater offered to do was work with the CIA to facilitate the purchase of Stinger missiles on the weapons black market in post-Soviet Central Asia. According to his accomplice and business partner, Salvatore Lauria, who **wrote a book detailing the story**, the CIA was more keen on working with Sater than was the FBI, which had recently been burned by its longstanding and close working relationship with Whitey Bulger. The plan eventually fell apart. It seemed like Sater and Lauria might end up doing hard time. They had defrauded investors over more than \$40 million. Then 9/11 happened and everything changed. Suddenly the federal government was much more interested in Sater's help.

Lauria later disowned the book which he had cowritten with an AP reporter, David Barry, claiming it was fiction. But Barry insists that he reported out everything contained in the book.

Sater's attorney Robert Wolf **made various seemingly hyperbolic claims** about Sater's cooperation for federal law enforcement and intelligence. He told *The Washington Times* in early 2015 that Sater worked on "the most serious matters of national security, battling our greatest enemies at tremendous risk to his own life and for the benefits of all citizens of our country ... [saving] potentially tens of thousands, if not millions, of our citizens' lives."

Needless to say this all sounds wild and improbably novelistic. And you would expect Sater's attorney to make extravagant claims about the value of his clients cooperation.

1. Sm
2. Wh
3. Spi
Acc
4. How
5. No,
Oba

TOP

Yo
Po
Ma

The
Ma
Ma

Tin
the
Ma

Try
ser
Tru
ba
Ma

Despite being well-attested, we don't know directly from the US government that any of these wild claims are true. But the statements and actions of federal law enforcement strongly suggest that even if some of the details are off, Sater's assistance was of an exceptional character.

The US government **went and continues to go to extreme lengths** to keep Sater's cooperation and work for the government a secret. Until quite recently, it went to great lengths to keep Sater's conviction itself, and all documents related to it, a secret. It took the extraordinarily rare step of managing the entire adjudication of Sater's crimes in secret, with all documents kept secret. Federal judges even pursued what might **reasonably be called a vendetta** against two lawyers who used leaked information about Sater's case in lawsuits growing out of a failed Trump building venture, Trump Fort Lauderdale, as well as lawsuits on behalf of victims in the original pump and dump scheme.

The federal government also kept Sater on as a cooperating witness for fully 11 years before finally sentencing him in 2009 for the plea deal in 1998. In a \$42 million securities fraud case, Sater received no jail time, was not forced to pay restitution and was fined a mere \$25,000. In other words, he walked away from the crime with close to no punishment. The controversy over the government's secrecy in the Sater case, as well as his minimal punishment, got enough attention that it eventually bubbled up from the criminal courts to the governmental and political realm. During her 2015 confirmation hearings, Attorney General Loretta Lynch was asked about the propriety of the government's cooperation with Sater, in part because she had been the US Attorney for the Eastern District of New York, where Sater's case was adjudicated.

In response to questions from Sen. Orin Hatch, Lynch **wrote** (emphasis added):

The defendant in question, Felix Sater, provided valuable and sensitive information to the government during the course of his cooperation, which began in or about December 1998. For more than 10 years, he worked with prosecutors from my Office, the United States Attorney's Office for the Southern District of New York and law enforcement agents from the Federal Bureau of Investigation and other law enforcement agencies, providing information crucial to national security and the conviction of over 20 individuals, including those responsible for committing massive financial fraud and members of La Cosa Nostra. For that reason, his case was initially sealed.

Lynch's references to "national security" has been echoed by other judges involved in Sater's case, ones who have gone to great length to prevent the release of documents tied to Sater's case.

It is impossible to know precisely what Sater was doing during this decade. But statements from government officials, news reports and Lauria's book make clear that it required him to have extensive associations with and knowledge of the mafia and touched not just on organized crime but specifically on critical matters of national security. Based on published reports and Lauria's book, it seems extremely likely that it also required him to have extensive knowledge of and contacts in the criminal underworld in the former Soviet Union. Clearly the US government saw Sater's cooperation as highly important. Otherwise it would not have gone to such lengths to get it, to keep it secret and to protect Sater after the fact. Lynch's words to Hatch speak volumes.

Then there's Mikhail Sater, aka Michael Sheferofsky, Felix Sater's father.

In 2000, two years after Felix was arrested in the securities fraud scheme, Mikhail Sater was charged along with Ernest "Butch" Montevicchi, a **soldier in the Genovese crime family**, for running an extortion ring in Brighton Beach between 1990 and 1999. In a **separate legal filing by the plaintiffs in the suit seeking restitution for Felix Sater's stock fraud**, petitioners claimed that Mikhail Sater was a boss in the Semion Mogilevich crime organization. Mogilevich is considered one of Russia's most notorious organized crime figures and was until 2015 on the FBI's most wanted list. Mikhail Sater also became a cooperating witness in the Eastern District and received three years probation.

There has been great deal of controversy over whether the federal government should have provided such protection for Felix Sater. For our present purposes, that's beside the point. What is relevant is that he was highly connected in the criminal underworld and the federal government found his cooperation extremely valuable.

Now, I've covered a lot of ground here, albeit compressing as much as I've been able a highly complex and florid story. You will no doubt see that Donald Trump's name does not come up in any of these crimes. My aim here is simply to demonstrate who Felix Sater is, his connections with a transnational criminal underworld stretching from New York's Outer Boroughs to Central Asia and (quite likely but not totally proven) meeting up with the weapons market where organized crime touches on international

terrorist networks.

We don't just know this information about Sater. Just as importantly we know that the FBI, attorneys in the Eastern District of New York and almost certainly the CIA also knew about Sater's connections with these worlds since they were enlisting his apparently extremely valuable cooperation to help conduct investigations and national security operations in those realms.

Here's where I think this becomes significant to the present moment. If you line up Sater's story and his time as a cooperating witness with his time as a top business associate and finally employee of Donald Trump, they overlap almost exactly.

Trump first met Sater and got into business with Bayrock Capital, where Sater was a cofounder, in 2003. In Bayrock, Sater partnered with Tefvik Arif, a former Soviet trade and commerce official from Kazakstan. Trump and Bayrock partnered together on numerous building projects and Sater was the point man on most of them. The most notable is Trump Soho, which was financed with money from Russia and Kazakstan. There was also **Trump Fort Lauderdale**, the Sater-managed project whose collapse first triggered the revelation of Sater's 1998 securities fraud conviction. Trump's work with Bayrock continued until 2010 when Sater went to work for the Trump Organization full time - again, putting together deals and financing for Trump-branded building projects.

Let's put this together.

The federal government knew who Sater was, his ties to the criminal underworld, business ties into that world in the former Soviet Union, etc. They also had to know of his deep and longstanding association with Donald Trump, his key role in numerous Trump projects during the first decade of this century and his role arranging financing for these projects. We don't know if the federal government had specific knowledge of the details of these business transactions or whether or how deeply Donald Trump was reliant on capital from Russia and more generally the murky world of oligarchs and underworlds that Sater is clearly immersed in and from which he appeared to draw investment capital. But they likely would have suspected as much, at least that Trump had uncomfortably close ties to someone like Sater.

They wouldn't have had to look far to confirm these assumptions. Take the Trump Soho project. In April 2016, *The New York Times* **published a story** on Trump Soho based on lawsuits which grew out of the project in 2011 and 2012. Consider this

passage. And yes, Lauria is the same Lauria who was at the '90s bar fight where Sater stabbed the man in the face. He was Sater's accomplice in the 1998 pump and dump scheme and the author of the book that detailed Sater's work for the FBI and the CIA ...

Mr. Lauria brokered a \$50 million investment in Trump SoHo and three other Bayrock projects by an Icelandic firm preferred by wealthy Russians "in favor with" President Vladimir V. Putin, according to a lawsuit against Bayrock by one of its former executives. The Icelandic company, FL Group, was identified in a Bayrock investor presentation as a "strategic partner," along with Alexander Mashkevich, a billionaire once charged in a corruption case involving fees paid by a Belgian company seeking business in Kazakhstan; that case was settled with no admission of guilt.

Here's another passage ...

Mr. Kriss's lawsuit was filled with unflattering details of how Bayrock operated, including allegations that it had occasionally received unexplained infusions of cash from accounts in Kazakhstan and Russia. Bayrock and Trump SoHo drew more negative headlines in October 2010, when news spread from Turkey that Mr. Arif had been aboard a luxury yacht raided by the police, who were investigating a suspected prostitution ring that catered to wealthy businessmen. He was charged but later acquitted.

Whatever US law enforcement and intelligence knew about the specifics of Trump's relationship with and his dependence on investment capital out of Russia and the former Soviet Union, material like this in public court filings surely would have raised red flags about Trump's businesses.

As long as Donald Trump was just a high-profile and frequently clownish real estate tycoon from New York and the star of *The Apprentice*, this probably didn't matter very much. After all, as I've noted, there's no specific evidence that Trump was involved in any of Sater's criminal activity.

But at some point in 2014 or 2015, Donald Trump started moving toward having a credible shot at becoming the President of the United States. By early 2016 that became a real possibility.

(One notable, though perhaps distinct, detail is that we can be sure that the attorney general of the United States at the time, Loretta Lynch, knew a level of detail about Felix Sater and his father Mikhail that only would have been possible as the former US Attorney for the district in which Sater's trial was adjudicated.)

It seems quite probable that as Trump moved closer to the presidency in the early months of 2016, alarm bells started to go off in the FBI and the CIA, as the relevance of business partnerships with Sater and reliance on capital out of the former Soviet Union suddenly became dramatically more relevant. Again, as I said, as long as Donald Trump was just Donald Trump this didn't matter that much. There's plenty of dirty money sloshing around the New York real estate world. But when it started to seem plausible that he might become the next President, this would start to be a matter of great concern.

This certainly also added to the concern when **popped up in a meeting** with **Michael Cohen** and a pro-Russian Ukrainian parliamentarian with a dossier he asked Cohen to hand deliver to Michael Flynn.

All of what I've said here would be an issue even if the Russian government had never inserted itself into the US election. It almost certainly predates any awareness within the US national security and law enforcement worlds that that was happening. But I suspect it is a critical backdrop for how this evidence was interpreted once it began to come to light. It quite possibly also informed and drove some of the scrutiny that was applied to Trump and his associates once it did.

[Did you enjoy reading this post? Considering **supporting TPM by subscribing to Prime.**]

ABOUT THE AUTHOR



Josh Marshall Follow <https://twitter.com/Joshtpm>

Josh Marshall is editor and publisher of TalkingPointsMemo.com.

LIKE US ON FACEBOOK

f SHARE

🐦 TWEET

📌 PIN-IT

EXHIBIT H

Nomination of Loretta E. Lynch to be Attorney General of the United States
Questions for the Record
Submitted February 9, 2015

QUESTIONS FROM SENATOR HATCH

1. On April 25, 2013, Professor Paul Cassell of the University of Utah College of Law testified before the House Judiciary Subcommittee on the Constitution regarding implementation of crime victims' rights statutes. These include the Mandatory Victim Restitution Act, 18 U.S.C. §3663A, and the Crime Victims Rights Act, 18 U.S.C. §3771, both of which I helped to enact. He suggested that your office had failed to follow these statutes in a sealed case involving a racketeering defendant who had cooperated with the government. Specifically, he cited documents appearing to show that your office failed to notify victims of the sentencing in that case and had arranged for the racketeer to keep the money he had stolen from victims, even though the law makes restitution mandatory. Please explain in detail how your office protected the rights of crime victims in this case and, in particular, how it complied with the mandatory restitution provisions of these two statutes.

RESPONSE: The defendant in question, Felix Sater, provided valuable and sensitive information to the government during the course of his cooperation, which began in or about December 1998. For more than 10 years, he worked with prosecutors from my Office, the United States Attorney's Office for the Southern District of New York and law enforcement agents from the Federal Bureau of Investigation and other law enforcement agencies, providing information crucial to national security and the conviction of over 20 individuals, including those responsible for committing massive financial fraud and members of La Cosa Nostra. For that reason, his case was initially sealed.

During my most recent tenure as the United States Attorney for the Eastern District of New York, the Office's only activity related to this matter was to address whether certain materials should remain sealed. My Office's position has consistently been upheld by the courts.

The initial sealing of the records related to Sater—which pre-dated my tenure as United States Attorney—occurred by virtue of a cooperation agreement under which Sater pled guilty and agreed to serve as a government witness. In 2013, following proceedings before United States District Judge I. Leo Glasser of the Eastern District of New York, roughly three-fourths of the materials in this case were unsealed. At this point, the majority of the materials that remain sealed go to the heart of the nature of Sater's cooperation in several highly sensitive matters. Judge Glasser has ruled that these remaining materials should remain sealed on the basis of, among other things, the "safety of persons or property" and the "integrity of government investigation and law enforcement interests."

In addition to Judge Glasser's 2013 ruling, a three-judge panel of the Second Circuit Court of Appeals twice rejected efforts to reconsider the decision to keep certain materials sealed in this case. The judges reviewing Judge Glasser's order concluded that "given the extent and gravity of Sater's cooperation," continued sealing of select materials was appropriate. In a separate

instance, the court went out of its way to warn the plaintiffs behind the lawsuit to cease any further “frivolous” motions or else risk court-imposed sanctions. Finally, just last month, the Supreme Court declined to hear any further arguments from the parties behind this lawsuit.

In terms of restitution, there has been speculation that my Office pursues restitution from cooperating defendants differently than it does from other defendants. It does not. With respect to Sater’s case, the information in the record that concerns the issue of restitution remains under seal. As a matter of practice, however, the prosecutors in my Office work diligently to secure all available restitution for victims, whether the defendants convicted in their cases cooperate with the government or not. In fact, since June 2010, in EDNY cases, judges have imposed nearly two billion dollars in restitution to individual and government victims.

2. For several years, then-Senator Joe Biden and I worked to insure that the Justice Department supported youth mentoring organizations. We helped groups like the Boys and Girls Clubs of America greatly expand the number of those they serve by partnering with the Office of Justice Programs, which you will oversee if appointed to be Attorney General. In recent years, the President’s budgets have proposed to reduce funding for youth mentoring grants and Congress has restored and even increased that funding. Can you assure me that, as Attorney General, you will work with OJP and others to make sure that funds are directed where they can do the most good and maximize the delivery of needed services?

RESPONSE: I know that mentoring organizations in this country, like the Boys and Girls Clubs of America, are doing amazing work with young people. The Department’s Office of Justice Programs (OJP) is invested in supporting the continued expansion of high quality mentoring for at-risk youth through the appropriated mentoring funds. OJP, through the Office of Juvenile Justice and Delinquency Prevention (OJJDP), has worked with and continues to work with many of these mentoring organizations through the use of funding solicitations directed at National and Multi-state mentoring organizations.

If I am confirmed as Attorney General, I will support the work of OJJDP and the many mentoring organizations implementing high quality mentoring programs. I will also support the OJJDP National Mentoring Resource Center, which is a source of training and technical assistance for all mentoring programs across the country.

3. In your hearing on January 28, I urged you to enforce laws prohibiting child pornography and to help victims receive restitution. Adult obscenity also lacks First Amendment protection and harms individuals, families, and communities. It is connected to sexual exploitation and violence against women as well as to human trafficking and is a destructive force in marriages. Even though the Obscenity Prosecution Task Force has been disbanded and prosecution of adult obscenity brought back under the Child Exploitation and Obscenity Section, will you commit to aggressively enforcing the adult obscenity laws and provide current data about the cases initiated and prosecuted by the Department that involve only adult obscenity?

RESPONSE: As you note, obscenity is not protected by the First Amendment. I understand that the Department has brought significant obscenity prosecutions in recent years, and I look forward to ensuring that the Department remains committed to bringing obscenity cases where appropriate. The Department can provide current data concerning obscenity prosecutions, if helpful.

4. I understand that the Justice Department is in the process of reviewing the ASCAP and BMI consent decrees. I want you to know how interested I am in this process and how important it is to the future of songwriters. Will you commit to making meaningful revisions to the decrees as soon as possible?

RESPONSE: I understand that the Antitrust Division is currently reviewing the American Society of Composers, Authors and Publishers (ASCAP) and Broadcast Music, Inc. (BMI) decrees in order to determine whether the decrees' terms continue to be appropriate given advances in markets and technology in music distribution and promotion. The Antitrust Division solicited public comments on a number of questions concerning these decrees. *See* <http://www.justice.gov/atr/cases/ascap-bmi-decree-review.html>. I believe the Department is working as expeditiously as possible to complete the review in a timely fashion and understand that it will pursue any appropriate modifications so that music publishers and licensees benefit from competitive markets, taking into account new media technologies.

5. It has been reported that the Justice Department systematically targets lawful businesses by pressuring financial and banking services providers to stop doing business with firearm and ammunition companies and others dubbed "high risk." Do you believe that this type of targeting is appropriate and will you continue his practice if appointed to be Attorney General?

RESPONSE: The role of the Department of Justice is to enforce the law and as a career prosecutor and the United States Attorney for the Eastern District of New York, I can assure you that I, and my fellow prosecutors and law enforcement partners, take this role seriously. Our job is to investigate specific evidence of unlawful conduct and enforce the law. Our cases should target businesses that are violating the law, not those acting lawfully.

The Department works every day to uphold the law and protect the American people. To ensure that our efforts are effective, the Department also must make sure to prevent any potential misunderstanding of its efforts that could be detrimental to lawful businesses. Thus, if I am confirmed as Attorney General, I will make clear that it is imperative that we inform financial institutions that any investigations are based on specific evidence that a financial institution is breaking the law, and not on the institution's relationships with lawful industries or companies.

6. Several years ago, the ATF was removed from the Treasury Department and became a stand-alone agency and the Department of Homeland Security was created. The ATF and

DHS often work together and share many of the same tasks. Do you believe the ATF should remain a separate agency or should it be merged with DHS?

RESPONSE: Although as the United States Attorney for the Eastern District of New York I have not studied various proposals for re-organizing components of the Department of Justice, I support ATF and believe its law enforcement capabilities must be preserved. ATF is a unique law enforcement agency in the Department of Justice that protects our communities from violent criminals, criminal organizations, the illegal use and trafficking of firearms, the illegal use and storage of explosives, acts of arson and bombings, acts of terrorism, and the illegal diversion of alcohol and tobacco products. ATF partners with communities, industries, law enforcement, and public safety agencies to safeguard the public through information sharing, training, research and use of technology.

7. I disagree with the Justice Department's decision not to enforce federal marijuana laws in states that have legalized marijuana. It sends the wrong message to our youth and demonstrates disregard for the rule of law. We should all agree, however, about the need to continue fighting drug trafficking organizations and the dangers they cause. In my state of Utah and other western states, drug trafficking organizations divert rivers and streams, clear cut timber, pollute the environment, and even place booby traps in the course of illegally growing marijuana on public lands. I recently introduced legislation with Sen. Feinstein to address these problems, S.348, the Protecting Lands Against Narcotics Trafficking Act. It enhances penalties for growers who degrade the environment and create public safety hazards and creates a fund to remediate environmental harms cause by illegal marijuana cultivation. Will you commit to making the prevention of marijuana growth on federal land a priority and to ensuring that prosecutors use the tools that my bill provides?

RESPONSE: As indicated in the Deputy Attorney General's Memorandum, dated August 29, 2013, combating large-scale marijuana grows, including those on public lands, is a priority for the Department. The geographic isolation of the marijuana grows and the size of federal public lands requires a coordinated and multi-agency effort. I understand that some of my fellow United States Attorneys, particularly those in the western part of the United States, are working closely with DEA, the National Forest Service, the Bureau of Land Management (BLM), and other federal, state, and local partners to enforce the controlled substance laws against drug traffickers who threaten public safety and the environment by using federal public lands for large-scale marijuana cultivations.

EXHIBIT I

The Crook Behind the Trump-Russia 'Peace' Plan



Felix Sater is an immigrant who did prison time for stabbing a man in the face with the broken stem of a margarita glass, and he would surely qualify for the label “bad hombre” were he from Mexico instead of Russia.

It was only by becoming a federal informant that Sater avoided a possible 20-year term for a \$40 million fraud in which the feds figure many of the victims were elderly.

Sater’s father also became an informant after being convicted of joining a Mafia soldier shaking down small businesses in Brooklyn for nearly a decade.

None of that stopped Donald Trump from having extensive business dealings with Sater that included the high-rise Trump SoHo New York hotels and condos. Then, after Sater’s rap sheet was widely publicized, Trump said he hardly knew the man.

“If he were sitting in the room right now, I really wouldn’t know what he looked like,” Trump says in court papers from a 2013 law suit.

Yet, even as the Trump administration was preparing plans to ramp up deportations, the president’s longtime personal attorney sat down for coffee in a Manhattan hotel with this Russian immigrant.

According to *The New York Times*, Trump attorney Michael Cohen and Sater were party to some amateur diplomacy aimed at settling the Russian war on Ukraine with a plan to push Ukraine's President Petro Poroshenko out of office.

Cohen insisted to The Daily Beast that the *Times* account was wrong and that he had not been involved in the peace plan. He declined to comment on whether he was troubled by Sater's criminal background and organized crime ties.

"I will not respond to this question as I am not knowledgeable of all aspects to his past," Cohen told The Daily Beast via email.

Cohen did acknowledge sitting down briefly with Sater at a Manhattan hotel last month.

"I was asked to meet him for a quick coffee and agreed," Cohen told The Daily Beast. "When asked, I was unaware who was going to be joining the meeting and never agreed to or worked on any diplomatic plan for Ukraine."

The person who joined the meeting was Andrii Artemenko, a rich Ukrainian member of parliament of dubious reputation in his home country. Artemenko claims to have material evidence of Poroshenko's corruption so compelling as to force the Ukrainian president from office.

The *Times* stands by its account, saying that Cohen had told the paper that he delivered a copy of the plan to the office of then-National Security Adviser Mike Flynn shortly before Flynn was fired. The plan is said by the *Times* to involve Russia's withdrawal from Ukraine and a referendum on the fate of occupied Crimea: namely, whether or not the peninsula, which Russian forces seized almost bloodlessly in 2014, would be "leased to Russia for a term of 50 or 100 years." Artemenko reportedly insists that their peace proposal was met with approval among senior aides to Russian President Vladimir Putin.

Sater did not respond to a request for an interview with The Daily Beast before this article was posted. He was quoted elsewhere denying that he had been engaged in actual diplomacy. He did tell Fox News that the effort is just his latest contribution to his adopted land.

"What could be wrong in helping stop a war and trying to achieve peace?" [he said](#). "I have done so much for my country and thought that promoting peace was a good thing."

Sater is certainly experienced in promoting things, principally himself. And what he has done for his country—two big Mafia cases for the FBI, a failed effort to buy Stinger missiles in Afghanistan on the black market for the CIA, and supposedly obtaining Osama bin Laden's cellphone number—seems to have been undertaken largely to escape

punishment for what he has admitted in court having done to this country.

Much about Trump's presidency, and the cast of characters it has assembled, challenges even the most imaginative Hollywood screenwriting, but Sater's backstory is an especially remarkable example. Having emigrated to Brighton Beach from the Soviet Union when he was 8 years old, he might have been the archetype of the self-made immigrant Trump has nothing but admiration for, provided of course they're from certain non-Muslim countries.

In his early twenties, Sater had a three-year stint as a successful broker on Wall Street before he slashed that man's face open in El Rio Grande, a Manhattan bar, causing the victim a wound which required 110 stitches and earning the perpetrator a felony conviction for assault.

Sater served 15 months at Edgecombe Correctional Facility. He was released on parole, prison records seen by The Daily Best show, in September 1995. A month later, his investment firm, White Rock Partners, changed its name to State Street Capital Markets.

Sater mostly escaped public notice until 1998, when the manager at a Manhattan Mini Storage in SoHo opened a cubicle Sater had rented under a false female name (the account was in arrears) and made an interesting discovery. In addition to a 12-gauge shotgun and two 9-millimeter pistols were a box and gym bag containing documents that led the FBI to a massive "pump-and-dump" stock fraud, racketeering, and international money laundering scheme, the architects of which were later shown to be Sater and two of his longtime business colleagues, Gennady "Gene" Klotsman and Salvatore Lauria. Both were with Sater at El Rio Grande the day he turned a margarita glass into a weapon. By the time the evidence was uncovered in SoHo, Sater and Klotsman had gone to Russia; Lauria had also skipped town. They returned and were arrested.

According to a 1998 indictment of Sater filed in the U.S. District Court Eastern District of New York, Sater violated the terms of his agreement with the National Association of Securities Dealers, which instructed him to restrict his activities at White Rock "largely to clerical duties, for which he would receive a minimal salary. In fact, [Sater] received substantial compensation greatly exceeding his agreed-upon salary, and he took part in activities at White Rock and State Street, including the handling of securities and account statement."

As Sater and his co-defendants would later admit when pleading guilty, White Rock and State Street made money by lying about the worth and ownership of securities, encouraging brokerage firms to peddle the artificially inflated stocks, then laundering the proceeds through various off-shore accounts. All told, they stole about \$40 million, much of it from elderly investors, including Holocaust survivors.

Moreover, their illicit activities involved four different Italian mafia crime families, as a subsequent grand jury indictment in 2000 stated. Specifically, from March 1993 to October 1996, Frank Coppa Sr., a captain in the Bonnano crime family; Eugene Lombardo, an associate of that family; Daniel Perisco, an associate of the Colombo family; Joseph Polito Sr., an associate of the Gambino family, Ernest “Butch” Montevecchi, a soldier in the Genovese family among others, “devised, implemented and oversaw fraudulent schemes to manipulate the price of securities” of four different companies and “fraudulently induc[ed] investors to buy and hold these securities,” according to the indictment, also filed in the Eastern District of New York.

Sater, Klotsman, and Lauria, who had already pleaded guilty to the 1998 complaint, were listed as unindicted co-conspirators in this later case, which clearly netted much bigger fish for the feds based on an accidental haul at the Mini Storage. They all turned on their former mob accomplices, as did Sater’s father, Mikhail Sater, also known as Michael Sheferofsky.

The father was indicted in 2000 on two counts by then-U.S. Attorney for the Eastern District of New York Loretta Lynch. Sheferofsky’s accomplice in that case was Butch Montevecchi, who also figured in the younger Sater’s case. Both men pleaded guilty to extorting “restaurants, food stores, and a medical clinic” in the Russian enclave of Brighton Beach in Brooklyn through intimidation and violence from December of 1990 to January of 1999. The father got off with three years’ probation in exchange for cooperation that included wearing a wire in a case against a group of Polish immigrants perpetrating major Medicaid fraud in Greenpoint in Brooklyn.

U.S. Attorney Lynch seemed to make ample use of the Saters, who were a unique father and son team, both working as informants with the same Mafia henchmen, but different FBI handlers on different cases. In a letter addressed to U.S. Senator Orrin Hatch during her confirmation hearing to become Barack Obama’s attorney general, she wrote that as a decade-long informant Felix Sater provided “information crucial to national security and the conviction of over 20 individuals, including those responsible for committing massive financial fraud and members of La Cosa Nostra.”

If the reference to “national security” seems a bit out of place in characterizing a domestic crackdown on organized crime, then that might be because of what Sater, Klotsman, and Lauria allegedly got up to when they were overseas.

As recounted in *The Scorpion and the Frog: High Crimes and High Times*, a 2003 book Lauria later co-authored with former Associated Press journalist David Barry, the three associates became spies for the CIA, tasked with offering U.S. taxpayer money to buy Stinger anti-aircraft missiles that had gone missing from the covert U.S. campaign to oust

the Soviets in Afghanistan. Those missiles, it was feared, were destined for Osama bin Laden's al Qaeda. The idea, according to the book, was to give the Russian government the funds to purchase 10 Stingers on the black market in Afghanistan, and then turn them over to the Sater, Klotsman, and Lauria, who would then relinquish them to their Langley handlers.

"I think it was Felix who made the deal to buy 10 Stingers and originally the total sale price was going to be \$350,000," Barry told The Daily Beast. "So \$35,000 per Stinger, which is about what somebody would have to pay for one of those things back then."

The quid pro quo with the U.S. government was purportedly as follows: In exchange for helping to secure the very weapon that helped defeat the Red Army in Afghanistan and thus hasten the collapse of the Soviet Union, Sater, Klotsman, and Lauria would buy a "get-out-of-jail-free" card for their Wall Street malfeasance.

Lauria has since repudiated his own book, whose publication he tried to have stopped, calling it a work of fiction. Barry insists, however, that based on his independent corroborative spadework, featuring court documents, interviews and open source material, the story of espionage-for-freedom is true.

"The Russians would go to Afghanistan to handle this because that's where the missiles were—without tipping off bin Laden that the Stingers were ultimately going to the CIA," says Barry. They supposedly photographed the serial number of one or more of the Stingers "so that the person they were dealing with in the Agency would be able to verify it."

Barry said that while the CIA was eager to exploit any and all contacts, even among those connected to the New York underworld, the FBI, which had embarked on a similar and more notorious collaboration with Boston mobster Whitey Bulger, wasn't as keen. "The feds still wanted to nail them all."

What eventually scuppered the arrangement, Barry added, was Klotsman's greed. The other Russian-American multiplied the buy price tenfold, now asking for \$350,000 per missile for a total of \$3.5 million for all 10. "The FBI at that point, according to what Sal told me, said, 'Fuck this, we're not making deals with mob-connected Wall Street gangsters.' They had no interest in the Agency's making a deal."

Sater, whom Barry variously described as a "bad guy" and "tough son of a bitch," returned to the U.S. first, without the 'Get out of Jail card,' still facing the possibility of long prison terms. Then came the 9/11 attacks.

"Until the tragedy of September 11, the matter of my sentencing was a big weight

hanging over my head,” Lauria says in the “as told to” book that Barry wrote. “It was very likely that I would do serious time; the question was how much. But a few days after September 11, I got a call from [Sater], telling me that the information we had provided about Osama bin Laden was now being actively pursued, and our situation had improved. Three days before the attack on the World Trade Center, the Taliban or al Qaeda had assassinated the man we had hoped would be our contact, Ahmad Shah Massoud, the man who had become the Northern Alliance leader.”

The book continues, “[Sater] had gotten a call from a boss of a new section in the FBI who wanted to talk to him about the whole Stinger deal. We had done a careful job of putting it together... We had provided the actual serial numbers of the Stingers, which had been available in '98, and we had passed on what we thought was an active cell phone number for bin Laden.”

The book goes on, “To our way of thinking at the time, we had provided a way to reach bin Laden that should have been important to the U.S. government. [Klotsman] had fouled the deal by raising our asking price for the Stingers from \$300,000 to \$3 million. Now the information was deemed important, even though the Stinger deal had not gone through. [Sater], for all his other faults, was a very patriotic guy and a diehard Republican, and he was anxious to help the country any way he could—particularly if it served his purposes.”

Sater’s lawyer, Robert Wolf, would later describe the book’s version of the failed Stinger deal as “fabricated” and insist that neither Klotsman nor the FBI were involved. Wolf would also say that fairness required noting that Sater had received high praise from the feds for gathering intelligence on nuclear weapons as well as terrorism and helping to make important criminal cases as he worked to escape punishment for his own crimes. One reason he was so successful in the criminal cases was that he was at the center of the scheme.

By 2002, Sater had reinvented himself yet again, this time as a managing director of a real-estate development firm called the Bayrock Group, founded by the Kazakhstan-born Tefvik Ari. His co-defendant and fellow FBI and CIA informant, Lauria, eventually joined him there.

Bayrock’s offices are, conveniently, in Trump Tower, which is how Sater’s checkered path intersected with the current U.S. president. Court papers say that Sater and Trump first met in 2003 through a leasing agent for the tower. Trump professes when asked about Sater in a sworn deposition not to “know him well at all.”

Nevertheless, for five years, Sater and Bayrock did deal after licensing deal with the Trump Organization, all over the country. A 2006 *Rocky Mountain News* article quoted

Sater as describing the ideal location for a Trump-named building in Denver, Colorado, while “traveling in Moscow with Trump’s son, Donald, Jr.” Email correspondence obtained by *Forbes* showed direct contact between Donald, Jr. and Sater in discussions about a Florida high-rise.

In the end, another building in SoHo would be the source of the former FBI mole’s unwanted media attention.

In 2007, the Charles Bagli of *The New York Times* profiled Sater owing to Bayrock’s involvement in developing the Trump SoHo. Sater, Trump and three of the latter’s children — Donald Jr., Eric, and Ivanka—attended the unveiling ceremony for the 46-story luxury condo-hotel in the chic Manhattan neighborhood. Trump, Arif, and Sater were photographed standing next to one another at that event.

Bagli recounted Sater’s history with assault and stock manipulation and yet, in a 2013 deposition related to a separate libel case, Trump claimed that Sater “may” have directly brought a Fort Lauderdale project to him years earlier, while denying any knowledge of his ties to organized crime. “I don’t think he was connected to the Mafia. He got into a barroom fight.”

Whether or not Trump was lousy at due diligence or his fleet of lawyers simply couldn’t Google the name “Felix Sater” (which would have brought up a 1998 *Businessweek* article citing his implication in the Mini Storage affair and ensuing fraud case) remains unclear. And Sater’s decision to add a ‘t’ to his given name to make it “Satter” should not have greatly complicated matters.

However, the offering plan filed with New York State for the Trump SoHo, averred that there were “no prior felony convictions of Sponsor,” referring to Bayrock and another developer involved in the project known as the Sapir Organization. At this time, Sater had an ownership stake in Bayrock, according to correspondence obtained by *Forbes*.

In October 2009, 11 years after his indictment, Sater finally faced sentencing for his financial crime in a closed Brooklyn courtroom. He addressed the judge.

“Yes, I am guilty of the things that I have done,” he said. “The worst thing that could happen, your honor, despite whatever sentence you impose on me... I went into real estate development and I built a very successful real estate company... a Trump project. I built the whole thing. Years ago, they wrote an article in the newspaper, ‘Executive With Ties to Donald Trump Has Criminal Past.’ The next month, I had to leave my company, the company I had built with my own hands.”

He spoke of his parents and his sincerity was somewhat undercut by those who knew of

his father's conviction for years of racketeering.

"I hated myself, despised myself for doing the things that I was doing while I was doing them, because my parents did not sacrifice what they sacrificed to have me come to this country and become a criminal," he said.

Sater was ordered to pay a \$25,000 fine rather than the \$40 million in restitution he might have been required to pay and to serve no jail time rather than as many as 20 years.

In 2013, Sater's connection to Trump, who was still two years shy of running for national office, caused the mogul one of his many moments of pique with a member of the international press. Trump stormed out of a BBC Panorama interview when asked by John Sweeney, "Shouldn't you have said, Felix Sater, you're connected with the Mafia and you're fired." Trump replied by suggesting Sweeney might be "thick" and that he could not break a contract with Bayrock even if Sater's mob ties were established to his satisfaction.

Sater's tenure at Bayrock wasn't just confined to leveraging the Trump brand. He was accused of threatening gruesome acts of violence against erstwhile business associates who were in a position to disclose his shady history. In 2007, the manager of one Trump hotel-condo in Phoenix, Arizona, sued Sater after he allegedly threatened to get a cousin to electrocute the manager's testicles, dismember him and leave him "dead in the trunk of his car." Sater reportedly settled that case out of court, but denied the charges. The manager was apparently satisfied with the settlement, for he has since said he wished Sater, "the best of luck."

By 2010, Sater was out at Bayrock—but in at the Trump Organization. He reportedly brandished a business card naming him as a "Senior Advisor to Donald Trump." He also had a valid email address at the organization, a phone number that had previously belonged to one of Trump's general counsels, and his own office in Trump Tower on Fifth Avenue.

Sater's role as an employee of the Trump Organization also came to light when he was accused of shaking down one of his former colleagues at Bayrock.

Jody Kriss, the former finance director of Bayrock, alleged that he was entitled to a share of the \$227 million profits in the Trump SoHo project. As [reported by The Daily Beast in August 2016](#), Kriss claimed, in a court case filed in Delaware, that he was owed \$7 million for his work on the project but offered a settlement of only half a million dollars. His principal antagonist in recouping his investment, he said, was Felix Sater.

In sworn testimony, Kriss stated that his money had become entangled with an Icelandic

financial company known as FL Group, which seemed to draw Russian investors “[in favor](#)” with Vladimir Putin. (Bayrock founder Tefvik Arif was also part of this deal.)

According to Kriss:

“Felix Satter [sic] told me that the deal with FL prohibited me from getting the rest in that I could either take the money and shut up or risk being killed if I made trouble. I knew at that time Satter had served a prison sentence for first degree assault (stabbing someone in the face with a wine glass stem) and with learning what would soon become common knowledge, that Satter had had a decades-long involvement with the New York and Russian mafia and had just in 2007 been sued in a civil action in Phoenix.”

The Delaware case ultimately was dismissed because of jurisdiction; but the judge stated on the record that the case could have otherwise proceeded. Sater’s defense team has denied the allegations.

In a separate and still-pending suit to which Kriss is a plaintiff, this one filed in New York’s Southern District, he has alleged that “tax evasion and money-laundering are the core of Bayrock’s business model.”

The defendants have argued that the suit amounts to a shakedown, but the judge has ruled that Kriss has enough of a case to warrant moving forward.

As for Sater, he had coffee the other day with the president's personal lawyer and discussed a peace plan for Ukraine. He was apparently not among the immigrants Trump had in mind when he spoke to a gathering of CEOs on Thursday about his deportation efforts.

“We’re getting really bad dudes out of this country at a rate no one has seen before,” Trump said.

EXHIBIT J

Former Mafia-linked figure describes association with Trump



On the 24th floor of Trump Tower, in an office two floors below Donald Trump, Felix Sater was trying to revive his career. The Russian-born businessman had already done a stint in prison for stabbing a man in the face with the stem of a margarita glass, and he was now awaiting sentencing for his role in a Mafia-orchestrated stock fraud scheme — all the while serving as a government informant on the mob and mysterious matters of national security.

But Sater and his business partners had an idea: They would build Trump towers in U.S. cities and across the former Soviet bloc. Sater pitched it to Trump, who gave Sater's company rights to explore projects in Moscow as well as in Florida and New York.

“Anybody can come in and build a tower,” Sater told potential investors, according to testimony in a 2008 court case. “I can build a Trump Tower, because of my relationship with Trump.”

Sater's “Trump card,” as he called it, didn't work everywhere. The Moscow deal fell apart. But their relationship continued — though just how close they were is now in dispute.

Trump describes association with Felix Sater

Play Video1:47

Video shows Donald Trump testifying at a deposition taken Nov. 5, 2013 in *Matthew Abercrombie, et. al. versus SB Hotel Associates* pending at the time in Florida. (Obtained by The Washington Post)

Trump has repeatedly said he barely remembers Sater. In sworn testimony in 2013, Trump said he wouldn't recognize Sater if they were sitting in the same room. In an interview last year with the Associated Press, he said, "Felix Sater, boy, I have to even think about it."

Sater, in previously unreported sworn testimony reviewed by The Washington Post, described a closer relationship.

Sater said he popped into Trump's office frequently over a six-year period to talk business. He recalled flying to Colorado with Trump and said that Trump once asked him to escort his children Donald Jr. and Ivanka around Moscow.

Sater's account, which came during a deposition in a libel case Trump brought against a book author, offers new insights into Trump's relationship with a complicated figure.

Sater has both been accused by former business associates of threatening to kill them and praised by top government officials for information that has led to numerous mob convictions and national security gains.

His relationship with Trump has created unwanted attention for the real-estate-mogul-turned-presidential-candidate as Sater and his onetime company have endured legal disputes with former business associates and investors who lost money in failed Trump-branded projects.

Sater arrived in Trump's orbit as the mogul was shifting his business model. Seizing on the success of his television reality show, "The Apprentice," he focused on licensing his name to developers constructing high-rise hotels and condominium projects.

Trump and his lawyers have said that he was not aware of Sater's criminal past when he first signed on to do business with Sater's firm, Bayrock Group. Sater's involvement in the stock fraud was kept secret for years by federal prosecutors because of his role as an informant.

But even after elements of Sater's background were disclosed in a 2007 New York Times article, he remained in close proximity to Trump — at one point using Trump Organization office space and business cards.

Alan Garten, a lawyer for the Trump Organization, did not dispute Sater's account of the

two men's relationship but said it differed from Trump's perception of events. He said Trump holds hundreds of meetings a year with people for whom the interactions are often more memorable than for the celebrity tycoon.

"I can see how the relationship may have been viewed differently from one person's side of the relationship from the other," he said, adding: "There was no relationship with Mr. Sater. The relationship was a business relationship with Bayrock."

Sater, through his lawyer, declined to comment. He has addressed his past conduct on his website, writing that he made "some poor and regrettable judgment calls in business" but that he had admitted his wrongdoing and pleaded guilty before assisting the government with "numerous issues of national security, including thwarting terrorist attacks against our country."

The lawyer, Robert S. Wolf, did not address Sater's relationship with Trump but stressed Sater's work for the government, saying he saved lives, including by providing "significant intelligence with respect to nuclear weapons in a major country openly hostile to the United States."

Sater, 50, emigrated from the Soviet Union, arriving in Brooklyn when he was 8. He has said his family, which is Jewish, left to escape persecution.

Sater pursued a career as a stockbroker. But he lost his trading license after the margarita glass incident that occurred during a 1991 bar fight and led to a year in prison.

Broke and with a young wife and child to support, Sater has said he hooked up with a boyhood friend who was operating a Mafia-linked brokerage firm. He pleaded guilty in 1998 to one count of racketeering as part of a \$40 million stock fraud in which Wall Street brokers artificially inflated the price of stocks.

The scheme relied on members of the La Cosa Nostra crime families for extortion and to resolve disputes, federal authorities alleged, part of a concerted effort by organized crime to make inroads on Wall Street.

He was spared prison time in recognition of what an FBI agent later called "extraordinary" cooperation as a witness in unnamed national security cases.

During that period, Sater turned his attention to real estate. Around 2001, he joined Bayrock, which had its offices in Trump Tower. Sater has testified that he met Trump and started to pitch him on business ideas soon thereafter.

The two developed a rapport, Sater testified.

He described the relationship as “friendly,” saying he had met one-on-one with Trump “numerous times” in Trump’s office to discuss various projects. In Phoenix, Sater testified, he met with local officials alongside Trump’s son, Donald Jr. In New York, Sater said he met with Trump and Trump’s staff “on a constant basis” to discuss possible deals in places such as Los Angeles, Ukraine and China.

Documents show that Trump in 2005 extended Bayrock a one-year deal to develop a project in the Russian capital. Sater said he had located a group of interested Russian investors, as well as a possible site for a luxury high-rise — a shuttered pencil factory that had been named for American radicals Nicola Sacco and Bartolomeo Vanzetti, who were convicted of murder and executed during the “red scare” that swept the United States after World War I.

“I handled all of the negotiations,” Sater said of the Russia deal, which did not come to fruition. Asked whether there was paperwork drawn up on the deal, he responded: “It was more of verbal updates when I’d come back, pop my head into Mr. Trump’s office and tell him, you know, ‘Moving forward on the Moscow deal.’ And he would say, ‘All right.’”

“I showed him photos, I showed him the site, showed him the view from the site. It’s pretty spectacular,” Sater said.

When Trump’s children Donald Jr. and Ivanka were planning a trip to Moscow in 2006, Sater said that Trump asked him to squire them around the city.

“They were on their way by themselves, and he was all concerned,” Sater said. “He asked if I wouldn’t mind joining them and looking after them while they were in Moscow.”

Garten, Trump’s lawyer, said that Trump’s adult children and Sater happened to be there at the same time. “There was no accompanying them to Moscow,” Garten said.

Sater said he also attended social events where Trump had been present and had visited Trump’s Mar-a-Lago estate in Palm Beach, Fla., though not at Trump’s invitation.

Sater attended a glitzy launch party with Trump in 2007 celebrating Trump Soho, a 46-story Manhattan project that Bayrock helped develop.

When the New York Times first linked Sater to the mob stock and money laundering scheme later that year, Trump expressed surprise.

“We do as much of a background check as we can on the principals. I didn’t really know him very well,” Trump told the Times, adding that he dealt primarily with other Bayrock executives.

Garten told The Post that, prior to the 2007 article, Trump's company knew "none" of Sater's criminal past and "would have had no reason to inquire."

The disclosure led to problems for Bayrock and Trump.

When one of the firm's most ambitious projects, the oceanfront Trump International Hotel and Tower in Fort Lauderdale, Fla., became embroiled in disputes after construction stalled in 2009, aggrieved condo buyers filed suit, claiming, among other things, that Trump and others had failed to tell them about the criminal past of a key member of the development team.

Trump walked away from the failing project, saying he held no responsibility since he had merely licensed his name to the effort.

He claimed in sworn testimony in 2013 as part of the dispute that he barely knew Sater.

"If he were sitting in the room right now, I really wouldn't know what he looked like," Trump said, adding that he had spoken with Sater "not many" times.

Sater, however, was memorable to others associated with Bayrock and its projects.

One former Bayrock employee alleged in a lawsuit that Sater once told him during a dispute to "shut up or risk being killed." Another lawsuit filed in Arizona in 2007 alleged that Sater had threatened a local project partner named Ernest Mennes.

According to the lawsuit, Sater called Mennes in 2006 and threatened that his cousin "would electrically shock Mr. Mennes' testicles, cut off Mr. Mennes' legs, and leave Mr. Mennes dead in the trunk of his car" if Mennes revealed his criminal past.

Mennes said he was barred by a legal settlement from discussing the matter. "I wish Mr. Sater well," he said, adding that he is now supporting Trump for president.

Wolf, Sater's lawyer, said the claim that Sater had threatened violence was "an outright fabrication" made in the course of lawsuits that have included "baseless and highly defamatory" accusations designed to win money from Bayrock.

As Sater became a more controversial figure, Trump did not cut ties.

In 2008, Trump's lawyers asked Sater to testify in Trump's libel suit against journalist Tim O'Brien, arguing that O'Brien's book, "Trump Nation," damaged his reputation and cost him projects that Bayrock and others had been pursuing. The suit was dismissed.

At the time, Sater testified he was in the process of leaving Bayrock because of the publicity around his past.

During his 2009 sentencing, which had been delayed because of his work as a government witness, Sater bemoaned leaving Bayrock, a company he said he “had built with my own two hands.”

“Here I am trying to rehabilitate myself and keep getting the rug pulled out from under me,” Sater told the judge.

After Sater left Bayrock, he was given Trump Organization business cards and office space so he could continue searching for deals for the company, Garten said. The cards, first reported by the Associated Press, identified Sater as a “senior advisor to Donald Trump.”

Garten said Sater was never a Trump Organization employee and was paid nothing during the brief 2010 arrangement. “Nothing came of it, and they went their separate ways,” Garten said.

Local Politics Alerts

Breaking news about local government in D.C., Md., Va.

According to his website, Sater has continued to work in real estate and finance for a number of international companies. His site touts his work on Trump projects and his extensive philanthropy. He is an active member of Chabad, an Orthodox Jewish sect, and, in 2014, was named Man of the Year by Chabad of Port Washington, N.Y.

His background emerged again last year during Loretta E. Lynch’s confirmation hearings to become attorney general. Lynch, who was U.S. attorney in the office that prosecuted the stock fraud, was asked to respond to allegations that Sater had been let off too easily and the government should not have hidden his conviction from public view.

Lynch told senators that Sater had “provided valuable and sensitive information” for more than 10 years and that his work had been “crucial to national security and the conviction of over 20 individuals, including those responsible for committing massive financial fraud and members of La Cosa Nostra.”

Sater has generally declined to comment about his relationship with Trump. But earlier this month, he tweeted his support for Trump’s presidential run, congratulating Trump on appearing to clinch the GOP nomination. “He will make the greatest President of our century,” Sater wrote.

Alice Crites and Walter Fee contributed to this report.

EXHIBIT K

ELECTION 2016

[Full Results](#)[Exit Polls](#)[Trump's Cabinet](#)

Donald Trump Settled a Real Estate Lawsuit, and a Criminal Case Was Closed

By MIKE McINTIRE APRIL 5, 2016

For Donald J. Trump, it is a long-held legal strategy, if not a point of pride, to avoid knuckling under to plaintiffs in court.

“I don’t settle lawsuits — very rare — because once you settle lawsuits, everybody sues you,” he said recently.

But Mr. Trump made an exception when buyers of units in Trump SoHo, a 46-story luxury condominium-hotel in Lower Manhattan, asserted that they had been defrauded by inflated claims made by Mr. Trump, his children and others of brisk sales in the struggling project. He and his co-defendants settled the case in November 2011, agreeing to refund 90 percent of \$3.16 million in deposits, while admitting no wrongdoing.

The backdrop to that unusual denouement was a gathering legal storm that threatened to cast a harsh light on how he did business. Besides the fraud accusations, a separate lawsuit claimed that Trump SoHo was developed with the undisclosed involvement of convicted felons and financing from questionable sources in Russia and Kazakhstan.

And hovering over it all was a criminal investigation, previously unreported, by the Manhattan district attorney into whether the fraud alleged by the condo buyers broke any laws, according to documents and interviews with five people familiar with it. The buyers initially helped in the investigation, but as part of their lawsuit settlement, they had to notify prosecutors that they no longer wished to do so.

The criminal case was eventually closed.

Mr. Trump's campaign for the Republican presidential nomination rests on the notion, relentlessly promoted by the candidate himself, that his record of business deals has prepared him better than his rivals for running the country. An examination of Trump SoHo provides a window into his handling of one such deal and finds that decisions on important matters like whom to become partners with and how to market the project led him into a thicket of litigation and controversy.

Trump SoHo is one of several instances in which Mr. Trump's boastfulness — a hallmark of his career and his campaign — has been accused of crossing the line into fraud. Other lawsuits have charged that he peddled worthless real estate sales courses and misled investors into thinking he had built hotels when in fact he had only licensed his name to them. He has won several cases at trial and is continuing to fight others.

Alan Garten, the general counsel for the Trump Organization, said that the condo buyers' lawsuit was not focused on Mr. Trump himself "in any material way" and that there was little reason not to settle it, adding that it cost Mr. Trump nothing. "It was solely a function of returning deposits," Mr. Garten said.

He described the case as "buyer's remorse," in which people who bought real estate at the wrong time turned to the courts to recoup their investment.

Mr. Garten would not talk about the criminal investigation or whether it was a factor in the decision to settle.

"The terms of the settlement are confidential, and thus I'm not at liberty to discuss them," he said.

The district attorney's office declined to comment, saying it could not provide information on "a criminal investigation which does not result in an arrest or prosecution."

When Mr. Trump and his co-defendants made the decision to settle the condo buyers' lawsuit in 2011, it was a far cry from the heady days of 2006, when Mr. Trump closed an episode of his hit television show "The Apprentice" with a splashy plug for Trump SoHo. In typical Trump fashion, he piled on the plaudits for "my latest development."

“When it’s completed in 2008,” he said, “this brilliant \$370 million work of art will be an awe-inspiring masterpiece.”

Jumping In With New Partners

To the artists and creative types inhabiting its trendy downtown Manhattan neighborhood, Trump SoHo was an oxymoron from the start. Many of them loudly opposed a huge glass tower at 246 Spring Street that would stab the sky high above its low-key surroundings.

If the plans for it attracted controversy, so too would the company most responsible for its development: Bayrock Group.

Mr. Trump was foggy on how he first came to do business with Bayrock, a small development company whose offices were in Trump Tower in Midtown. In a deposition a few years ago, he said it might have been a Bayrock associate, Felix H. Sater, who first approached him in the early 2000s.

Mr. Sater, a Russian immigrant, had recently joined Bayrock at the behest of its founder, Tefvik Arif, a former Soviet-era commerce official originally from Kazakhstan. Bayrock, which was developing commercial properties in Brooklyn, proposed that Mr. Trump license his name to hotel projects in Florida, Arizona and New York, including Trump SoHo.

The other development partner for Trump SoHo was the Sapir Organization, whose founder, Tamir Sapir, was from the former Soviet republic of Georgia. In addition to receiving a licensing agreement, Mr. Trump would manage the completed condo-hotel, and he was also given a minor equity interest in it.

Emails and testimony in several lawsuits show that Mr. Sater and Mr. Arif worked closely with Mr. Trump and others in the Trump Organization. Mr. Trump was particularly taken with Mr. Arif’s overseas connections. In a deposition, Mr. Trump said that the two had discussed “numerous deals all over the world” and that Mr. Arif had brought potential Russian investors to Mr. Trump’s office to meet him.

“Bayrock knew the people, knew the investors, and in some cases I believe they were friends of Mr. Arif,” Mr. Trump said. “And this was going to be Trump International Hotel and Tower Moscow, Kiev, Istanbul, etc., Poland, Warsaw.”

What sort of due diligence Mr. Trump did before jumping in with his new partners is unclear. But he, as well as many others, apparently missed some dark spots on Mr. Sater's résumé. Mr. Garten said the Trump Organization typically did a background check on potential business partners like Bayrock, but not on their individual employees, so nothing about Mr. Sater would have turned up.

Mr. Sater was convicted and sent to prison in 1993 after a New York bar fight in which he stabbed a man in the face with a broken margarita glass. That was a matter of public record. However, what few people beyond insiders at Bayrock knew was that five years later, Mr. Sater was implicated in a huge stock manipulation scheme involving Mafia figures and Russian criminals — and that he became a confidential F.B.I. informant.

Recently unsealed federal court records show that Mr. Sater helped the government disrupt an organized crime ring on Wall Street and deal with an unexplained national security matter involving his foreign connections. He was not the only F.B.I. informant in Bayrock's offices. Another was Salvatore Lauria, an associate of Mr. Sater, who sometimes showed up to work wearing a court-ordered ankle monitor.

Mr. Lauria brokered a \$50 million investment in Trump SoHo and three other Bayrock projects by an Icelandic firm preferred by wealthy Russians "in favor with" President Vladimir V. Putin, according to a lawsuit against Bayrock by one of its former executives. The Icelandic company, FL Group, was identified in a Bayrock investor presentation as a "strategic partner," along with Alexander Mashkevich, a billionaire once charged in a corruption case involving fees paid by a Belgian company seeking business in Kazakhstan; that case was settled with no admission of guilt.

Slowing Sales and a Lawsuit

The official unveiling of Trump SoHo in September 2007 was quintessential Trump: a red-carpet announcement followed by a big bash, where flavored vodka flowed, dancers whirled and models wandered about. Amid the hoopla, Mr. Trump took the microphone to extol the greatness of the project. Standing beside him, beaming, were Mr. Arif and Mr. Sater.

The timing of Trump SoHo's completion and marketing could hardly have been

worse. The real estate bubble was bursting, and the global economy was on the brink of crisis as the developers began advertising luxury condo-hotel units costing as much as tens of millions of dollars.

The economics of the investment were largely untested in New York real estate. To get around residential zoning restrictions, owners of Trump SoHo units were allowed to live in them only 120 days a year. The rest of the time, the units would be rented as hotel rooms, with the owners sharing in the revenue.

The project was marketed aggressively to potential investors overseas, where exchange rates were favorable and the Trump brand carried a certain cachet. Many early buyers were from Europe, including a French former soccer star, Olivier Dacourt, who put down a deposit of \$460,400 on a \$2.3 million unit.

After an initial flurry of activity, the pace of sales slowed considerably. In addition to the economic decline, Trump SoHo was jolted by bad publicity when The New York Times published an article in December 2007 revealing Mr. Sater's criminal past.

According to data the Trump SoHo developers filed with state and federal agencies, only 15 to 30 percent of the units had been sold by the start of 2009. But those numbers did not come close to the grand-sounding sales figures promoted, publicly and in private, by people affiliated with Trump SoHo, according to a lawsuit filed in August 2010 by Mr. Dacourt and other people who had bought units.

In June 2008, Mr. Trump's daughter Ivanka was quoted in a Reuters article saying that about 60 percent of the units had been sold. In April 2009, Mr. Trump's son Donald Jr. appeared in another news article saying that 55 percent of the units were sold by March of that year. More purported cases of puffery occurred in emails and statements by sales agents.

The lawsuit also suggested that Mr. Trump had contributed to the deception, citing a claim he made at the project's unveiling. Depending on the news account, he said 3,200 prospective purchasers either had signed up to see the units or had requested applications to buy them; the plaintiffs argued that this figure was exaggerated, given how few units had actually been sold at the time. The Trumps and the other defendants denied that there had been any deception.

The inflated numbers were more than just harmless self-promotion and

amounted to fraudulent enticement of investors, who believed they were buying into a project that was healthier than it actually was, said Adam Leitman Bailey, the lawyer representing the buyers.

“They relied on these misrepresentations to their detriment,” he said.

The people familiar with the criminal investigation said that not long after Mr. Bailey’s lawsuit was filed, the district attorney’s office began looking into the allegations it had raised. These people insisted on anonymity for fear of legal repercussions from speaking about confidential agreements or sealed criminal matters.

Documents reviewed by The Times, including a state grand jury subpoena, make clear that an area of focus for prosecutors was determining whether the accusations in Mr. Bailey’s lawsuit rose to the level of a crime. The investigation was being handled by the Major Economic Crimes Bureau.

Gradually Cutting Ties

Shortly before the condo buyers’ lawsuit was filed, another suit appeared, this one by Jody Kriss, a former finance director of Bayrock. It claimed that by concealing Mr. Sater’s criminal record, Bayrock had committed fraud on banks and investors with which it did business. Mr. Trump is not a defendant in that case, which is continuing.

Mr. Kriss’s lawsuit was filled with unflattering details of how Bayrock operated, including allegations that it had occasionally received unexplained infusions of cash from accounts in Kazakhstan and Russia. Bayrock and Trump SoHo drew more negative headlines in October 2010, when news spread from Turkey that Mr. Arif had been aboard a luxury yacht raided by the police, who were investigating a suspected prostitution ring that catered to wealthy businessmen. He was charged but later acquitted.

The next year, when it was clear that Mr. Bailey’s lawsuit would be allowed to proceed and with the district attorney’s criminal investigation continuing, Mr. Trump and his co-defendants agreed to settle the condo buyers’ suit. The financial terms were announced publicly, but another part of the settlement was kept secret.

That part required the plaintiffs to notify any investigative agency with which

they “may have previously cooperated” that they did not want to “participate in any investigation or criminal prosecution” related to matters in the lawsuit, according to a confidentiality agreement signed by more than 20 people. The plaintiffs could respond to a subpoena or court order, but would also have to notify the defendants that they had received it, the agreement said. The criminal investigation was closed sometime afterward.

As for Trump SoHo, the condo-hotel concept did not pan out. Only about a third of the units were ultimately sold, and one of the project’s lenders foreclosed on the rest, although the property remained open and became a popular luxury hotel, still managed by Mr. Trump’s company.

Mr. Sater left Bayrock after the news of his criminal background was reported. But even after that, his association with Mr. Trump did not end. The Trump Organization later gave him a business card identifying him as a “senior advisor” to Mr. Trump, as well an office. Mr. Garten, the general counsel for the organization, said that Mr. Sater was never an employee, but that he had worked independently to steer potential deals to Mr. Trump. The arrangement lasted about six months, Mr. Garten said. Mr. Sater declined to comment on his dealings with Mr. Trump or with Bayrock.

By the time Mr. Trump sat for a deposition in a lawsuit in November 2013, it was clear he no longer saw the benefit of knowing the Bayrock executives with whom he had once completed big deals. He said he barely knew Mr. Arif: “I mean, I’ve seen him a couple of times; I have met him.”

As for Mr. Sater, “if he were sitting in the room right now,” Mr. Trump said, “I really wouldn’t know what he looked like.”

Find out what you need to know about the 2016 presidential race today, and get politics news updates via Facebook, Twitter and the First Draft newsletter.

A version of this article appears in print on April 6, 2016, on Page A1 of the New York edition with the headline: Trump Settled Suit, and Legal Storm Blew Over.

EXHIBIT L

Amid Russia scrutiny, Trump associates received informal Ukraine policy proposal



By **Tom Hamburger** and **Rosalind S. Helderman** February 19

President Trump's personal lawyer and a former business associate met privately in New York City last month with a member of the Ukrainian parliament to discuss a peace plan for that country that could give Russia long-term control over territory it seized in 2014 and lead to the lifting of sanctions against Moscow.

The meeting with Andrii V. Artemenko, the Ukrainian politician, involved Michael Cohen, a Trump Organization lawyer since 2007, and Felix Sater, a former business partner who worked on real estate projects with Trump's company.

The occurrence of the meeting, first reported Sunday by the New York Times, suggests that some in the region aligned with Russia have been seeking to use Trump business associates as an informal conduit to a new president who has signaled a desire to forge warmer relations with Russia. The discussion took place amid increasingly intense scrutiny of the ties between Trump's team and Russia, as well as escalating investigations on Capitol Hill of the determination by U.S. intelligence agencies that the Kremlin intervened in last year's election to help Trump.

The Times reported that Cohen said he left the proposal in a sealed envelope in the office of then-national security adviser Michael T. Flynn while visiting Trump in the White House. The meeting took place days before Flynn's resignation last week following a report in The Washington Post that he had misled Vice President Pence about his discussions in December of election-related sanctions with the Russian ambassador to the United States.

Cohen, speaking with The Post on Sunday, acknowledged that the meeting took place and that he had left with the peace proposal in hand.

But Cohen said he did not take the envelope to the White House and did not discuss it with anyone. He called suggestions to the contrary "fake news."

"I acknowledge that the brief meeting took place, but emphatically deny discussing this topic or delivering any documents to the White House and/or General Flynn," Cohen said. He said he told the Ukrainian official that he could send the proposal to Flynn by writing him at 1600 Pennsylvania Ave.

The Times stood by its story Sunday.

"Mr. Cohen told The Times in no uncertain terms that he delivered the Ukraine proposal to Michael Flynn's office at the White House. Mr. Sater told the Times that Mr. Cohen had told him the same thing," Matt Purdy, a deputy managing editor, said in a statement to The Post.

The Times reported that the proposal discussed at last month's meeting included a plan to require the withdrawal of Russian forces from Eastern Ukraine. Then Ukrainian voters would decide in a referendum whether Crimea, the territory Russia seized in 2014, would be leased to Russia for a 50-year or a 100-year term. Artemenko said Russian leaders supported his proposal, the Times reported.

In Ukraine, Artemenko belongs to a bloc that opposes the nation's current president, Petro O. Poroshenko. It is a group whose efforts were previously aided by Paul Manafort, Trump's former campaign manager, who had advised Ukraine's previous pro-Vladimir Putin president until his ouster amid public protests in 2014 — a development that sparked the Russian invasion of Ukraine. Manafort told The Post that he had "no role" in Artemenko's

initiative.

The back-channel discussions could disrupt delicate diplomacy between the new Trump administration and Poroshenko. Artemenko told the Times he hopes evidence of corruption by Poroshenko could be used to effect his ouster, a necessary first step to pushing his peace proposal.

Cohen said the meeting between the Ukrainian politician, Cohen and Sater lasted less than 15 minutes and took place at a New York hotel.

He said he received the proposal and took it with him from the hotel meeting out of politeness but never relayed its contents to anyone in the administration. He said he attended the meeting as a courtesy to Sater, a former business colleague.

Cohen has been in the public spotlight since his name was mentioned in a dossier prepared by a former British spy hired by Trump's political opponents suggesting he had once served as a liaison between the Kremlin and the Trump campaign, an allegation he has emphatically denied.

Cohen said no federal investigators have contacted him about the dossier, which was widely distributed to Washington journalists and published by BuzzFeed, and he called the ongoing suggestion of federal interest in the case infuriating. "It has to stop," he said.

Cohen had worked for a decade for the Trump Organization, where he earned a reputation as a trusted and aggressive defender of the celebrity mogul. He left the company in January to assume a more amorphous role as Trump's personal counsel. The role holds no public policy portfolio.

Sater pleaded guilty in 1998 to participating in a Mafia-related stock fraud. His sentencing was delayed while he secretly cooperated with the government on criminal and national security investigations. Law enforcement officials have praised him for his participation.

Working out of an office just below Trump's in Trump Tower with a development company called Bayrock Group, Sater had worked on several licensed Trump projects, including the Trump SoHo in New York. He also

worked on proposals to build a Trump Tower in Moscow, a decade ago and again in 2015. He has said he met with Trump's children Ivanka and Donald Jr. in the foreign capital in 2006 at Trump's request.

In 2010, Trump allowed Sater to use a business card identifying himself as a senior adviser to the Trump Organization while he prospected deals. Still, when Sater's criminal past, which had long been sealed because of his government cooperation, emerged, Trump claimed to barely know the Russian immigrant. In sworn testimony in 2013 in litigation related to a failed project with which Sater had been involved, Trump said he would not recognize Sater if they were in the same room.

Sater confirmed that the meeting at the New York hotel took place at his request after he heard about the peace plan from Artemenko.

Today's WorldView

[Sign up](#)

What's most important from where the world meets Washington

"I got excited about trying to stop a war," he said. "I thought if this could improve conditions in three countries, good, so be it."

Sater said he held the recent meeting out of honorable intent only. He said he had no business deals in Ukraine and without thought of any business deal or inappropriate relationship with a foreign power.

"I was not practicing diplomacy and I was not having clandestine meetings," Sater said. He said he called Cohen because his Ukrainian lawmaker acquaintance "was emphatic that he wants the war to end." He said the conversations with Cohen and Artemenko were not "a back channel to the Kremlin or anything like that."

Sater said he thought Cohen intended to give the document to Flynn but was unable to do so because Flynn was embroiled in a crisis over his own job and resigned days later.

"He had other things on his mind," Sater said.

Tom Hamburger covers the intersection of money and politics for The Washington Post. 🐦 Follow @thamburger

Rosalind Helderman is a political enterprise and investigations reporter for the Washington Post. 🐦 Follow @PostRoz

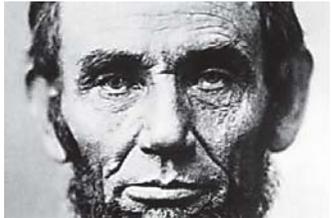
PAID PROMOTED STORIES

Recommended by



Here's What New Dental Implants Should Cost You - View Pricing & Dentist Information

New Dental Implants



Only 3% Can Pass This U.S. History Quiz. Can you?

Definition



Do This Every Time You Turn On Your Computer...

www.onlinelifeadvice.com



Her Dress At The Emmys After Party Left The Crowd Speechless

Livingly



Absolutely the Best Sheets You'll Ever Sleep in

Business Insider



Why Doctors In The Know No Longer Prescribe Metformin

Vibrant Health Network

EXHIBIT M

133
1870
126
133

SUPREME COURT OF THE UNITED STATES.

No. ~~229~~ 126.

FREDERICK GRIFFING, COMPLAINANT AND APPELLANT,

VS.

DANIEL GIBB AND DONALD FRASER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
NORTHERN DISTRICT OF CALIFORNIA.

[Signature]

GOVERNMENT PRINTING OFFICE.

[Signature]

[Signature]

1 UNITED STATES OF AMERICA,
Northern District of California, ss.

Pleas before the judges of the circuit court of the United States for the districts of California, in and for the northern district of said State, in the case of Frederick Griffing, complainant, vs. Daniel Gibb and Donald Fraser, defendants.

And now, on this 11th day of September, A. D. 1857, comes Frederick Griffing, the complainant, by Halladay & Cary and P. W. Shephard, and files his bill of complaint in the words and figures following, to wit:

2 *Bill of complaint.*

Circuit court of the United States for the districts of California, in and for the northern district.

FREDERICK GRIFFING
vs.
DANIEL GIBB and DONALD FRASER. } In equity.

Frederick Griffing, the plaintiff herein, avers that he is a citizen of the State of New York, and complains of Daniel Gibb, a citizen of the State of California, and Donald Fraser, an alien of the United States and a subject of the Queen of Great Britain and Ireland, and now resident of the State of California, the defendants herein, and for cause and grounds of complaint plaintiff alleges as follows:

That he is the owner in fee simple of the following described property in the city of San Francisco, in the northern district of California, bounded on the east by Battery street, and on the north by Filbert street, being two fifty-vara lots, making 275 feet front on Filbert street by 137½ feet on Battery street; and also of two other fifty-vara lots on the north side of Filbert street, and on the west
3 side of Battery street, being 137½ feet on Battery street by 275 feet on Filbert street.

Plaintiff avers that he is, by himself and his tenants, in the exclusive use and possession of said land and every part thereof.

That he has buildings and improvements upon said lots to the amount of two hundred thousand dollars and upwards, in the way of extensive warehouses of brick and stone, and wharves in front thereof.

Plaintiff avers that his said lots, above described, were originally fronting on and forming a part of the natural shores of the bay of San Francisco, with a steep bank or declivity in the rear, and a bold, deep water in front thereof, where the tide regularly ebbed and flowed, and where the tide still doth regularly ebb and flow, and where ships and vessels of the largest class, sailing to and from the ocean, might approach in safety and lie to receive and discharge cargo.

Plaintiff avers that in the year 1850 he commenced his improvements upon said property, by excavations in the hill for his present

warehouses, at the same time preparing a suitable wharf in front thereof for receiving and delivering cargo of ships.

4 Plaintiff avers that he purchased said property with the view of acquiring the free and uninterrupted use and enjoyment of the water front on the waters of the bay of San Francisco, which at that place then were, and ever since have been, and now are, deep and navigable for the largest class of ships, steamers, and vessels sailing to and from the ocean.

Plaintiff avers that ever since the completion of the first part of his said warehouses on said lots, about the beginning of the year 1851, and since the final completion of the last one, in the year 1854, and ever since up to the present time, the said warehouses have been situated upon the water front of the said bay, receiving cargo from the largest class of ships there lying in front of said property alongside plaintiff's wharves, in navigable tide-waters of the bay.

Plaintiff avers that when he commenced his said improvements there was no sign or appearance of either Battery or Filbert street at or near the said premises, but the lines of said streets were only definable on some maps of the city of San Francisco.

5 Plaintiff avers that the defendants have commenced, and are now, by their workmen, agents and employés, engaged in driving piles in the ground under the navigable waters of the bay of San Francisco, in front of the plaintiff's premises above described, and the defendants declare their intention and determination to be to pile in and build a wharf over and upon and covering up all that 100 varas square forming the northeast corner of Filbert and Battery streets, as the same are defined on the map of the city of San Francisco, being a lot of land 275 feet square, covered by the navigable tide-waters as aforesaid at low tide, where ships and vessels of the largest class are in the habit of passing and repassing in said bay, sailing to and from the ocean in the pursuit of commerce, and especially to approach the warehouses and wharves in front thereof, the property of plaintiff, as above described.

6 Plaintiff avers that such acts of piling and wharfing of the said defendants, or any other obstructions, are wrongful and unlawful, and contrary to the Constitution and laws of the United States, and of the constitution and laws of this State; that, if continued and completed, the said piling and wharfing now commenced and projected by the defendants will entirely obstruct and cut off this plaintiff from the use, benefit, and enjoyment of the riparian rights pertaining to him as owner of the property herein described, and entirely destroy his use of the present water front, and cut off the plaintiff's warehouses from access to said tide-water front, and from the vessels usually lying there to receive and discharge cargo.

Plaintiff avers that when he first built his said warehouses and wharves there was about 30 feet of water in front thereof, which has since diminished from the sedimentary deposits of the waters of the bay; that there is now from 16½ feet to 30 feet of water at high tide in front of plaintiff's said premises, and which the defendants have commenced to cover with piles driven in the ground. That the effect of said piling will be to check the current at that point, and fill up that

part of the bay above and below the premises with sediment, so as to render the same wholly unnavigable.

Plaintiff avers that if said work of defendants be permitted to progress, the same will greatly impede and obstruct the free navigation of that part of the bay now navigable, and great wrong and injury will accrue to the public, and especially will this plaintiff be irreparably injured in his estate and premises above described, so that
7 what is now valuable navigable tide-water below low-water mark will be obstructed and rendered useless, unsafe and unnavigable irreparably and without remedy, whereby this plaintiff will be injured and damaged in the sum of one hundred thousand dollars.

Plaintiff avers that he is already greatly injured by the piles already driven by defendants in front of his premises, as aforesaid.

Wherefore plaintiff prays for an injunction of this court in due form to restrain the defendants, and each of them, their contractors, agents, servants and employés in said work, and each of them, from driving piles, or making or placing any further obstruction in front of the premises of this plaintiff, herein described, that is to say, on the east side of Battery street, and 137½ feet each side, north and south, of Filbert street, and within the navigable tide-waters of the bay of San Francisco, until the further order of the court in the premises; and that upon the final hearing hereof, that said injunction
8 may be made perpetual, and that the plaintiff may have the final process of this court to abate and remove the piles already so driven by the defendants, and for a judgment against the defendants in the sum of ten thousand dollars for damages already accrued and to accrue to the plaintiff by reason of the aforesaid wrongful acts of the defendants, and for costs of suit, and for such other and further relief in the premises as the nature of the case may require, and as the court is competent to administer in the premises. Dated September 11, 1857.

HALLADAY & CARY and
P. W. SHEPHEARD,
Attorneys for Plaintiff.

STATE OF CALIFORNIA,
City and County of San Francisco.

Frederick Griffing, the plaintiff above named, being duly sworn, doth depose and say that he has heard read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those things he believes it to be true.
FRED'K GRIFFING.

Sworn and subscribed before me this 11th day of September, A. D. 1857.

GEO. PEN JOHNSTON, *Clerk.*

9 IN CHAMBERS, *September 11, 1857.*

On reading foregoing bill and affidavits,
It is ordered that the defendants do show cause on Tuesday, 14th

instant, before the court, at 1 o'clock, why an injunction should not issue as prayed for.

M. HALL McALLISTER,
Judge United States Circuit Court, Districts of California.

Indorsed: Filed September 11, 1857.

GEORGE PEN JOHNSTON, *Clerk.*

10 And now, on this 26th day of October, A. D. 1857, the following order was duly entered in said cause, to wit:

Order denying injunction.

At a special term of the circuit court of the United States for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco, on Monday, the 26th day of October, in the year of our Lord one thousand eight hundred and fifty-seven—

Present: The honorable M. Hall McAllister, judge of said court.

FREDERICK GRIFFING }
vs. } In equity.
DANIEL GIBB *et al.* }

And now at this day, argument having been heretofore heard herein, it is ordered, adjudged, and decreed that the motion for an injunction in this case be denied.

Indorsed: Filed October 26, 1857.

GEORGE PEN JOHNSTON, *Clerk,*
By CUTLER McALLISTER,
Deputy Clerk.

11 And now at this day come the defendants, Daniel Gibb and Donald Fraser, and file their demurrer to the bill of complaint herein, in the words and figures following, to wit:

Demurrer.

In the circuit court of the United States for the districts of California, northern district of California.

FREDERICK GRIFFING, complainant,
vs. } In equity
DANIEL GIBB AND DONALD FRASER, defendants. }

The demurrer of William S. Reese, attorney of Daniel Gibb and Donald Fraser, esquires, defendants to the bill of complaint of Frederick Griffing, esquire, complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show that the complainant's said bill of complaint, in case the same were true,

12 which these defendants do in nowise admit, contains not any matter of equity whereon this court can ground any decree, or give the complainant any relief or assistance as against them, these defendants. Wherefore these defendants pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

Dated San Francisco, November 2, A. D. 1857.

WILLIAM S. REESE,
Attorney of Daniel Gibb & Donald Fraser, esquires, defendants.

NORTHERN DISTRICT OF CALIFORNIA, ss.

Donald Fraser, of aforesaid district, being duly sworn, says that he is one of the defendants in the above entitled cause; that he has read the foregoing demurrer, and knows the contents thereof, and that the same is not interposed for delay; and further says not.

D. FRASER.

13 Subscribed and sworn to before me this 2d day of November, 1857.

[L. s.]

SAMUEL HERMANN,
Notary Public.

I hereby certify that I am an attorney and counsellor of aforesaid court, and that in my opinion foregoing demurrer is well founded in point of law.:

HALL McALLISTER,
Counsel for Defendants.

Dated San Francisco, November 2, 1857.

Indorsed.

We admit due service of a copy of the within demurrer in the cause therein mentioned, and of notice of the filing thereof

HALLADAY & CARY & P. W. SHEPHEARD,
Attorneys for Complainant.

Dated San Francisco, November 2, 1857.

Filed November 2, 1857.

GEORGE PEN JOHNSTON, *Clerk.*

14 And now at this day the following order was entered in this cause, to wit:

Order sustaining demurrer.

At a regular term of the circuit court of the United States of America for the district of California, in and for the northern district, held at the court-house in the city of San Francisco, on Monday, the 8th day of November, in the year of our Lord one thousand eight hundred and fifty-eight—

Present: The honorable M. Hall McAllister, judge of said court.

FREDERICK GRIFFING }
 vs. } In equity.
 DANIEL GIBB *et al.* }

And now at this day, the demurrer to the bill in this cause having been heretofore duly submitted, after due consideration—

It is hereby ordered that said demurer be, and it is hereby, sustained.

Indorsed: Filed this 8th day of November, 1858.

GEO. PEN JOHNSTON, *Clerk*,
 By CUTLER McALLISTER, *Dep. Clerk*.

15 And afterwards, to wit, on the 1st day of December, A. D. 1858, the following order was duly entered of record, to wit:

Order allowing complainant to file amended complaint.

At a regular term of the circuit court of the United States of America for the district of California, in and for the northern district, held at the court-house in the city of San Francisco, on Wednesday, the 1st day of December, in the year of our Lord one thousand eight hundred and fifty-eight—

Present: Hon. M. Hall McAllister, judge of said court.

FREDERICK GRIFFING }
 vs. } In equity.
 DANIEL GIBB *et al.* }

And now at this day, on motion of S. W. Halladay, solicitor for the complainant, the solicitor for the defendants consenting thereto in writing, as appears by his stipulation indorsed thereon: It is ordered that the complainant have leave to file his amended complaint in the above entitled cause.

Indorsed: Filed this 1st day of December, 1858.

GEO. PEN JOHNSTON, *Clerk*,
 By CUTLER McALLISTER, *Dep. Clerk*.

16 And now, on this 1st day of December, comes the complainant, Frederick Griffing, by his solicitors, and files the following amended bill, to wit:

Amended bill.

Circuit court of the United States for the district of California, in and for the northern district.

FREDERICK GRIFFING }
 vs. } In equity.
 DANIEL GIBB and }
 DONALD FRAZER. }

Amended complaint.

Frederick Griffing, the plaintiff herein, avers that he is a citizen of the State of New York, and complains of Daniel Gibb, a citizen

of the State of California, and Donald Frazer, an alien and subject of the Queen of Great Britain and Ireland, and now resident of the State of California, the defendants herein, and for cause and grounds of complaint plaintiff alleges as follows:

That he is the owner in fee simple and in possession of the following described property in the city of San Francisco, in the northern district of California, bounded and described as follows, namely:

17 First. Beginning at a point where the east line of Sansome street intersects the south line of Filbert street, running thence southerly along the east line of Sansome street $137\frac{1}{2}$ feet, thence east at right angles to Sansome street 275 feet, thence north parallel with Sansome street $137\frac{1}{2}$ feet to a point in range with the south line of Filbert street, thence west 275 feet to the point of beginning.

Second. Beginning at a point where the east line of Sansome street intersects the northern line of Filbert street, thence north along the east line of Sansome street $137\frac{1}{2}$ feet, thence east at right angles to Sansome street 275 feet, thence south parallel with Sansome street $137\frac{1}{2}$ feet to a point in range with the north line of Filbert street, thence west 275 feet to the place of beginning, being the same two parcels of land described in the original complaint.

Plaintiff avers that he is in the exclusive occupation, use, and possession of said land, and every part thereof; that he has buildings and improvements upon said lots to the amount of two hundred thousand dollars and upwards, in the way of extensive warehouses of brick, stone, and iron, and a wharf.

18 Plaintiff avers that his said lots above described were originally fronting on and forming a part of the natural shore of the bay of San Francisco, with a steep and high bank or acclivity in the rear, and bold, deep water in front thereof, where the tide regularly ebbed and flowed, and where the tide doth still regularly ebb and flow, and where ships and vessels of the largest class, sailing to and from the ocean, might approach in safety, and lie to receive and discharge cargo.

Plaintiff avers that in the year 1851 he commenced his improvements upon said property by excavations in the hill for his present warehouses, at the same time preparing a suitable wharf in front thereof for receiving and delivering cargo of ships.

Plaintiff avers that he purchased said property with the view of acquiring the free and uninterrupted use and enjoyment of the water front on the waters of the bay of San Francisco, which at that place were, and ever since have been, and now are, but for the wrongful acts of defendants herein complained of, deep and navigable for the largest class of ships, steamers, and vessels sailing to and from the ocean.

19 Plaintiff further shows that his said warehouses are situated upon the natural and proper water front of the bay; and ever since his said warehouses were built, they have been used for the reception and storage of cargo directly from shipboard, and for the discharge of goods therefrom to ships and vessels. And in that way said warehouses have received immediately from, and delivered cargo immediately to, several hundred large vessels, amongst which are the—

Ship Hurricane, of 1,697 tons burden ;
 Ship Storm King, of 1,288 tons burden ;
 Ship Witch of the Wave, of 1,498 tons burden ;
 Ship Flying Fish, of 1,505 tons burden ;
 Ship Water Witch, of 1,224 tons burden ;
 Ship Don Quixote, of 1,429 tons burden ;
 Ship Aurora, of 1,396 tons burden ;
 Ship Radiant, of 1,317 tons burden ;

and about one hundred and fifty other large ships and vessels, many of them of the size and tonnage of those now here mentioned, besides numerous other vessels of smaller size, such as brigs and schooners, while said vessels were lying at and in front of his said warehouses.

Plaintiff avers that if the proposed wharf, which defendants
 20 have commenced, is built, all access of ships and vessels to and from plaintiff's said premises will be entirely impeded and cut off.

Plaintiff avers that when he commenced his said improvements, there was no sign or appearance of either Battery or Filbert street at or near the said premises, but the lines of said streets near said premises were only definable on some new maps of the city of San Francisco ; but said streets were never legally or officially laid out, or declared open at that place, as plaintiff is informed and believes.

Plaintiff avers that the defendants have commenced, and are now, by their workmen, agents, and employés, engaged in driving piles in the ground, under the navigable waters of the bay of San Francisco, in front of the plaintiff's premises, above described, upon and over the space 275 feet square hereinafter mentioned ; and defendants assert their right so to do, and declare their intention and determination to be, to pile in and build a wharf over and upon, and covering up all that 100 varas square, being the northeast corner formed by the extended lines of Filbert and Battery streets, being a lot of land 275 feet
 21 square, covered by the navigable tide-waters, as aforesaid, at low tide, where ships and vessels of the largest class have been and are in the habit of passing and repassing in said bay, sailing to and from the ocean in the pursuit of commerce, and especially to approach the plaintiff's warehouses above described.

Plaintiff avers that the space included within the lines claimed by defendants embraces a very important, necessary, and essential part of this harbor for this, to wit : That the natural depth of water there is sufficient for the accommodation of large ships, for which purpose it has always been freely and publicly used as aforesaid, and also because vessels lying there are protected from the prevailing winds, by the lofty acclivity of Telegraph Hills, on the west thereof.

Plaintiff avers the fact to be, that if the said space of 275 feet square, or any considerable part thereof, be obstructed by the defendants, and appropriated to their own private and exclusive use, by the erection of their proposed wharf, it will essentially incommode the public, in the use of the harbor, in the following essential particulars :

First. It will thereby shut out all ships and vessels from a

22 favorite and essential part of this harbor, as being a place of safe shelter from the wind.

Second. It will deprive hundreds of vessels of their free natural right to traverse that part of the harbor in navigating the bay, and especially in approaching plaintiff's property, as masters and owners of vessels desire to do, to secure safe and commodious storage for cargo directly from vessels, and to take in cargo directly therefrom.

Third. It will so obstruct the tide, and change the current, as to produce essential and material damage to the harbor of San Francisco, by causing sedimentary deposits, and thereby shallowing the water, and thus materially interfering with the navigation of the bay as a highway.

Plaintiff avers that such acts of piling and wharfing of the said defendants, or any other obstructions to the free access of vessels over and across the said place, are wrongful and unlawful, and contrary to the Constitution and laws of the United States, and of the constitution and laws of this State; that if continued and completed, the said piling and wharfing, now commenced and projected by the defendants, will entirely obstruct and cut off this plaintiff from the use, benefit, and enjoyment of the rights pertaining to him, as owner of
23 the property herein described, and entirely destroy his use of the present water front, and cut off the plaintiff's warehouses from access to said tide-water front, and from the vessels usually coming there to receive and discharge cargo.

Plaintiff avers that when he first built his said warehouses and wharves there was about 30 feet of water immediately in front thereof, which has since diminished from the sedimentary deposits of the waters of the bay; that there is now from 16½ feet to 30 feet of water at high tide in front of plaintiff's said premises, and which the said defendants have commenced to cover with piles as aforesaid; that the effect of said piling will be to check the current at that point, and fill up that part of the bay above and below the premises with sediment, so as to render the same wholly unnavigable, and thereby do material and irreparable injury to the harbor and to the public.

Plaintiff avers that if said work of defendants be permitted to progress or to continue, the same will greatly impede and obstruct the free navigation of that part of the bay now navigable, and
24 great wrong and material injury will accrue to the public, and especially will this plaintiff be irreparably injured in his estate and premises above described, so that what is now valuable navigable tide water below low-water mark will be obstructed and rendered useless, unsafe and unnavigable, irreparably and without remedy; whereby this plaintiff will be injured and damaged to the sum of one hundred thousand dollars.

Plaintiff avers that he is already greatly injured by the piles already driven by defendants in front of his premises as aforesaid, and that he has notified and required the defendants to desist and discontinue driving said piles and erecting said structure, which notice and request the defendant wholly disregard. Wherefore plaintiff prays for an injunction of this court, in due form, to restrain the defendants, and each of them, their contractors, agents, servants and employés, in

said work, and each of them, from driving piles, or making or placing any further obstruction or obstructions of any kind upon the above described 275 feet square of land covered by water, or any part thereof claimed by defendants, and situated at the north-east corner formed by the lines of Filbert and Battery streets extended, until the further order of the court in the premises; and that upon the final hearing hereof, that said injunction may be made perpetual against the defendants and all parties claiming or acting under them, and that the plaintiff may have the final process of the court to abate and remove the piles already so driven, or other structure erected, or to be erected, by the defendants upon the premises above described as claimed by them, and for a judgment against the defendants in the sum of fifty thousand dollars for damages already accrued and to accrue to the plaintiff by reason of the aforesaid wrongful acts of the defendants, and for costs of suit, and for such other and further process, order and relief in the premises as the nature of the case may require, and as the court is competent to administer in the premises.

Dated September 11, 1857.

Amended complaint, dated December 1, 1858.

26

HALLADAY & CARY and
P. W. SHEPHEARD,

Solicitors for Plaintiff.

STATE OF CALIFORNIA, }
City and County of San Francisco, } ss.

George J. Griffing, being duly sworn, doth depose and say that he has heard read the foregoing complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those things he believes it to be true.

Deponent makes this affidavit instead of the plaintiff, because plaintiff is absent from this State, and is in the State of New York, and deponent is his business agent here, having charge of the property mentioned, and as such agent is well advised of the facts stated in the complaint.

GEO. J. GRIFFING.

Subscribed and sworn to before me this 2d day of July, A. D. 1858.
[L. s.] E. P. PECKHAM, *Notary Public.*

27

Indorsed.

Received a copy of the within amended complaint, and consent that the same be filed, and hereby enter the appearance of the defendants in the case, hereby waiving the issue and service of subpoenas therein to the defendants, reserving the like time to plead to this

amended complaint as if subpoenas had been regularly issued and served this day.

WM. S. REESE,
Solicitor for Defendants.

DECEMBER 1, 1858.

Filed December 1, 1858.

CUTLER McALLISTER, *D. C.*,
For GEO. PEN JOHNSTON, *Clerk.*

28 And afterwards, to wit, on the 26th day of February, come the defendants, by their solicitor, and file the following demurrer, to wit:

Demurrer.

In the circuit court of the United States for the districts of California.
Northern district of California.

FREDERICK GRIFFING, complainant,
vs. } In equity.
DANIEL GIBB and DONALD FRASER, defendants. }

The demurrer of William S. Reese, attorney of Daniel Gibb and Donald Fraser, esqrs., defendants to the amended bill of complaint of Frederick Griffing, esq., complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's said amended bill to be true, in such manner and form as the same are therein set forth and alleged, do demur thereto, and for cause of demurrer show that the complainant's said amended bill of complaint, in case the same were true, which these defendants do in nowise admit, contains not any matter of equity whereon this court can
29 ground any decree or give the complainant any relief or assistance as against them, these defendants.

Wherefore these defendants pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to the said bill, or any of the matters and things therein contained, and pray to be hence dismissed with their reasonable costs in this behalf sustained.

Dated San Francisco, February 26, A. D. 1859.

WM. S. REESE,
Attorney of Daniel Gibb and Donald Fraser.

NORTHERN DISTRICT OF CALIFORNIA, ss.

Daniel Gibb, of aforesaid district, being duly sworn, says that he is one of the defendants in the above entitled action; that he has read the foregoing demurrer, and knows the contents thereof, and that the same is not interposed for delay; and further says not.

DANIEL GIBB.

Subscribed and sworn to before me this 26th day of February, A. D. 1859.

[L. s.]

SAM'L HERMANN,
Notary Public.

30 I hereby certify that I am an attorney and counsellor of aforesaid court, and that in my opinion foregoing demurrer is well-founded in point of law.

Dated San Francisco, February 26, 1859.

HALL McALLISTER,
Counsel for Defendants.

Indorsed.

We hereby consent that the foregoing demurrer be filed in the cause therein mentioned; waive notice of such filing, and admit service of a copy thereof, and of the affidavit and certificate.

Dated San Francisco, February 26, A. D. 1859.

S. W. HALLADAY,
Solicitor for Complainant.

Filed February 26, 1859.

GEO. PEN JOHNSTON, *Olerk,*
By CUTLER McALLISTER, *D. C.*

31 And afterwards, to wit, the following order was duly entered in this cause, to wit:

Order submitting demurrer on briefs.

At a regular term of the circuit court of the United States of America for the districts of California, in and for the northern district, held at the court-house in the city of San Francisco, on Saturday, the fourth day of August, in the year of our Lord one thousand eight hundred and sixty—

Present: The Hon. M. Hall McAllister, judge of said court.

FREDERICK GRIFFING	} In equity.
vs.	
DANIEL GIBB <i>et al.</i>	

And now at this day, on motion of solicitor for defendants, and by consent, it is ordered that the demurrer to the amended bill, heretofore filed herein, be submitted to the court on briefs, and without oral argument.

Indorsed: Filed this 4th August, 1860.

CUTLER McALLISTER, *Clerk.*

32 And afterwards, to wit, the following order was duly entered of record in this cause.

Order sustaining demurrer and dismissing bill.

In the circuit court of the United States for the districts of California.
Northern district.

FREDERICK GRIFFING, complainant,	}
vs.	
DONALD FRASER and DANIEL GIBB, defendants.	

It is hereby ordered and adjudged that the demurrer be sustained

and the bill dismissed unless the complainant amends on or before the next rule's day.

Dated October 27, 1860.

M. HALL McALLISTER,
Judge Cir. Ct. U. S.

Indorsed: Filed October 27, 1860.

CUTLER McALLISTER, Clerk.

33 And afterwards, to wit, on the 15th day of January, A. D. 1861, the following decree was duly entered in said cause, to wit:

Decree.

Circuit court of the United States for the districts of California, in and for the northern district:

FREDERICK GRIFFING }
vs. } In equity.
DANIEL GIBB and }
DONALD FRASER. }

This cause having been heretofore duly argued and submitted, by the counsel of the respective parties, to the court for its decision on the bill and the demurrer thereto, and the court, after having duly considered the law and the premises, having rendered its decision on the 27th of October, 1860, sustaining the said demurrer, and the complainant having failed to amend his bill of complaint, or to apply for leave of the court so to do, in accordance with the practice of said court: Now, on this 15th day of January, 1861, on motion of Hall McAllister, esq., counsel for the defendants, it is ordered, ad-
34 judged, and decreed, that final judgment be, and the same is hereby, rendered for the defendants on their demurrer to the bill of complaint herein, and that the said bill of complaint be, and the same is hereby, dismissed.

And it is further decreed that the complainant do pay unto the defendants their costs to be taxed.

M. HALL McALLISTER,
Judge Cir. Ct. U. S. Districts of California.

SAN FRANCISCO, January 15, 1861.

Indorsed: Filed January 15, 1861.

CUTLER McALLISTER, Clerk.

35 And afterwards, to wit, on the 15th day of January, the following petition for leave to appeal was filed in said cause:

37

Bond on appeal.

In the circuit court of the United States for the districts of California—Northern district of California.

FREDERICK GRIFFING	}
v	
s.	
DANIEL GIBB and	}
DONALD FRASER.	

Know all men by these presents that we, Frederick Griffing, as principal, Charles F. Lott and William Alvord, as sureties, are held and firmly bound unto the above-named Daniel Gibb and Donald Fraser in the sum of five hundred dollars, to be paid to them, their executors, or administrators; to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this seventeenth day of January, A. D. 1861.

Whereas the above named Frederick Griffing hath prayed and obtained an appeal to the Supreme Court of the United States from the decree rendered January 15, 1861, in the above entitled cause, 38 in the circuit court of the United States for the districts of California, in the northern district of said State:

Now, therefore, the condition of this obligation is such, that if the above-named appellant, Frederick Griffing, shall prosecute his said appeal with effect, and shall answer all damages and costs in case he shall fail therein, then this obligation shall be void; otherwise, the same shall be and remain in full force and effect.

FRED'K GRIFFING.	[SEAL.]
CHAS. F. LOTT.	[SEAL.]
WILLIAM ALVORD.	[SEAL.]

Sealed and delivered in presence of—
CUTLER McALLISTER,
U. S. Commissioner.

NORTHERN DISTRICT OF CALIFORNIA, ss.

Charles F. Lott and William Alvord, being duly sworn, depose and say, and each for himself deposes and says, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities and property exempt from execution.

CHAS. F. LOTT.
WILLIAM ALVORD.

Subscribed and sworn to before me this 17th day of January, A. D. 1861.

CUTLER McALLISTER,
U. S. Commissioner.

Indorsed. Approved April 11, 1861.

M. HALL McALLISTER,
Judge C. C. U. S.

Filed January 17, 1861.

CUTLER McALLISTER, *Clerk.*

39

Clerk's certificate.

I, Cutler McAllister, clerk of the circuit court of the United States for the districts of California, do hereby certify the foregoing pages, from 1 to 39 inclusive, to be a transcript of the record of the said circuit court in the cause named at the beginning hereof, being true, full, and correct copies of the original papers on file herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court this 7th day of May, A. D. 1861, and of the independence of the United States the 85th.

[L. S.]

CUTLER McALLISTER, *Clerk.*

15/3

IN THE

Supreme Court of the United States.

December Term, 1862.

FREDERICK GRIFFING, COMPLAINANT AND APPELLANT,

vs.

DANIEL GIBB AND DONALD FRASER, APPELLEES.

BRIEF FOR COMPLAINANT AND APPELLANT.

3

IN THE
Supreme Court of the United States.

December Term, 1862.

FREDERICK GRIFFING, COMPLAINANT AND APPELLANT,

vs.

DANIEL GIBB AND DONALD FRASER, APPELLEES.

BRIEF FOR COMPLAINANT AND APPELLANT.

This case comes here on an appeal from a decree of the Circuit Court of the United States for the Northern District of California, dismissing Appellant, x x

Bill of complaint on a demurrer to the same.

The complainant had filed another bill which was demurred to and, the demurrer being sustained and leave granted to file a new bill, he filed his amended bill, which is to be found in Record, pages 6 to 10.

To the amended bill a general demurrer has been filed.

Upon this demurrer, all the facts stated in the bill are admitted to be true notwithstanding the protestation clause, and the demurrer being general, all objections to the bill, in matters of form, are waived.

“A demurrer necessarily admits the truth of the facts ‘stated in the bill, so far as they are relevant and well ‘pleaded.’”

“ A demurrer is always preceded by a protestation against
 ‘ the truth of the matters contained in the bill, a practice
 ‘ borrowed from the Common Law, and probably intended
 ‘ to avoid any conclusion in another suit; for the present
 ‘ suit it is wholly without effect.”—Story’s Equity Pleadings,
 Section 452.

“ A general demurrer is sufficient (although special causes
 ‘ are usually stated) when the bill is defective in substance.”
Id., Section 455.

The complainant avers that he is the owner in fee and in
 possession of certain property in the City of San Francisco,
 which he describes, being two parcels of land, and he states
 “ that he is in the exclusive occupation, use, and possession
 ‘ of said land, and every part thereof; that he has buildings
 ‘ and improvements upon said lots to the amount of two
 ‘ thousand dollars and upwards, in the way of extensive
 ‘ warehouses, of brick, stone, and iron, and a wharf.”

He then avers that the lots described “ were originally
 ‘ fronting on and forming a part of the natural shore of the
 ‘ Bay of San Francisco, with a steep and high bank or ac-
 ‘ clivity in the rear, and bold, deep water in front thereof,
 ‘ where the tide regularly ebbed and flowed, and where the
 ‘ tide doth still regularly ebb and flow, and where ships and
 ‘ vessels of the largest class, sailing to and from the ocean,
 ‘ might approach in safety, and lie to, receive and discharge
 ‘ cargo.”

He avers that in the year 1851 he commenced “ his im-
 ‘ provement upon said property by excavations in the hill
 ‘ for his present warehouses, at the same time preparing a
 ‘ wharf in front thereof for receiving and delivering cargoes
 ‘ of ships,” and that “ he purchased the property with a
 ‘ view of acquiring the free and uninterrupted use of the
 ‘ water front, on the waters of the bay of San Francisco,
 ‘ which at that place were, and ever since have been, and,
 ‘ but for the wrongful acts of defendants herein complained

‘ of, deep and navigable for the largest of ships, steamers,
 ‘ and vessels sailing to and from the ocean.” And he avers
 that “his warehouses are situated upon the natural and
 ‘ proper water-front of the bay, and ever since his said ware-
 ‘ houses were built, they have been used for the reception and
 ‘ storage of cargo *directly* from shipboard, and for the dis-
 ‘ charge of goods therefrom to ships and vessels.”

He then mentions a large number of ships and vessels so loaded and discharged.

The complainant then avers “that if the proposed wharf
 ‘ which defendants have commenced is built, all access of
 ‘ ships and vessels to and from plaintiff’s said premises will
 ‘ be entirely impeded and cut off.”

He then described the locality of the proposed wharf, which he states was then being piled in and built in the northeast corner of Battery and Filbert streets, on a lot of land covered by the navigable tide water, and shows the proposed wharf to be a public nuisance.

Before describing the locality of the proposed wharf, complainant avers that “when he commenced his said improve-
 ‘ ments there were no sign or appearance of either Battery
 ‘ or Filbert streets at or near said premises, but the lines of
 ‘ said streets near said premises were only definable on
 ‘ some new map of the city of San Francisco—*but said streets*
 ‘ *were never legally or officially laid out or declared open at*
 ‘ *that place.*”

The complainant then avers “that such acts of piling and
 ‘ wharfing of the said defendants, or any other obstruction
 ‘ to the free access of vessels over and across the said place,
 ‘ are *wrongful and unlawful, and contrary to the Constitution*
 ‘ *and laws of the United States, and of the Constitution and*
 ‘ *laws of this State.*”

He then avers that “the effect of such piling will be to
 ‘ check the current at that point, and fill up that part of the
 ‘ bay above and below the premises with sediment so as to

‘render the same wholly unnavigable, and thereby do material and irreparable injury to the harbor and the public.’

He then says that if the said work be permitted to progress and continue “he will be irreparably injured in his estate and premises above described.”

He states that he has notified and required defendants to desist, which notice and request they disregard, and he prays for an injunction and general relief.

Water frontage is a valuable right of property, and the complainant, as riparian proprietor, is entitled to the free and uninterrupted enjoyment of it, to the extent of his two lots. This was settled by this Court at the last term, in *Dutton vs. Strong, et al.*, 1st Black R. We quote from pages 31 and 32: “Wharves, quays, piers, and landing places for the loading and unloading of vessels were constructed in the navigable waters of the Atlantic States by riparian proprietors at a very early period in the colonial times; and in point of fact, to build such erections, subject to the limitations before mentioned, has been claimed and exercised by the owner of the adjacent land from the first settlement of the country to the present time. (Angell on Tide Water, page 196).”

The limitations referred to were that they should conform to the regulations of the State, and not extend below low water mark. The regulations of the State, here meant, we assume to be such as control the extension of piers and wharves into the water. They have no application here, for it is stated that the complainant’s “buildings and improvements in the way of extensive warehouses of brick, stone, and iron, and a wharf,” are upon his lots.

The complainant’s warehouses and wharf cannot extend below low water mark for the same reason, and for the further reason, that “bold, deep water is in front thereof, where ships and vessels of the largest class, sailing to and from the ocean, might approach in safety, lie to, and discharge cargo.”

The complainant is entitled to relief in equity against the acts of the respondents of which he complains. In support of this we quote from Story's Equity Pleadings:—

“The ground of this jurisdiction of Courts of Equity in cases of purpresture, as well as of public nuisance, undoubtedly is, their ability to give a more complete and perfect remedy than is attainable at law, in order to prevent irreparable mischief, and, also, to suppress oppressive and vexatious litigation.”—Section 926.

“A Court of Equity will not only interfere upon the information of the Attorney General, but, also, upon the application of private parties directly affected by the nuisance.” Same section. “When private individuals suffer any injury quite distinct from that of the public in general, in consequence of a public nuisance, they will be entitled to an injunction and relief in equity, which may thus compel the wrong-doer to take active measures against allowing the injury to continue.”—Section 926.

It seems clear to us that the complainant, upon the face of his bill, is entitled to the relief he asks for.

He could be precluded from relief only by the extension of Battery and Filbert streets beyond his premises into the water, done by the proper authorities, or by the showing of some right or title in the respondents, which would justify them in the acts complained of.

With regard to those streets, the complainant's bill says, “that, when he commenced his said improvements, there were no sign or appearance of Battery or Filbert streets at or near said premises;” and further, that “*said streets were never legally or officially laid out or declared open at that place.*”

And as to any right or title in the respondents which would justify their acts, there is not only no admission, by any implication, of any such right or title, but the bill expressly says that these acts are *wrongful and unlawful, and*

contrary to the Constitution and laws of the United States, and the Constitution and laws of this State.

We respectfully submit that the decree of the court below must be reversed.

H. P. HEPBURN AND
HENRY WILKINS,

for Appellant.

Supreme Court of the United States.

No. 126.

FREDERICK GRIFFING, APPELLANT,

VS.

WILLIAM GIBB, EXECUTOR OF DANIEL GIBB,
DECEASED, AND DONALD FRASER,
RESPONDENTS.

BRIEF FOR RESPONDENTS.

MILTON S. LATHAM,
J. S. BLACK,

Of Counsel.

121

Supreme Court of the United States.

FREDERICK GRIFFING, APPELLANT,

VS.

WILLIAM GIBB, EXECUTOR OF DANIEL GIBB, AND
DONALD FRASER, RESPONDENTS.

This is an appeal from the decree of the Circuit Court of the United States for the districts of California, in and for the Northern District of said State, sustaining a demurrer to appellant's amended bill of complaint, filed on the equity side of said court, and dismissing said bill for want of equity.

Nature and Object of the Bill.

Said bill was filed substantially for the purpose of obtaining a perpetual injunction against said respondents, to restrain them from piling and improving a certain lot of land claimed by them, being 100 Spanish varas, or 275 feet square, and situated inside of the water front line of the city of San Francisco, as established by the act of the Legislature of California, passed March 26th, 1851, and between said line and the natural shore of the bay of San Francisco, and always covered by the tide waters of said bay.

The right to have the piles already driven in said lot removed, and the right to damages, cannot, of course, exist, unless the acts of said defendants in placing them there are illegal.

Even if shown to be illegal, no remedy by injunction, nor on the equity side of the court, can be obtained, unless there is likewise shown to be "imminent danger of irreparable mischief before the tardiness of the law could reach it."

If, as the complainant supposes, the defendants are guilty of a public nuisance, by which he, in particular, has sustained special damage, the ordinary public remedy is by indictment, or information for its abatement, and complainant's private remedy by an action on the case for the special damage which he may have suffered.

City of Georgetown vs. Alexandria Canal Co., 12 *Pet.*, 97, 98.

Spoooner vs. McConnell, 1 *McLean R.*, 337.

The bill of complaint shows no sufficient reason why those ordinary remedies are not ample in the present case. It does not show that the injury, if any, which is being done by the defendants, cannot be compensated by damages recoverable in an ordinary action, nor that the defendants are insolvent, nor that they are not amply and abundantly able to respond to all such damages as the plaintiff has already sustained, and which he may hereafter sustain.

It seems to defendant's counsel, therefore, that, on this ground alone, the decree of the court below was right.

But if mistaken in this position, we still say that the averments of the bill do not show any right in the plaintiff to stop the improvements which the defendants are making. In other words, they show no right to any relief whatever against said defendants.

Averments of Plaintiff's Bill.

The grounds of this supposed right, as stated in said bill, are, that the plaintiff "is the owner in fee simple and in possession" of lots of ground which "were originally fronting on and forming a part of the natural shore of the bay of San Francisco, with bold, deep water in front thereof, where the tide regularly ebbed and flowed, and where the tide doth still regularly ebb and flow, and where ships and vessels of the largest class sailing to and from the ocean might approach in safety and lie to receive and discharge cargo;" and that he, said plaintiff, "in the year 1850 commenced his improvements upon said property, at the same time preparing a suitable wharf in front thereof for receiving and delivering cargo of ships;" and that "he has buildings and improvements upon said lots to the amount of two hundred thousand dollars and upwards, in the way of extensive warehouses of brick, stone, and iron, and a wharf;" that "his said warehouses are situated upon the natural and proper

water front of the bay, the waters of which at that place then" (*i. e.* at the time of his purchase) "were, and ever since have been, and now are, but for the wrongful acts of defendants herein complained of, deep and navigable for the largest class of ships, steamers, and vessels sailing to and from the ocean;" that "ever since his said warehouses were built they have been used for the reception and storage of cargo directly from ship-board, and for the discharge of goods therefrom to ships and vessels;" that "when he commenced his said improvements there was no sign or appearance of either Battery or Filbert street at or near the said premises," and that said streets were not then "legally or officially laid out or declared open, as plaintiff is informed and believes;" that the "defendants are now engaged in driving piles in the ground, under the navigable waters of the bay of San Francisco, in front of the plaintiff's premises above described, upon and over the space of 275 feet square, and defendants assert their right so to do, and declare their intention to be to pile in and build a wharf over and upon, and covering up, all that 100 varas square, being the northeast corner formed by the extended lines of Filbert and Battery streets, being a lot of land 275 feet square, covered by the navigable tide waters, as aforesaid, at low tide, where ships and vessels of the largest class have been, and are, in the habit of passing and repassing in said bay, sailing to and from the ocean in pursuit of commerce, and especially to approach the plaintiff's warehouses, above described;" that "the space included within the lines claimed by defendants, embraces a very important, necessary, and essential part of this harbor," for reasons particularly specified; and that "if the said space of 275 feet square, or any considerable part thereof, be obstructed by the defendants and appropriated to their own private and exclusive use, by the erection of their proposed wharf, it will not only entirely impede and cut off all access of ships and vessels to and from plaintiff's said premises, but it will likewise essentially incommode the public in the use of the harbor in the essential particulars;" that it "will shut out all ships and vessels from a favorite and essential part of this harbor, as being a place of safe shelter from the wind," and "will deprive hundreds of vessels of their free, natural right to traverse that part of the harbor in navigating the bay, and especially in approaching plaintiff's property, as masters and owners of vessels desire to do, to secure safe and commodious storage for cargo directly from vessels, and to take in cargo directly therefrom;" and that "it will so obstruct the tide and change the current, as to produce essential and material damage to the harbor of San

Francisco, by causing sedimentary deposits, and thereby shallowing the water, and thus materially interfering with the navigation of the bay as a highway ;” that “the effect of said piling will be to check the current at that point, and fill up that part of the bay above and below the premises with sediment, so as to render the same wholly unnavigable, and thereby do material and irreparable injury to the harbor, and to the public, and especially will this plaintiff be irreparably injured in his estate and premises, above described, so that what is now valuable navigable tide water below low water mark, will be obstructed and rendered useless, unsafe, and unnavigable, irreparably and without remedy, whereby this plaintiff will be injured and damaged in the sum of ‘one hundred thousand dollars ;’ ” and that “he is already greatly injured by the piles already driven by defendants in front of his premises, as aforesaid,” &c. ; and that “such acts of piling and wharfing of the said defendants are wrongful and unlawful, and contrary to the Constitution and laws of the United States, and of the Constitution and laws of this State.”

Argument.

The above are substantially, and for the most part literally, the averments of the complaint upon which the plaintiff’s right to relief, if it exists at all, must rest.

The question presented for the consideration of this Court is, whether they make out a case for equitable relief by injunction from the Federal Courts.

As we have before stated, so far as the special damage to the plaintiff is concerned, (which is the only matter to be considered,) if it can be compensated by money, he is bound to seek his remedy in the courts of law ; and that it can be so compensated is evident from the fact that he himself states the amount of damage which he will suffer if the defendants’ improvements are completed, to wit : the sum of one hundred thousand dollars.

It is immaterial that the bill avers that plaintiff’s damage will be irreparable, when the facts set forth therein clearly show that it will not be so.

But independent of this ground, we submit that the case made by the plaintiff, shows no right to any relief whatever as against the defendants.

He appeals to the Constitution and laws of the United States,

and the constitution and laws of the State of California as establishing, and declaratory of his rights, and avers that the defendants' acts are contrary thereto.

Let us examine for a moment, each of these positions.

To entitle himself to relief on the ground that defendants' acts are contrary to the Constitution, and laws of the United States, he must point out some clause in that Constitution, or some law of the United States which, by piling and wharfing the 100 vara lot in question, the defendants are violating.

The plaintiff's bill fails to do anything of that kind, and especially fails to show that by reason of said improvements the space left in the bay and harbor of San Francisco, for the lading and unloading of merchandise and the passing and repassing of vessels to and from the ocean will be insufficient.

No such facts are averred, nor could they be with any truth.

Moreover, this Court as well as the State Courts, take judicial notice that the bay and harbor of San Francisco is of very large extent, so that necessarily the covering of 100 varas square on the margin of that bay with a wharf, cannot be a material obstruction to the use of the said bay as a highway and harbor for the commerce of the nation.

Fazkerly vs. Wiltshire, 1 *Strange*, 469.

It will also take judicial notice of all acts of the legislature of California relating to said harbor, including, of course, the "water lot act" of March 26th, 1851.

Owings vs. Hull, 9 *Pet.*, 625.

1 *Greenleaf's Ev.*, §6.

If not such material obstruction, the interposition of the Federal power cannot be called into exercise to stop or remove it.

In other words, the power to "regulate commerce," given by said Constitution to the Federal Government, will not furnish any special ground of interference in a case like the present, whose national and inter-state commerce is not materially, if at all, affected.

Wilson vs. Blackbird Creek Marsh Co., 2 *Pet.*, 245.

Gibbons vs. Ogden, 9 *Wheat.*, 193—204.

People vs. Saratoga and Ren. R. R. Co., 15 *Wend.*, 131—136.

Thompson vs. The People, 23 *Wend.*, 552, 553.

Commonwealth vs. Breed, 4 Pick., 462, 463.

Charlestown vs. Middlesex, 3 Met., 203, 205.

Pennsylvania vs. Wheeling Br. Co., 13 How. U. S., 577, 578.

United States vs. New Bedford Bridge, 1 Wood Min. R., 401.

Nor does any greater power to give relief exist, in such cases, in the Federal courts, than is possessed and would be exercised by the State courts, because in deciding any case where the Federal Constitution and laws are not involved, the Federal courts, equally with the State courts, administer the State laws, and follow the decisions of the highest State tribunal in the construction and interpretation of those laws.

Nor have the powers of the Federal Government over the navigable waters of the State of California received any accession or enlargement from the 3d section of the act of Congress "for the admission of the State of California into the Union," for that section neither takes from her, nor varies in any respect, her rights and powers as a sovereign State, under the Constitution, over the navigable waters within her limits.

9 U. S. Stats. at Large, p. 452.

Pollard's Lessee vs. Hagan, 3 How., 220—225.

There being, therefore, no Federal right arising under the Constitution or laws of the United States, infringed by the defendants' acts, it follows that both the court below and this court must decide the questions now presented entirely upon the basis of State laws.

Let us proceed, therefore, to examine whether the plaintiff's assertion in his bill, that the defendants' acts, in piling and wharfing the premises in question, are contrary to the Constitution and laws of the State of California, is or not true.

No clause of the written Constitution of California, so far as we are aware, is relied upon by the plaintiff as having any application to the subject.

It is, however, a part of the constitutional law of California, as well as of every other State of the Union, that the ownership and sovereign power of disposition of premises situated like those now in question, (being a portion of the soil of said

State covered by navigable tide waters,) is vested in said State by virtue of its sovereignty.

This ownership and power of disposition, as far as the line of ordinary high water mark, is absolute in the State, with the sole restriction that national and inter-state commerce be not obstructed.

Martin vs. Waddell, 16 *Pet.*, 410.

Pollard's Lessee vs. Hagan, 3 *How. U. S.*, 229, 230.

Commonwealth vs. Charlestown, 1 *Pick.*, 182—185.

Commonwealth vs. Breed, 4 *Pick.*, 462, 463.

Charlestown vs. Middlesex, 3 *Met.*, 203.

Parker vs. Cutler Mill Dam Co., 20 *Maine R.*, 357.

Eldridge vs. Cowell, 4 *Cal. R.*, 87.

Chapin vs. Bourne, 8 *Cal. R.*, 295.

3 *Kent*, 427—431, (*side paging.*)

In other words, the discretion of the State in the disposition of such land is, with this simple restriction, absolutely unlimited. This discretionary power has been expressly recognized by this court in regard to a portion of the same water lot property now in question.

Field vs. Seabury, 19 *How.*, *U. S.* 323.

If our position, therefore, is correct, that the improvements being made by the defendants are not in conflict with this restriction, but entirely consistent with it, then it was a matter within the sole and absolute discretion of the State to authorize these improvements or not, as it thought fit.

It is not to be presumed that the State would authorize improvements upon its own soil which would conflict with any vested rights of the plaintiff, and, therefore, before any relief can be had, (if it can be had at all,) on the supposition of such conflict, it must be very clearly shown.

The plaintiff's bill fails to show any such conflict.

It shows, it is true, that he "commenced his improvements" in the year 1850, upon the lots, of which he avers that he is now the owner, but it does not show when he became such owner. The inference, however probable, that he became owner in fee simple before he commenced improvements upon the lots, is by no means a necessary one, as the contrary is entirely possible.

If therefore the plaintiff purchased after the passage of the California law of March 26th, 1851, commonly known as the

“San Francisco water lot act,” there can be no pretence that he had any prior vested rights, with which that act could interfere.

Furman vs. city of New York, 5 Sands. R., 42.

Had he set out his title, as we affirm he was by law required to do, in order that the Court might see what that title was and when and how acquired, and what were his rights under it, we assert that it would have then appeared that his own title to the larger portion of the lots claimed by him was derived from the same source, to wit, the “San Francisco water lot act,” from which the defendants likewise derive title.

In saying this, we do not ask the Court to take notice of anything outside of plaintiff’s bill of complaint, but mention it only as an additional reason, why what we conceive to be the rule of law should be strictly enforced in this case.

But we futher say, that even if it were admitted that riparian rights would attach to land bounded on one side “by the sea,” or by navigable tide water, that until plaintiff shows that such are the boundaries of his lots as described, in his purchase deeds, he has not, even under that admission, established any riparian rights.

Dunlap vs. Stetson, 4 Mason, 365, 366.

Thomas vs. Hatch, 3 Sumner, 178, 182.

Storer vs. Freeman, 6 Mass., 438, 400.

But we take still broader ground, and say that even if it appeared that plaintiff’s purchase was prior to the passage of said water lot act, and that his lots were bounded on one side “by the sea,” or “by the Bay of San Francisco;” that these facts would not extend his title below high water mark, nor vest in him any riparian rights as against the State of California, or any person or corporation claiming under her, which could prevent the State, or person claiming under her, from improving and using the land below high water mark, in front of plaintiff’s lot, in such manner as said State or such individual or corporate owner might think fit.

Furman vs. City of New York, Sands R., 42, 43, 44.

Commonwealth vs. Charlestown, 1 Pick., 182—184.

Callender vs. Marsh, 1 Pick., 430—433.

Charles River Bridge, vs. Warren Bridge, 7 Pick., 471—473.

Arnold vs. Mundy, 1 Halst., 67—87.

3 Kent Com., 427, 428.

Doe vs. Beebe, et al., 13 How. U. S., 25.

The State as a proprietor, prior to the passage of said water lot act, had as absolute an "ownership in fee simple" of the 100 varas square which defendants are improving, as the plaintiff or any former owner of his lots could have had of the lots claimed by him.

The *jus disponendi* in each case was a necessary attendant upon and incident to such ownership.

Thurston vs. Hancock, 12 *Mass.*, 229.

This question of the existence of riparian rights in a case precisely similar to the present has been adjudicated upon, and adversely to the existence of such rights, by the Supreme Court of California between parties respectively owning the lots immediately adjoining, on the south, those now in question.

See *Eldridge vs. Cowell*, 4 *Cal. R.*, 80.

The point was expressly made in that case, that "the riparian proprietor alone, with the assent of the legislature, has the exclusive right of extending embankments into the water, and he cannot be cut off from the water by any extraneous additions to his upland; that "this is a right of which the State cannot, either directly or indirectly, divest him, except by the constitutional exercise of the power to appropriate private property for public purposes, and any act of the State, short of such appropriation which attempts to transfer the right to another, without the consent of the riparian owner, is inoperative and void;" and that "the State cannot make, nor authorize to be made, any obstruction in navigable waters in front of any riparian proprietor which will prevent his having free access by water to his land, unless it be done in the exercise of its power to take private property for public use, and compensation therefor be made."

These objections were expressly overruled, and it was held that the State both had the power, and had exercised it, by the water lot act, of authorizing the filling in, or other improvement of all the land covered by tide water, situated between the "water front" of said city as established by said act of March 26th, 1851, and the ordinary high water mark.

The lot which is now being improved by the defendants is within these limits. It constitutes, as shown by plaintiff's bill, "the north-east corner formed by the extended lines of Filbert and Battery streets, being a lot of land 275 feet square," &c.

By reference to the first section of the San Francisco water lot act, it will be seen that said "water front," from the "northern

line of Vallejo street" to the "northern line of Greenwich street" is "the easterly line of Front street." This, both the act itself and the city map to which it refers, and which is, therefore, a part of it, show is the street of said city next east of Battery street, making said water front include the premises in question. But, if any doubt could exist on this point, it was incumbent on the plaintiff to show what was the precise truth.

We shall assume, therefore, that it sufficiently appears from the bill that the lot in question, which is being improved by defendants, is within said "water front." The question then recurs, are the defendants' acts in so improving it lawful?

If neither the Constitution, nor any law of the United States, prohibits these acts, then, as we have already seen, their lawfulness must be determined solely by State laws.

United States vs. New Bedford Bridge, 1 Wood and Min. R., 401.

The act of the Legislature of California, passed March 26th, 1851, entitled "An act to provide for the disposition of certain property of the State of California," (commonly called the "San Francisco water lot act,") has been expressly and repeatedly construed by the Supreme Court of California to authorize the precise acts which defendants were doing when stopped by injunction from the court below.

See Eldridge vs Cowell, 4 Cal. Rep., 80.

In the above case of *Eldridge vs. Cowell*, the court say: "In the plan of the city of San Francisco the survey into blocks, lots, and streets, extended into the tide waters in front of the city, the object of which was to reach a sufficient depth of water, on the land line, for the convenience of shipping. It was necessarily anticipated that the water lots would be filled up to a level suitable for building or land carriage. That this was perfectly legitimate, in the establishment of a seaport town, is so self-evident, that it needs no argument to prove it."

The same point was likewise made in that case that seems to be chiefly relied upon in the present, to wit: that such improvements were a public nuisance inasmuch as they would impede or destroy navigation in that part of the bay, and by possibility injure it elsewhere. But the Court dispose of this objection, very summarily by saying that even if this were true it is not a matter of which the plaintiff can complain, and that "if destruc-

tive to navigation or seriously affecting the public welfare," it would, at most, "subject the defendant to a prosecution by the people, certainly not to an action by the plaintiff."

See also Spooner vs. McConnell, 1 McLean, 358—360.

But we submit that no act which is expressly authorized by a law, can be a nuisance. A nuisance is necessarily an illegal obstruction. Nothing which the law authorizes to be done, can subject a party doing it to indictment or punishment as for a crime.

Parker vs. Cutler Milldam Co., 20 Maine R., 357.

United States vs. New Bedford Bridge, 1 Wood & Min., R., p. 401.

We submit, moreover, that every material consideration which the plaintiff urges in his bill of complaint as grounds for the interference of the court below, were matters properly belonging, and which should have been addressed, to the legislative department, and not to the judiciary.

As to what was "the natural and proper water front" of the city of San Francisco—whether "the space claimed by the defendants," and which the water lot act has converted to private ownership and authorized to be improved as defendants are improving it, "embraces a very important, necessary, and essential part of this harbor"—and whether "if said 275 feet square, or any considerable part thereof, be obstructed by defendants by the erection of their proposed wharf, it will essentially incommode the public in the use of the harbor," or "will so obstruct the tide, and change the current as to produce essential and material damage to the harbor of San Francisco," were all matters for the consideration of the legislative authority of the State, prior to their passage of said water lot act, matters proper to influence legislative discretion in deciding upon the passage of said act, but which it is too late, and not the province of courts to review, now that said act has become a law of the State. Something more than inexpediency is necessary, even if it were admitted, (which it is not,) to render a law void.

If, then, the water lot act is valid, and authorizes the improvements which defendants are making, those improvements can neither be unlawful nor a nuisance. Consequently all the averments in said plaintiff's bill alleging them to be such, are averments against express law, and against the

construction and interpretation thereof made by the supreme court of California.

We submit therefore, in conclusion, that the judgment of the court below, in sustaining the demurrer to plaintiff's bill, was clearly right for the following, among other reasons, to wit:

1st. Because said bill does not show that the injury (if any) which plaintiff will sustain by the completion of defendant's improvements cannot be compensated by damages, but, on the contrary, expressly shows that one hundred thousand dollars will be the amount of such damages.

2d. Because said bill does not set out said plaintiff's title to the lots, to which he claims riparian rights attach, nor show when nor how he acquired such title, nor how said lots are bounded; so that this Court is unable to see that said plaintiff's title is prior to, and independent of, said water lot act under which defendants likewise claim.

3d. That even if said plaintiff's title were prior, and his lots bounded by "the bay of San Francisco," no riparian rights would attach to his lots so as to enable him to arrest the defendants in the improvement of their lots, the title to, and right to improve which, they have acquired from the sovereign owner and sovereign authority of the State.

4th. It being shown by said plaintiff's bill that said defendants are in possession of the lots which they are improving, and "assert their right" so to improve them, it is necessary for the plaintiff to show affirmatively by his bill what their rights are, and thereby to make it apparent to the court that they have not the right which they claim, and are "asserting." This the bill does not show. It asserts that their acts are "wrongful and unlawful," but it does not show it by any averment of facts. The wrongfulness and unlawfulness must necessarily be a legal inference from facts, which facts are not set forth.

5th. But, as we have seen, defendant's lots being within the water front of the city of San Francisco, as fixed by the legislative act of March 26th, 1851, they were thereby expressly authorized by the sovereign power, to make the improvements which they are making, and no improvements

so authorized can be a public nuisance, nor, if said legislative act be constitutional and valid, can they be a legal injury which courts can restrain, or for which the law gives redress.

6th. The plaintiff's bill of complaint seems based upon the supposition that because the land which defendants are improving is covered by tide-water, and navigable for vessels of large size, that, therefore, there can be no lawful right or authority derived from the sovereignty of the State, or elsewhere, so to improve it. This, we think we have shown, is an entire mistake.

7th. No question under the Constitution of the United States nor under any law of Congress passed in pursuance thereof, arises, in this case, inasmuch as national and inter-State commerce is not injured, but rather promoted by the improvements which defendants are making, and Congress has passed no act relating to the water front of the city of San Francisco, nor in relation to the construction of wharves in front of said city.

MILTON S. LATHAM,
J. S. BLACK,
Of Counsel for Respondents.

EXHIBIT N

Trump business associate led double life as FBI informant — and more, he says



From left, Donald Trump, Bayrock Group founder Tevfik Arif and Felix Sater in New York in 2007. (Mark Von Holden / WireImage)

By [Joseph Tanfani](#) and [David S. Cloud](#)

MARCH 2, 2017, 3:55 PM | REPORTING FROM WASHINGTON

Working from a 24th-floor office in Manhattan's [Trump Tower](#), Felix Sater spent years trying to line up lucrative deals in the United States, Russia and elsewhere in Europe with Donald Trump's real estate organization.

For much of that time, according to court records and U.S. officials, Sater also worked as a confidential informant for the [FBI](#), and — he says — U.S. intelligence.

"I was building Trump Towers by day and hunting Bin Laden by night," Sater, now 50, told the [Los Angeles Times](#) in a phone interview from New York.

As managing director of Bayrock Group LLC, a real estate development firm, the Russian-born businessman met Trump in 2003, court records show, when Trump was looking to expand his business and branding

organization around the globe.

Although few projects were built, Sater worked on hotel and condominium deals with the Trump Organization through 2010 in New York, Florida, Arizona, London, Moscow and elsewhere even as he secretly helped the FBI infiltrate and take down organized crime figures, according to court records.

Trump has denied they were close, but Sater had access to Trump's inner circle as recently as this year.

In January, Sater and Trump's personal attorney, Michael Cohen, met in a New York hotel with a Ukrainian lawmaker who asked them to bring the White House a pro-Russian peace deal for Ukraine.

"I was only trying to stop a war," Sater said of his role linking the lawmaker, Andrei Artemenko, with Cohen.

The New York Times, which first [reported](#) the meeting, quoted Cohen as saying he gave the envelope containing the proposal to [Michael Flynn](#), then Trump's national security advisor, but Cohen now denies delivering it.

"I acknowledge that the brief meeting took place, but emphatically deny discussing this topic or delivering any documents to the White House and/or General Flynn," Cohen wrote in an email to the Los Angeles Times.

The White House has "no record" of receiving the Ukraine peace proposal, according to spokesman Michael Short. He also said that "no one in the White House" had discussed the matter with Cohen.

There is no question that Sater led a double life during the years he worked with the Trump Organization.

In 1998, Sater pleaded guilty to a federal charge of racketeering for his role in a Mafia-linked \$40-million stock fraud scheme. He quickly cut a deal, agreeing to become a secret FBI informant in hopes of getting a lenient sentence.

Court records were sealed to protect Sater's identity, so his role in the fraud case stayed secret for a decade while he was at Bayrock. After a court hearing in 2009, he was fined \$25,000 but was not sent to prison or ordered to pay restitution.

At his sentencing hearing, several FBI officials vouched for Sater's help. He got his biggest endorsement in January 2015 when [Loretta Lynch](#) was asked at her Senate confirmation hearing for U.S. attorney general why court records had been sealed in the fraud case.

Sater had secretly worked with federal prosecutors and the FBI for more than 10 years, "providing information crucial to national security and the conviction of over 20 individuals, including those responsible for committing massive financial fraud and members of La Cosa Nostra" — the Mafia —

according to Lynch, who had served as U.S. attorney in the Eastern District in New York.

Sater's lawyer, Robert W. Wolf, gives his client more credit, saying he worked with "numerous U.S. national security, intelligence and law enforcement agencies." Sater says he helped hunt "America's greatest enemies" in Afghanistan and elsewhere.

There is no independent verification of those assertions.

Former CIA officials who worked in counter-terrorism and Russian affairs said they never heard of Sater and doubt his cloak-and-dagger claims of chasing down terrorists.

"We should not take this guy's statements at face value," said Glenn Carle, a former CIA operations officer who retired in 2007. "There are all sorts of people who seek protection by wrapping themselves in the American and CIA flags."

A spokesman for the CIA declined to comment.

Sater's business history with Trump is well documented, however.

In their first deal, in November 2003, the Trump Organization and Bayrock announced plans to build a 19-story condominium tower and hotel complex in Phoenix.

Residents who objected that the project was too large forced a citywide referendum to block construction, however. Trump pulled out in 2005, and the project was never built.

The following year, Bayrock licensed Trump's name and began construction of a 24-story hotel and condominium complex in Fort Lauderdale, Fla.

The project ran out of money and was hit by lawsuits and claims of fraud by buyers. Trump was dropped from the lawsuits after asserting he was not the developer and was not responsible for the problems.

The Trump Organization and Bayrock developed the Trump Soho hotel in Lower Manhattan starting in 2006. Sater appeared with Trump at a launch party in September 2007.

Sater left Bayrock the following year after news stories first revealed his criminal record. He continued to work with the Trump Organization — he had business cards that called him a "special advisor" and kept his offices in Trump Tower — trying to put together real estate deals through 2010.

Sater said he had signed several development deals with Trump's company, including one for a Trump Tower in Moscow, but none were built.

“We were looking to do deals in various capitals, in London, Paris — we had no special affinity for Moscow,” Sater said in the interview.

Sater says he was still pitching deals to the Trump Organization in 2015. A lawyer for the Trump company did not return requests for comment.

In a sworn deposition in 2013 in a civil suit, Trump said he barely knew Sater.

“If he were sitting in the room right now, I really wouldn’t know what he looked like,” Trump said.

Short, the White House spokesman, declined to comment on Sater’s role as an FBI informant or on Trump’s relationship with him.

Born in Russia, Sater grew up in Brighton Beach, a gritty Brooklyn neighborhood known for its large Russian community, after his father emigrated from the Soviet Union in 1972.

Sater became a licensed stock broker, but he stabbed a man with a broken margarita glass during a bar fight in 1991. He was convicted of felony assault and served about a year in prison.

During his years as an informant, Sater sometimes confided in his rabbi — who thought he was making up his exploits.

“I thought perhaps he had watched too many James Bond movies and read one too many Tom Clancy novels,” Rabbi Shalom M. Paltiel said in a 2014 speech naming Sater “man of the year” for his service to his Chabad congregation on Long Island.

Paltiel said Sater then invited him to a secret thank-you ceremony at a federal building in New York.

“To my amazement I see dozens of U.S. intelligence officers, from all the various three-letter intelligence agencies of this country, including some I had never even known existed,” Paltiel said in a video posted by Sater. Their accounts were “more fantastic and more unbelievable than anything he’d been telling me.”

Several lawsuits paint a less flattering portrait of Sater, however.

In one, Ernest Mennes, an investor in the Phoenix project, sued Sater and Bayrock in Arizona Superior Court in 2007, alleging that they had skimmed an unspecified amount of money and that Sater had threatened to kill Mennes if he disclosed Sater’s criminal record.

Sater angrily denied the allegation. “You think I’m doing Trump Towers [deals] and telling someone I would ... cut their legs off? Are you crazy?” he said in the interview

Bayrock settled the case for an undisclosed amount. In an interview, Mennes praised Sater, saying he “served the U.S. well” and was “a great partner.”

joseph.tanfani@latimes.com

Twitter: [@jtanfani](https://twitter.com/jtanfani)

ALSO

[Jared Kushner met with Russian ambassador during transition, White House official says](#)

[What you need to know about Jeff Sessions and why he's under fire over contacts with Russia](#)

[Sessions goes from 'I did not have communications with the Russians' to recusing himself from investigation](#)

Copyright © 2017, Los Angeles Times

This article is related to: [Russia](#), [Europe](#), [Donald Trump](#), [FBI](#), [Loretta Lynch](#), [Michael Flynn](#), [Tom Clancy](#)

EXHIBIT O

POLITICS

For Trump, Three Decades of Chasing Deals in Russia

By MEGAN TWOHEY and STEVE EDER JAN. 16, 2017

It was 2005, and Felix Sater, a Russian immigrant, was back in Moscow pursuing an ambitious plan to build a Trump tower on the site of an old pencil factory along the Moscow River that would offer hotel rooms, condominiums and commercial office space.

Letters of intent had been signed and square footage was being analyzed. “There was an opportunity to explore building Trump towers internationally,” said Mr. Sater, who worked for a New York-based development company that was a partner with Donald J. Trump on a variety of deals during that decade. “And Russia was one of those countries.”

The president-elect’s favorable comments about President Vladimir V. Putin of Russia and the conclusion of United States intelligence officials that Moscow acted to help Mr. Trump’s campaign have focused attention on Mr. Trump’s business interests in Russia. Asked about the issue at his news conference last week, Mr. Trump was emphatic on one point: “I have no dealings with Russia.” And he repeated, “I have no deals that could happen in Russia because we’ve stayed away.”

The project on the old pencil factory site ultimately fizzled. And by the time Mr. Trump entered the presidential race, he had failed to get any real estate development off the ground in Russia. But it was not for lack of trying.

Mr. Trump repeatedly sought business in Russia as far back as 1987, when he

traveled there to explore building a hotel. He applied for his trademark in the country as early as 1996. And his children and associates have appeared in Moscow over and over in search of joint ventures, meeting with developers and government officials.

During a trip in 2006, Mr. Sater and two of Mr. Trump's children, Donald Jr. and Ivanka, stayed at the historic Hotel National Moscow opposite the Kremlin, connecting with potential partners over the course of several days.

As recently as 2013, Mr. Trump himself was in Moscow. He had sold Russian real estate developers the right to host his Miss Universe pageant that year, and he used the visit as a chance to discuss development deals, writing on Twitter at the time: "TRUMP TOWER-MOSCOW is next."

As the Russian market opened up in the post-Soviet era, Mr. Trump and his partners pursued Russians who were newly flush with cash to buy apartments in Trump Towers in New York and Florida, sales that he boasted about in a 2014 interview. "I know the Russians better than anybody," Mr. Trump told Michael D'Antonio, a Trump biographer who shared unpublished interview transcripts with The New York Times.

Seeking deals in Russia became part of a broader strategy to expand the Trump brand worldwide. By the mid-2000s, Mr. Trump was transitioning to mostly licensing his name to hotel, condominium and commercial towers rather than building or investing in real estate himself. He discovered that his name was especially attractive in developing countries where the rising rich aspired to the type of ritzy glamour he personified.

While he nailed down ventures in the Philippines, India and elsewhere, closing deals in Russia proved challenging. In 2008, Donald Trump Jr. praised the opportunities in Russia, but also called it a "scary place" to do business because of corruption and legal complications.

Mr. Sater said that American hotel chains that had moved into Russia did so with straightforward agreements to manage hotels that other partners owned. Mr. Trump, by contrast, was pursuing developments that included residential or commercial offerings in which he would take a cut of sales, terms that Russians

were reluctant to embrace.

Even so, Mr. Trump said his efforts put him in contact with powerful people there. "I called it my weekend in Moscow," Mr. Trump said of his 2013 trip to Moscow during a September 2015 interview on "The Hugh Hewitt Show." He added: "I was with the top-level people, both oligarchs and generals, and top of the government people. I can't go further than that, but I will tell you that I met the top people, and the relationship was extraordinary."

When asked about Mr. Trump's claim that he had "stayed away" from Russia, Alan Garten, general counsel for the Trump Organization, said it was a fair characterization given that none of the development opportunities ever materialized. Mr. Trump's interest in Russia, he said, was no different from his attraction to other emerging markets in which he investigated possible ventures. Mr. Garten did not respond to questions about whom Mr. Trump met with in Moscow in 2013 and what was discussed.

Stalking Deals

Ted Liebman, an architect based in New York, got the call in 1996. Mr. Trump and Liggett-Ducat, an American tobacco company that owned property in Moscow, wanted to build a high-end residential development near an old Russian Olympic stadium. As they prepared to meet with officials in Moscow, they needed sketches of the Trump tower they envisioned.

The architect scrambled to meet the request, handing over plans to Mr. Trump at his Manhattan office. "I hope we can do this," Mr. Liebman recalled Mr. Trump telling him.

Soon after, Mr. Trump was in Russia, promoting the proposal and singing the praises of the Russian market.

"I've seen cities all over the world. Some I've liked, some I haven't," Mr. Trump said at a news conference in Moscow in 1996, according to The Moscow Times. But he added that he didn't think he had ever been "as impressed with the potential of a city as I have been with Moscow."

Mr. Trump had been eyeing the potential for nearly a decade, expressing interest to government officials ranging from the Soviet leader Mikhail S. Gorbachev (they first met in Washington in 1987) to the military figure Alexander Lebed.

The 1996 project never materialized, but by then Mr. Trump was already well known in Russia. Moscow was in the midst of a construction boom, which transformed the capital from a drab, post-Soviet expanse into a sparkly modern city.

Yuri M. Luzhkov, Moscow's mayor at the time, said in an interview that he had met with Mr. Trump and showed him plans for a massive underground shopping mall just outside the Kremlin gates. Mr. Trump suggested connecting it to the Metro, "a very important observation," Mr. Luzhkov said. Today, visitors to the Okhotny Ryad shopping center can go straight from the Metro to the Calvin Klein store without venturing into the cold.

In the following years, Mr. Trump's pursuit of Russia was strengthened by a growing circle of partners and associates in Canada and the United States who had roots in the region. Among them were Tevfik Arif, a former Soviet-era commerce official originally from Kazakhstan who founded a development company called the Bayrock Group, and Mr. Sater, a partner in the firm, who had moved to New York from Russia as a child.

Bayrock was in Trump Tower, two floors below the Trump Organization. While working to take Trump-branded towers to Arizona, Florida and New York's SoHo neighborhood, Bayrock also began scouting for deals in Russia and other countries.

"We looked at some very, very large properties in Russia," Mr. Sater said. "Think of a large Vegas high-rise."

When Mr. Sater traveled to Moscow with Ivanka and Donald Trump Jr. to meet with developers in 2006, he said their attitude could be summarized as "nice, big city, great. Let's do a deal here."

Mr. Trump continued to work with Mr. Sater even after his role in a huge stock

manipulation scheme involving Mafia figures and Russian criminals was revealed; Mr. Sater pleaded guilty and served as a government informant.

In 2007, Mr. Trump discussed a deal for a Trump International Hotel and Tower in Moscow that Bayrock had lined up with Russian investors.

“It would be a nonexclusive deal, so it would not have precluded me from doing other deals in Moscow, which was very important to me,” Mr. Trump said in a deposition in an unsuccessful libel suit he brought against Tim O’Brien, a journalist.

He claimed the development had fallen apart after Mr. O’Brien wrote a book saying that Mr. Trump was worth far less than he claimed. But Mr. Trump said he was close to striking another real estate deal in Moscow.

“We’re going to do one fairly soon,” he said. Moscow, he insisted “will be one of the cities where we will be.”

Making a Mark

The Trump brand did appear in Russia, but not quite as the grand edifice the real estate mogul had envisioned.

Trump Super Premium Vodka, with the shine of bottles glazed with 24-karat gold, was presented at the Millionaire’s Fair in Moscow in 2007, and large orders for the spirits followed. The vodka was sold in Russia as late as 2009, but eventually fizzled out. In a news release, Mr. Trump heralded it as a “tremendous achievement.”

He tried — and failed — to start a reality show in St. Petersburg in 2008 starring a Russian mixed martial arts fighter.

But real estate developments remained a constant goal. From 2006 to 2008, his company applied for several trademarks in Russia, including Trump, Trump Tower, Trump International Hotel and Tower, and Trump Home, according to a record search by Sojuzpatent, a Russian intellectual property firm.

Donald Trump Jr. became a regular presence in Russia. Speaking at a 2008

Manhattan real estate conference, he confessed to fears of doing business in Russia, saying there is “an issue of ‘Will I ever see my money back out of that deal or can I actually trust the person I am doing the deal with?’” according to coverage of his remarks in eTurboNews.

But he told the Manhattan audience that “I really prefer Moscow over all cities in the world” and that he had visited Russia a half-dozen times in 18 months.

In 2011, he was still at it. “Heading to the airport to go to Moscow for business,” he tweeted that year.

Mr. Trump himself was back in Moscow in 2013, attending the Miss Universe pageant, which he owned with NBC.

Earlier that year, at the Miss USA pageant in Las Vegas, he had announced that Aras and Emin Agalarov, father and son real estate developers in Russia, would host the worldwide competition.

Erin Brady, that year’s Miss USA winner, who watched the announcement from backstage of the auditorium at Planet Hollywood Resort and Casino, said the news was a surprise. She was expecting one of the Latin American countries where beauty pageants are widely celebrated.

“I was like, ‘Wow, Russia, I never thought of that,’” she said.

Phil Ruffin, Mr. Trump’s partner in the Trump International Hotel and Tower in Las Vegas, said he was happy to lend him his new Global 5000 private plane for the trip. He and his wife met Mr. Trump in Moscow, also checking into the Ritz-Carlton. Mr. Ruffin said he and Mr. Trump had lunch at the hotel with the Agalarovs.

The Agalarovs also reportedly hosted a dinner for Mr. Trump the night of the pageant, along with Herman Gref, a former Russian economy minister who serves as chief executive of the state-controlled Sberbank PJSC, according to Bloomberg News.

Talk of development deals swirled around the visit, and Mr. Trump sent out his tweet, promising that Trump Tower Moscow was coming.

But the tower never appeared on the skyline.

Jo Becker, Michael Schwartz and Maria Goncharova contributed reporting. Kitty Bennett contributed research.

A version of this article appears in print on January 17, 2017, on Page A1 of the New York edition with the headline: A Brand's Long Flirtation With Russia.

EXHIBIT P

The Many Times Donald Trump Has Lied About His Mob Connections

He apparently lied under oath to deny he associated with organized crime figures.

DAVID CORN SEP. 23, 2016 6:00 AM



Jonathan Ernst/Reuters via ZUMA Press

Last week, media coverage of Donald Trump may have hit an inflection point, when major news outlets, while covering Trump's latest birther shenanigans, characterized the GOP presidential nominee's remarks as a [lie](#) (<http://www.nytimes.com/2016/09/17/us/politics/donald-trump-obama-birther.html>). Though Trump has [scored more pants-on-fire](#) (<http://www.politifact.com/truth-o-meter/lists/people/comparing->

[hillary-clinton-donald-trump-truth-o-met/](#) false statements than any other candidate in this campaign, mainstream news outlets have struggled over whether and how to use the L-word when reporting on him. With this birther-driven breakthrough in coverage, there now remain plenty of brazenly untrue assertions—deliberate lies or not—uttered by Trump that warrant close examination. One topic ripe for such scrutiny is Trump's associations with organized crime. For years during his business career, Trump worked or associated with proven or alleged mobsters. (Trump's longtime lawyer (https://www.washingtonpost.com/investigations/former-mccarthy-aide-showed-trump-how-to-exploit-power-and-draw-attention/2016/06/16/e0f44f20-2bf3-11e6-0b37-42085f6a265c_story.html), the thuggish and deceased Roy Cohn, repped numerous Mafia bosses, some of whom were connected to Trump projects.) Yet when asked about his links to the mob, Trump has repeatedly made false comments and has contradicted himself—to such a degree it seems he has flat-out lied about these relationships, even when he was under oath.

If elected president, Trump would be in charge of federal law enforcement. So his attitude toward the mob could well be deemed a highly significant campaign issue—as could his long record of not telling the truth about his ties to organized crime. Here are some of the strongest examples of when Trump has spoken falsely on this matter.

The time Trump falsely denied in a deposition that he associated with any mob associates: In 2005, journalist Timothy O'Brien published a book on Trump, *TrumpNation: The Art of Being the Donald*, in which he referenced an already established fact: that in the early 1980s Trump began his casino empire in Atlantic City, New Jersey, by leasing property owned by Kenneth Shapiro and Daniel Sullivan. Shapiro, O'Brien wrote, was a "street-level gangster with close ties to the Philadelphia mob," and Sullivan was a "Mafia associate, FBI informant and labor negotiator." (Trump also had obtained Sullivan's assistance (https://www.washingtonpost.com/investigations/trumps-ties-to-an-informant-and-fbi-agent-reveal-his-modes-of-operation/2016/09/16/6e65522e-6f0f-11e6-0705-23e51a2f424d_story.html) when he had trouble with undocumented Polish workers who were demolishing the Bonwit Teller building in Manhattan to make way for Trump Tower.)

After the book came out, Trump sued (<http://www.nationalreview.com/article/431575/donald-trump-tim-obrien-courtroom-story>) O'Brien for libel and requested \$5 billion in damages—not for O'Brien's reporting on Trump's connection to these mob-linked guys, but for the reporter's assertion that the self-proclaimed billionaire was actually only worth between \$150 million and \$250 million. In 2007—two years before a New Jersey judge tossed out the case—Trump was questioned during a deposition (<https://assets.documentcloud.org/documents/2420267/trumps-lawsuit-on-net-worth.pdf>). Over the course of the two-day-long interrogation, Trump was forced repeatedly to acknowledge (<https://www.washingtonpost.com/graphics/politics/2016-election/trump-lies/>) having made false statements. And at one point, a lawyer for O'Brien and his publisher asked Trump a straightforward question: "Have you ever before associated with individuals you knew were associated with organized crime?"

Trump, who was testifying under oath, answered, "Not that I know of."

That was a clear and unequivocal response. But it was not true. Two years earlier, O'Brien had interviewed Trump and specifically asked him about Sullivan and Shapiro. O'Brien, now an editor and writer at Bloomberg, has provided *Mother Jones* with a transcript of the interview, and it conclusively shows that Trump believed that these two men were associated with organized crime:

Trump: They were tough guys. In fact, they say that Dan Sullivan was the guy that killed Jimmy Hoffa. I don't know if you ever heard that.

O'Brien: I have heard that. And that he was, you know...

Trump: A lot of people say

O'Brien: What I heard about both of them, and that anybody who wanted to get anything done down there [in Atlantic City], that if you wanted to deal with labor you had to deal with Sullivan, if you wanted to deal with politics you had to deal with Shapiro.

Trump: That was only in their imagination.

O'Brien: So that wasn't true?

Trump: Yeah, it was really bullshit. But, but they were tough guys. And not good guys.

O'Brien: How do you handle people like that?

Trump: I just was able to handle them. And I, really, I was able to handle them. I found Sullivan to be the tougher of the two. I started hearing reports about Sullivan, that he killed Jimmy Hoffa....

O'Brien: Weren't you worried about (1) getting screwed over (2) would you be able to hold on to the whole thing yourself (3) any kind of reputational risk given that they were tough guys?

Trump: I wasn't worried because I felt I could handle it, but I felt I'd get a partner. But getting a partner wasn't easy. And reputational, I didn't want to have anything to do with those guys because I had heard bad, I had heard good

and bad. Sullivan was like a con man and he would convince you that he's virtually working for the FBI. You know, he'd always, and ultimately he was sent to jail on income tax evasion and it was the FBI that testified against him.

O'Brien: What was Shapiro like?

Trump: He was like a third-rate, local, real estate mob guy. Nothing spectacular. And I, you know, I got lucky. I heard a rumor that Sullivan, because Sullivan was a great con man, I heard a rumor that Sullivan killed Jimmy Hoffa. And because I heard that rumor I kept my guard up. You know, I said, "Hey, I don't want to be friends with this guy."

So here was Trump connecting Sullivan to the Hoffa murder and calling Shapiro a "mob guy." And though Trump told O'Brien that he didn't want to be friends with Sullivan, he did explore (https://www.washingtonpost.com/investigations/trumps-ties-to-an-informant-and-fbi-agent-reveal-his-modes-of-operation/2016/09/16/6e65522e-6f9f-11e6-9705-23e51a2f424d_story.html) investing in a drywall company with Sullivan. (Trump backed out of the deal so that he wouldn't complicate his application for a casino license (<https://www.scribd.com/doc/301761265/Report-on-Donald-Trump-to-Casino-Control-Commission>) in New Jersey.) After New Jersey regulators in 1982 granted Trump that casino license, they compelled the real estate mogul to buy the property that he had leased from Shapiro and Sullivan because of their backgrounds. Shapiro later told a federal grand jury that he had illegally funneled (<http://www.wsi.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736922>) thousands of dollars to the Atlantic City mayor on Trump's behalf—a charge Trump denied.

Trump was well aware that Sullivan and Shapiro were mobbed up, yet in the 2007 deposition he stated he had never associated with persons with such ties. He appears to have lied under oath in this instance.

The Trump campaign did not respond to a request for comment regarding Trump's 2007 deposition statements and other remarks he has made over the years related to his interactions with mob associates.

The time Trump told Tim Russert he had nothing to do with organized crime figures: In the fall of 1999, Donald Trump renounced his Republican Party membership and declared he was considering running for president (<http://talkingpointsmemo.com/cafe/trump-reform-party-president-2000>) the following year on the Reform Party ticket. His exploratory bid would last only a few months. But during that stretch, he appeared on *Meet the Press*, and moderator Tim Russert asked Trump about his ties to organized crime. Trump cut him off to insist he had no such connections (despite his previous dealings with Sullivan, Shapiro, and others linked to the mob). Here's the exchange:

Russert: Another book written suggested that because you are in the construction business, because you're in the casino business, you've had relations with members of organized crime.

Trump: False. I mean—you know, the funny thing about the casino business, in particular in Atlantic City, as an example, you have to go through a very brilliant casino control system. Every check you write, every deal you make, even outside of Atlantic City. I'm talking if I build a building in New York I send in papers as to who's building it, who's the concrete people, etc., etc. Everything I do is under scrutiny. And one of the things different, I think, about me is that my life has been, Tim, a very, very open book. More so than virtually any politician that you interview on Sundays.

Russert pressed on:

Russert: But you've never had to meet with, to do business with any organized figure in order to build buildings or do...

Trump: I never have had to, and, to be honest with you, being a celebrity at a very high level is a good thing. Because they sort of—and they're—I'm not saying the mob doesn't exist. But they want to keep it low. They want to really keep it low. The last thing they want to do is meet with Donald Trump and have 500 paparazzi taking pictures. The answer is no. And I think, in that way—and I must tell you, I think, in that way, celebrity has been a positive for me.

Trump neglected to mention that he got his start in Atlantic City via a business deal with Shapiro and Sullivan. Nor did he refer to working with a cement company owned by Mafia chieftains and with a mob-linked union official when he was building Trump Tower. But eight months earlier, when he was not making moves to run for president, Trump did clearly state that he had in the past done business with organized crime figures. Talking to the Associated Press about his Miss USA pageant, Trump remarked, "Usually, I build buildings. I have to deal with the unions, the mob, some of the roughest men you've ever seen in your life. I come here and see these incredible beauties. It's a lot of fun."

So while discussing his hot-shot life, Trump practically boasted that as a builder he had to handle organized crime tough guys. As a possible presidential candidate, he claimed he had nothing to do with the mob. Only one of these statements can be true.

The time Trump said he couldn't recall a mobbed-up criminal who worked for his company: Last December, Trump was asked by a reporter about a man named

Felix Sater who had once been involved in a Mafia-linked stock swindle. "Felix Sater, boy, I have to even think about it," Trump answered

(<http://www.chicagotribune.com/news/nationworld/politics/ct-trump-felix-sater-felon-adviser-20151204-story.html>). "I'm not that familiar with him." Not that familiar? Sater had worked with the Trump Organization, and Trump had been questioned about Sater in at least three depositions, including the 2007 deposition in Trump's failed lawsuit against Timothy O'Brien.

Sater had not been mentioned in O'Brien's book. But two days before the deposition, the *New York Times* revealed

(<http://www.nytimes.com/2007/12/17/nyregion/17trump.html>) that Sater was doing business with Trump. The newspaper noted that Sater was something of a mysterious figure with a criminal past, and it reported:

A federal complaint brought against him in a 1998 money laundering and stock manipulation case was filed in secret and remains under seal. A subsequent indictment in March 2000 stemming from the same investigation described Mr. Sater as an "unindicted co-conspirator" and a key figure in a \$40 million scheme involving 19 stockbrokers and organized crime figures from four Mafia families.

Sater, according to the *Times*, also "became embroiled in a plan to buy anti-aircraft missiles on the black market for the Central Intelligence Agency in either Russia or Afghanistan, depending on which of his former associates is telling the story." The newspaper reported that he was now working for the Bayrock Group, "a partner in the Trump SoHo, a sleek, 46-story glass tower condominium hotel under construction on a newly fashionable section of Spring Street."

It was certainly a story to receive much notice in New York: an arms-dealing, Mafia-connected man of international mystery in cahoots with the city's most famous developer. Naturally, O'Brien's lawyer asked Trump about him, and Trump said (<https://assets.documentcloud.org/documents/2430267/trumps-lawsuit-on-net-worth.pdf>) he had only had "limited" interactions with Sater. "Have you severed your ties with the Bayrock Group as a result of this?" Trump was asked. He replied, "Well, I'm looking into it, because I wasn't happy with the story." He added, "people that were trying to find things out about [Sater] have been unable to."

Trump did not sever ties with Sater and the Bayrock Group. In fact, the following year Trump's lawyers asked Sater to testify in Trump's lawsuit against O'Brien. And two years after that, Sater officially joined the Trump Organization

(https://www.washingtonpost.com/politics/former-mafia-linked-figure-describes-association-with-trump/2016/05/17/cec6c2c6-16d3-11e6-aa55-670cabef46e0_story.html) as a "senior advisor" (<http://abcnews.go.com/Politics/memorv-lapse-trump-seeks-distance-advisor-past-ties/story?id=34600826>): he was provided Trump Organization business cards and office space. Last year, a Trump lawyer said (

[felon-adviser-20151204-story.html](#)) Sater had searched for high-end real estate deals for Trump's company. Sater, who was born in the Soviet Union and later was a US government informant on organized crime and national security cases, has claimed (<http://www.nytimes.com/2007/12/17/nyregion/17trump.html>) that he met regularly with Trump and discussed deals in Los Angeles, Ukraine, and China and that in 2006 he escorted Donald Trump Jr. and Ivanka Trump when the two Trump children visited Moscow.

Trump was asked about Sater in depositions related to other cases in 2011 and 2013. In the first, Trump acknowledged that he used to speak to Sater "for a period of time." Yet in the second, he said, "if he were sitting in the room right now, I really wouldn't know what he looked like." Last year ABC News reported (<http://abcnews.go.com/Politics/memory-lapse-trump-seeks-distance-advisor-past-ties/story?id=24600826>), "Trump and Sater can be seen together in photographs attending a Denver business conference in 2005, and the two men posed on stage together at the 2007 launch party for the Trump SoHo Hotel and Condominium project."

Sater, who served prison time in the United States for a 1991 first-degree assault (<http://abcnews.go.com/Politics/memory-lapse-trump-seeks-distance-advisor-past-ties/story?id=24600826>) in which he stabbed a man in the face with a broken glass, was at first a PR headache for Trump but then became a senior adviser within Trump's company. And Trump has had to answer questions about him in several serious legal proceedings. So how could he have said he was not familiar with him?

The time Trump denied knowing a mobster who threatened to castrate him: In 1991, the *Philadelphia Inquirer* asked Trump about Robert LiButti, a famous horse breeder and high-stakes gambler with ties to infamous Mafia boss John Gotti. At the time, New Jersey regulators were investigating allegations that the the Trump Plaza casino had repeatedly removed women and African Americans from craps tables after LiButti griped about their presence while playing. "I have heard he is a high roller, but if he was standing here in front of me, I wouldn't know what he looked like," Trump told (<https://www.yahoo.com/news/trump-challenged-over-ties-to-mob-linked-gambler-100050602.html>) the newspaper. And when *Yahoo News* in March asked Trump about this 1991 inquiry that resulted in a \$200,000 fine, Trump responded, "During the years I very successfully ran the casino business, I knew many high rollers. I assume Mr. LiButti was one of them, but I don't recognize the name."

There's reason to believe Trump was fibbing in both instances. As *Yahoo News* reported:

Edith Creamer, LiButti's daughter, told Yahoo News in two recent telephone interviews that Trump's account was false and that Trump and her father knew each other quite well. "He's a liar," said Creamer. "Of course he knew him. I flew in the [Trump] helicopter with [Trump's then-wife] Ivana and the kids. My dad flew it up and down [to Atlantic City]. My 35th birthday party was at the Plaza and Donald was there. After the party, we went on his boat, his big

yacht. I like Trump, but it pisses me off that he denies knowing my father.

That hurts me.

The *Yahoo News* story by Michael Isikoff pointed out that a 1991 book written by John O'Donnell, the former president of the Trump Plaza casino, described a 1988 meeting between Trump and LiButti aboard Trump's private helicopter. During this flight, according to O'Donnell, Trump discussed buying a racehorse for \$500,000 from LiButti. Isikoff also obtained the full transcript of a wiretapped meeting in 1990 between LiButti and a top Trump executive in which LiButti made numerous references to his conversations with Trump and recounted an occasion when Trump personally handed him a check after he lost \$350,000 at the craps table. (It was a supposedly a gift to keep LiButti happy so he would continue gambling at the Trump Plaza—and Trump has denied this occurred.) Speaking about Trump's romantic life, then much in the news, LiButti said, "He's lost that aggressiveness... Walks around like a f***ing banana. I can't believe it's Donald Trump. I don't understand it."

And there's more. A new book by journalist David Cay Johnston reports

(<http://www.nvdailynews.com/news/politics/donald-trump-attempt-court-mobster-daughter-didn-article-12732403>) that Trump took a fancy to LiButti's daughter and that when the mob-connected gambler learned about this he confronted the casino mogul and said, "Donald, I'll fucking pull your balls from your legs."

Trump, according to Johnston, "lavished gifts on [Robert] LiButti, was generous with his time, and, less graciously, repeatedly tried to seduce the gambler's grown daughter." And for Edith LiButti's 35th birthday, the book says, Trump offered her a rather generous present: a cream-colored Mercedes-Benz convertible. Trump's casino, Johnston adds, was hit with a \$450,000 fine for giving LiButti as gifts nine ultraluxury cars—three Ferraris, three Rolls-Royces, two Bentleys, and a Mercedes —that were quickly converted into cash (<http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736022>).

Would a casino owner and playboy really not recognize a high-stakes player who lost over \$11 million (<http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736022>) at his tables, who received exorbitant gifts as comps, and who once threatened him with castration? That's not a safe bet. Consider this: In March, Trump insisted to *Yahoo News* that he didn't know LiButti. A few weeks ago, he told (<http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736022>) the *Wall Street Journal*: "LiButti was a high-roller in Atlantic City. I found him to be a nice guy. But I had nothing to do with him." In one instance, he claimed he didn't know the man; in the other, he said he considered him a fine fellow. Once again, both remarks cannot be true.

*

*

*

"If people were like me, there would be no mob, because I don't play that game."

That's what Trump told (<http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people->

[who-had-mob-ties-1472736022](#)) the *Wall Street Journal* recently, when the newspaper was examining his mob links. But that story noted that Trump in the late 1970s and early 1980s [forged an important relationship](http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736022) (<http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736022>) with John Cody, a local union leader who controlled cement truck drivers and who was close to Mafia bosses Carlo Gambino and Paul Castellano. Cody's son Michael told the *Journal* that Trump received preferential treatment from his father and obtained cement for Trump Tower even when Cody called a strike. (In a 1992 book, reporter Wayne Barrett noted that a female friend of John Cody, who had no visible means of support, ended up owning three apartments in Trump Tower. Cody occasionally stayed at these apartments and invested \$500,000 in the units.) And Johnston recently [pointed out](http://www.politico.com/magazine/story/2016/05/donald-trump-2016-mob-organized-crime-213010) (<http://www.politico.com/magazine/story/2016/05/donald-trump-2016-mob-organized-crime-213010>) in *Politico* that when Trump was building Trump Tower, he used concrete (which he bought at inflated prices) from a firm owned through fronts by Castellano and another Mafia chieftain named Anthony "Fat Tony" Salerno. (Castellano and Salerno each were [clients](http://www.politico.com/magazine/story/2016/05/donald-trump-2016-mob-organized-crime-213010) (<http://www.politico.com/magazine/story/2016/05/donald-trump-2016-mob-organized-crime-213010>) of Roy Cohn when he was working for Trump.)

Trump told the *Journal* that he is "the cleanest guy there is." But that was just another lie. How clean is it to lie under oath about interacting with mob-linked thugs? No other presidential candidate has had such an extensive and publicly known record of business deals with mob associates—and of making false and contradictory statements to keep these dirty connections from becoming a major campaign controversy.

GET THE SCOOP, STRAIGHT FROM MOTHER JONES.

ENTER YOUR EMAIL

Submit

 Share on Facebook

 Share on Twitter (<http://twitter.com/home?>



DAVID CORN ([/AUTHORS/DAVID-CORN](#))

David Corn is *Mother Jones'* Washington bureau chief. For more of his stories, [click here](#) (<http://www.motherjones.com/authors/david-corn>). He's also on [Twitter](#) (<http://www.twitter.com/davidcorn>) and [Facebook](#) (<http://www.facebook.com/davidcorn>).

Mother Jones is a nonprofit, and stories like this are made possible by readers like you. [Donate](#) (https://secure.motherjones.com/fnp/?action=SUBSCRIPTION&list_source=7HEGP004&extra_on=1&abver=A) or [subscribe](#) (https://secure.motherjones.com/fnx/?action=SUBSCRIPTION&pub_code=MJM&term_pub=MJM&list_source=SEGYN4&base_country=US) to help fund independent journalism.

RELATED

[\(ht](#)
[fr](#)
[//t](#)
[wi](#)
[tte](#)
[.c](#)
[da](#)
[vi](#)
[dc](#)
[or](#)
[nd](#)
[c\)](#)



(/politics/2015/07/donald-trump-azerbaijan-anar-mammadov)
[Donald Trump Is Doing Business With a Controversial Azerbaijani Oligarch](#)
(/politics/2015/07/donald-trump-azerbaijan-anar-mammadov)

[RUSS CHOMA](#) (/AUTHORS/RUSS-CHOMA)



(/politics/2016/08/trump-conflict-of-interest-old-post-office-hotel)
[Donald Trump Has a Huge Conflict of Interest That No One's Talking About](#)
(/politics/2016/08/trump-conflict-of-interest-old-post-office-hotel)

[RUSS CHOMA](#) (/AUTHORS/RUSS-CHOMA)

[+ VIEW COMMENTS](#)

Cheap Flights

\$418 just for today

Compare & Save up to 75% with Jetcost! Go to Select from 750+ airlines



Flights from Charlotte to New York

\$153

Hotels in Phoenix

\$189 ~~\$300~~

Got the travel bug? Hotwire can help. Go to Book on Hotwire

EXHIBIT Q

The Donald and the Snitch

Posted by [Bill Conroy \(/users/bill-conroy/\)](/users/bill-conroy/) - September 27, 2016 at 9:52 pm

Donald Trump's Business Empire Offered Mob-Linked FBI Informant a Target-Rich Environment

Republican presidential candidate Donald Trump's business relationship with a U.S. government informant named Felix Sater raises some interesting questions about what Trump knew and when he knew it — and whether Trump, at some point, also agreed to become an informant himself.

Sater, a convicted fraudster with [Russian roots \(http://licensedtolie.com/wp-content/uploads/2015/01/Palmer-Petition-for-a-writ-of-certiorari-14-676.pdf\)](http://licensedtolie.com/wp-content/uploads/2015/01/Palmer-Petition-for-a-writ-of-certiorari-14-676.pdf) speaks highly of Trump in the media, telling the [Washington Post \(https://www.washingtonpost.com/politics/former-mafia-linked-figure-describes-association-with-trump/2016/05/17/cec6c2c6-16d3-11e6-aa55-670cabef46e0_story.html\)](https://www.washingtonpost.com/politics/former-mafia-linked-figure-describes-association-with-trump/2016/05/17/cec6c2c6-16d3-11e6-aa55-670cabef46e0_story.html) earlier this year that "he will make the greatest President of our century." Sater also has donated the maximum amount allowable, \$5,400, to Trump's presidential campaign and claims to have visited Trump Tower on "confidential" business this past summer, according to [media reports \(http://www.politico.com/story/2016/08/donald-trump-russia-felix-sater-227434\)](http://www.politico.com/story/2016/08/donald-trump-russia-felix-sater-227434)

Trump, however, has told the media he barely remembers Sater, despite their years-long business relationship, which involved numerous formal and informal [interactions](#)



(https://www.washingtonpost.com/politics/former-mafia-linked-figure-describes-association-with-trump/2016/05/17/cec6c2c6-16d3-11e6-aa55-670cabef46e0_story.html) and at least one [joint public appearance. \(http://www.nytimes.com/2007/12/17/nyregion/17trump.html?_r=0\)](http://www.nytimes.com/2007/12/17/nyregion/17trump.html?_r=0)

So why would Trump be so eager to distance himself from a former business associate and advisor now that he is running for president?

One possibility is that Sater's work as a government informant hits too close to the vest for the billionaire presidential candidate, whose business empire allegedly is propped up by plenty of Russian money and who operated in the mafia-invested casino industry from 1995-2009.

In fact, according to the [Wall Street Journal \(http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736922\)](http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736922), Trump met with FBI agents in the early 1980s to discuss his plans to enter the casino business in Atlantic City, in part, because of concerns about the influence of organized crime in that industry and Trump's fears that such a move would sully his family's reputation. An FBI agent advised him to invest elsewhere.

Still, Trump moved forward, ultimately controlling four casinos and amassing a mound of debt that would eventually force him out of the business [by 2009 \(http://fortune.com/2016/03/31/donald-trump-debt-trump-hotels-casinos-atlantic-](http://fortune.com/2016/03/31/donald-trump-debt-trump-hotels-casinos-atlantic-)

About Bill Conroy Biography:

Narcosphere@aol.com

Personal Website: (/)

[View full user profile \(/users/bill-conroy/\)](/users/bill-conroy/)

Latest Notebook Entries

[White House Grounds Breached After Secret Service Froze Officers' Pay, Leaked Email Reveals \(/notebook/bill-conroy/2017/03/white-house-grounds-breached-after-secret-officers-pay-le\)](/notebook/bill-conroy/2017/03/white-house-grounds-breached-after-secret-officers-pay-leaked-email-reveals/)

[La interferencia rusa en las elecciones americanas tiene más sentido cuando sigues el dinero \(/notebook/bill-conroy/2017/02/la-interferencia-rusa-en-las-elecciones-americanas-tiene-m-s-sentido-cu\)](/notebook/bill-conroy/2017/02/la-interferencia-rusa-en-las-elecciones-americanas-tiene-m-s-sentido-cu/)

[Demanda pendiente busca exponer las conexiones neonazis de Trump \(/notebook/bill-conroy/2017/01/demanda-pendiente-busca-exponer-las-conexiones-neonazis-de-trump\)](/notebook/bill-conroy/2017/01/demanda-pendiente-busca-exponer-las-conexiones-neonazis-de-trump/)

[Pending Lawsuit Seeks to Expose Trump's Neo-Nazi Connections \(/notebook/bill-conroy/2017/01/pending-lawsuit-seeks-expose-trump-s-neo-nazi-connections\)](/notebook/bill-conroy/2017/01/pending-lawsuit-seeks-expose-trump-s-neo-nazi-connections/)

[Russian Interference in US Elections Makes More Sense When You Follow the Money \(/notebook/bill-conroy/2017/01/russian-interference-us-elections-makes-more-sense-when-you-follow-money\)](/notebook/bill-conroy/2017/01/russian-interference-us-elections-makes-more-sense-when-you-follow-money/)

[Casino Owned by Presidential Candidate Donald Trump Violated US Anti-Money Laundering Laws Repeatedly \(/notebook/bill-conroy/2016/10/casino-owned-presidential-candidate-donald-trump-violated-us-anti-money\)](/notebook/bill-conroy/2016/10/casino-owned-presidential-candidate-donald-trump-violated-us-anti-money-laundering-laws-repeatedly/)

[The Donald and the Snitch \(/notebook/bill-conroy/2016/09/donald-and-snitch\)](/notebook/bill-conroy/2016/09/donald-and-snitch/)

[Trump Campaign Is Still Playing Russian Roulette With Foreign Policy \(/notebook/bill-conroy/2016/08/trump-campaign-still-playing-russian-roulette-foreign-policy\)](/notebook/bill-conroy/2016/08/trump-campaign-still-playing-russian-roulette-foreign-policy/)

[Lawsuit Threatens to Expose Trump Campaign's White Supremacist Links \(/notebook/bill-conroy/2016/07/lawsuit-](/notebook/bill-conroy/2016/07/lawsuit-threatens-to-expose-trump-campaigns-white-supremacist-links/)

User login

Username: *

Password: *

[Request new password \(/user/password\)](/user/password/)

Navigation

- [The Narcosphere \(/ \)](#)
- [Narco News \(http://www.narconews.co\)](#)
- [The Field \(/thefield/\)](/thefield/)
- [Recent posts \(/tracker\)](/tracker/)



[\(/thefield/\)](/thefield/)

About Bill Conroy

Biography

Narcosphere@aol.com

[View full user profile \(/users/bill-conroy/\)](/users/bill-conroy/)

city/). One of the co-owners of the site where Trump built his first Atlantic City casino in the early 1980s was a mob-linked FBI informant named Daniel Sullivan, whom Trump also later used as an advisor on labor issues, the [Wall Street Journal](http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736922) (<http://www.wsj.com/articles/donald-trump-dealt-with-a-series-of-people-who-had-mob-ties-1472736922>) reported. So Sater does not represent the first time Trump has done business with an FBI informant.

Not a Coincidence

Trump's relationship with Sater was not likely the byproduct of a chance meeting, according to a group of former federal agents interviewed recently by Narco News. The veteran agents, all of whom have extensive experience in intelligence operations and in handling informants, contend Sater likely cozied up to Trump on purpose in an effort to advance his informant goals.

Several of the agents said Trump's business network represents a target-rich environment, both for law enforcement and intelligence agencies. They said Sater, if he was doing his job as an informant, would have been reporting back to his FBI and other law-enforcement and intelligence-agency handlers about Trump's activities.

Sater, when asked about his relationship with Trump in a recent email interview with Narco News, declined to address whether he was monitoring Trump as part of his informant role, or if his government handlers were aware of his business dealings with Trump. Sater did say, however, that "I'm pretty sure the government knew my dog's weight down to the ounces"—an indication that the law enforcement and intelligence agencies he was reporting to were well aware of his business dealings with Trump.

Whether Trump was aware that Sater was an informant from the start is not clear. Trump, according to [media reports](https://www.washingtonpost.com/politics/former-mafia-linked-figure-describes-association-with-trump/2016/05/17/cec6c2c6-16d3-11e6-aa55-670cabef46e0_story.html) (https://www.washingtonpost.com/politics/former-mafia-linked-figure-describes-association-with-trump/2016/05/17/cec6c2c6-16d3-11e6-aa55-670cabef46e0_story.html), denies he knew about Sater's sordid past when they met and began working on deals. Trump's press secretary, Hope Hicks, did not respond to a request for comment.

In 2007, however, the [New York Times](http://www.nytimes.com/2007/12/17/nyregion/17trump.html) (<http://www.nytimes.com/2007/12/17/nyregion/17trump.html>) published a story about Sater's past criminal history and his alleged cooperation with the U.S. government, a story in which Trump is quoted. It seems Trump should have known Sater was likely an informant at that point, yet he still continued to do business with Sater.

One of the former federal agents interviewed by Narco News, who asked not to be named, said if Trump continued to work with Sater even after he became aware that Sater was an informant, it could be a sign that Trump, too, may have been cooperating with federal authorities.

"One possibility is that Trump was working with the Russians [relying on Russian investments to fund his ventures] and the U.S. government planted Sater [in Trump's orbit] to monitor that activity," said [Celerino Castillo](http://narcosphere.narconews.com/notebook/bill-conroy/2009/07/cele-castillo-ordered-report-federal-prison) (<http://narcosphere.narconews.com/notebook/bill-conroy/2009/07/cele-castillo-ordered-report-federal-prison>), a former DEA agent who played a key role in exposing the US government's role in narco-trafficking during the Iran/Contra era. "The Russians launder a lot of money."



During the time Sater was working with Trump, the billionaire's business financing relied heavily on Russian investments, according to Trump's son, Donald Trump Jr., who in 2008 at a [real estate conference in New York](https://www.washingtonpost.com/politics/heres-what-we-know-about-donald-trump-and-his-ties-to-russia/2016/07/29/1268b5ec-54e7-11e6-88eb-7dda4e2f2aec_story.html) (https://www.washingtonpost.com/politics/heres-what-we-know-about-donald-trump-and-his-ties-to-russia/2016/07/29/1268b5ec-54e7-11e6-88eb-7dda4e2f2aec_story.html) said: "Russians make up a pretty disproportionate cross-section of a lot of our assets. We see a lot of money pouring in from Russia."

Several of the former federal agents interviewed by Narco News, who also asked that their identities not be disclosed, said if Trump decided to cooperate with federal authorities with respect to the Russians, his knowledge of organized-crime activities or some other matter, it would likely be to done to protect and advance his own business interests.

One of those agents, who has extensive experience dealing with both FBI and CIA operations, explained that the FBI operates an intelligence division that performs a function domestically that is similar to the role played by the CIA overseas. He said given Trump's business interests — which include casino-industry and Russian connections — it is not out of the realm of possibility that he was recruited as a source of information:

[threatens-expose-trump-campaigns-white-supremacist-links](#)

[Donald Trump's Past Lobbying Exploits Paint a Picture of a Deft Washington Insider \(/notebook/bill-conroy/2016/06/donald-trump-s-past-lobbying-exploits-paint-picture-deft-washington-ins\)](#)

[more \(/notebook/70\)](#)

asking for favors in the form of intel. The citizen sees it as a chance to indemnify [protect] themselves from charges of corruption, fraud, theft, even adverse publicity. The CIA may find it in their interest to help the citizen expand his business and coincidentally, improve his access to intel. In most cases, the citizen's assumptions prove correct. Once again, I emphasize that those agencies consider the gathering of high-level intel far more important than crime stopping.

And that approach, according to former deep-cover DEA agent Mike Levine, is what leads to corruption in the informant-handling world.

Levine, who now regularly testifies in court as an expert witness, explained:

I am involved in a case where I am representing a mafia hood against the FBI. He was an 18-year top-echelon informant who in that time earned a total of about \$30,000 in unspecified fees. [That] means he was given a license to commit any crimes he had to in



order to maintain his standing within the mafia so that the FBI agents could file very cool reports. But I could find no convictions wherein the man was instrumental in obtaining same during that whole period of time. Sound like the Whitey Bulger case?

That is the problem. The FBI and CIA have created a situation where, if you are well placed in any criminal organization, you can get an FBI or CIA license to commit all kinds of crimes (to maintain your cover) in return for which you give the Feds bullshit.

Ergo, if Sater et al. have any smarts, they will become FBI or CIA informants, because they have nothing to lose and everything to gain. Crime does pay.

The former federal agents who spoke with Narco News made it clear that, in their experience, informants and other cooperators rarely act out of altruism or a sense of patriotism. Their cooperation is almost always based on ego and self-interest. If Trump was working as a cooperating source, or informant, either in relation to his casino-industry ties, Russian investors or some other matter, the agents said it was likely because he stood to gain from that cooperation, similar to Sater.

There is precedent for that kind of cooperation on the part of a well-heeled business figures. Former New York Yankees owner George Steinbrenner worked as an FBI informant assisting with criminal-investigation and national-security matters from 1976-1987, according to former DEA agent and attorney Dennis Fitzgerald's book, *Informants, Cooperating Witnesses, and Undercover Investigations*. In [Steinbrenner's case \(https://vault.fbi.gov/george-steinbrenner\)](https://vault.fbi.gov/george-steinbrenner), according to the book, he was motivated by the desire to get a presidential pardon for his Watergate-era felony conviction for obstruction of justice and authorizing illegal campaign contributions to President Richard Nixon.

"On January 20, 1989, President Reagan had at least three celebrities seeking pardons: industrialist Armand Hammer, heiress and Symbionese Liberation Army bank robber Patty Hearst, and George Steinbrenner," Fitzgerald writes in his book. "Only one of them won the lottery: Steinbrenner's pardon was one of the former FBI informant President Ronald Reagan's last official acts." Yes, [Reagan](http://www.mercurynews.com/2010/11/22/document-1985-mercury-news-article-reagan-acted-as-informant-for-fbi/), (<http://www.mercurynews.com/2010/11/22/document-1985-mercury-news-article-reagan-acted-as-informant-for-fbi/>) a former actor (like Trump), worked as an FBI informant during the 1940s as part of the effort to purge "communist infiltrators" from the film industry in Hollywood.

Sater Time

Sater, while serving as a U.S. government informant, was an executive with a real estate development company called Bayrock Group LLC, which as early as 2003 leased office space at Trump Tower in Midtown Manhattan.

While with Bayrock, Sater got to know Trump and the duo were soon pursuing multimillion-dollar business deals in Russia and the U.S. between 2005 and 2007, including a condo development project called Trump SoHo in Midtown Manhattan.

In 2005, Trump cut a business deal with Bayrock to build a [hotel in Moscow](http://www.motherjones.com/politics/2016/07/donald-trump-history-trying-do-business-in-russia) (<http://www.motherjones.com/politics/2016/07/donald-trump-history-trying-do-business-in-russia>), but the project didn't pan out. He did later team with Bayrock,

however, on the Trump SoHo project, which in 2007 (<http://therealdeal.com/2016/05/26/trump-signed-off-50m-trump-soho-investment-turned-loan-report/>) received a shot in the arm, along with several other Bayrock projects, in the form of a \$50 million dollar investment from an Icelandic investment firm. That company, the FL Group, was backed by Russians “who were in favor with [Russian President] Putin,” pleadings in a [lawsuit](http://narcosphere.narconews.com/userfiles/70/Lawsuit.PleadingBayrock.pdf) (<http://narcosphere.narconews.com/userfiles/70/Lawsuit.PleadingBayrock.pdf>) against Bayrock allege.

Bayrock is currently the target of a [civil-racketeering lawsuit](http://narcosphere.narconews.com/userfiles/70/BayrockLawsuit.pdf) (<http://narcosphere.narconews.com/userfiles/70/BayrockLawsuit.pdf>) (<http://narcosphere.narconews.com/userfiles/70/BayrockLawsuit.pdf>) filed by the company’s former finance director and another employee. The plaintiffs allege in the pleadings that Bayrock is “covertly mob-owned and operated” and accuse the company’s principals of engaging in “money laundering, conspiracy, bribery, extortion and embezzlement.”

Bayrock was founded and led by a native Russian named Tevfik Arif, who served as a commerce official during the Soviet era, according to the litigation, which is still pending and being contested by Bayrock’s attorneys in federal court in New York.

Sater was hired by Bayrock a few years after he pleaded guilty in 1998 to racketeering charges in relation to his role in a \$40 million pump-and-dump Wall Street stock and money-laundering scheme that was carried out in partnership with Russian and New York organized-crime syndicates, according to [legal documents](http://licensedtolie.com/wp-content/uploads/2015/01/Palmer-Petition-for-a-writ-of-certiorari-14-676.pdf) (<http://licensedtolie.com/wp-content/uploads/2015/01/Palmer-Petition-for-a-writ-of-certiorari-14-676.pdf>) and media reports related to the case. In fact, Sater worked in Russia (<http://www.nytimes.com/2007/12/17/nyregion/17trump.html>) from roughly 1996 through 1998, when he returned to the U.S. to face criminal charges pending against him in that case, according to his [sentencing-hearing transcript](http://c1.nrostatic.com/sites/default/files/Transcript%20of%20Sentencing%20of9). (<http://c1.nrostatic.com/sites/default/files/Transcript%20of%20Sentencing%20of9>)

In the early 1990s, Sater also was convicted and served a year in prison for stabbing a man in the face with the stem of a margarita glass during a bar fight.

Sater’s criminal past, however, was cloaked from public view because his legal case was sealed after he cut a deal in 1998 to become a U.S. government informant in exchange for hopes of a lighter sentence in the stock-fraud case. That also meant his criminal past and work as an informant was presumably kept secret from Bayrock and Trump.

That is, until 2007, when a [New York Times](http://www.nytimes.com/2007/12/17/nyregion/17trump.html) (<http://www.nytimes.com/2007/12/17/nyregion/17trump.html>) story exposed Sater’s past misdeeds and the fact that he likely agreed to cooperate with the US government to avoid a long jail sentence. Still, in 2010, after Sater had left Bayrock in the wake of the public exposure of his past, the Trump Organization still retained Sater as a consultant and issued him a business card with the title “Senior Advisor to Donald Trump.”

One of Sater’s FBI handlers, [Leo Taddeo](https://archives.fbi.gov/archives/newyork/press-releases/2013/executive-level-appointments-announced-in-new-york-field-office) (<https://archives.fbi.gov/archives/newyork/press-releases/2013/executive-level-appointments-announced-in-new-york-field-office>), whose specialty was US and Russian organized-crime syndicates, told the judge at Sater’s 2009 [sentencing](http://c1.nrostatic.com/sites/default/files/Transcript%20of%20Sentencing%20of9) (<http://c1.nrostatic.com/sites/default/files/Transcript%20of%20Sentencing%20of9>) that “without his cooperation, it would have been a few more years [before] the FBI would have effectively removed La Cosa Nostra [the New York City Mafia families] from the penny stock business.”

Years later, in early 2015, in written [congressional testimony](http://c6.nrostatic.com/sites/default/files/Lynch%20response%20to%20Hatch%2) (<http://c6.nrostatic.com/sites/default/files/Lynch%20response%20to%20Hatch%2>), current U.S. Attorney General Janet Lynch also made public that in addition to Sater’s work as an FBI informant targeting organized crime, he also provided “information crucial to national security.”

By the time of his sentencing hearing in 2009, Sater had worked some 11 years as an informant (or cooperating witness per the technical term) — most of that time during the Bush presidency. The judge in Sater’s case apparently believed he had been redeemed. Sater walked away from his judgment day in court with a [\\$25,000 fine](http://www.courthousenews.com/2013/05/14/57593.htm) (<http://www.courthousenews.com/2013/05/14/57593.htm>) and no jail time or restitution required for his role in a \$40 million mob-linked stock-fraud scam.

Sater’s light sentence isn’t necessarily an accurate reflection of the value of his work and character, however. The federal judge in Sater’s stock-fraud case, Leo Glasser, gave a similarly light sentence years earlier to the notorious Salvatore “Sammy the Bull” Gravano, who participated in some 19 murders while working as a mob hitman. Gravano later became an FBI informant and helped to convict his boss, the so-called Teflon Don, John Gotti.

Judge Glasser sentenced Gravano in 1994 to a five-year prison stint, or about three months for each murder. The judge’s character assessment in that case proved faulty, however, given Gravano was [later convicted](http://www.nytimes.com/2000/02/25/nyregion/gotti-s-accuser-is-accused-in-phoenix-drug-ring.html?_r=0) (http://www.nytimes.com/2000/02/25/nyregion/gotti-s-accuser-is-accused-in-phoenix-drug-ring.html?_r=0) of running a major ecstasy-distribution ring out of Arizona, in league with a white supremacist group, and in 2002 was sentenced to 20

years in prison. (<http://themobmuseum.org/blog/u-s-judge-rebukes-sammy-the-bulls-bid-for-reduction-of-twenty-year-drug-sentence/>)

House of Mirrors

Former DEA agent Levine's warnings about the nature of the informant business and the potential for informants and other cooperators to abuse the system seems to merit some attention in the case of Sater, given claims he recently made about his "national security" work.

Sater told Narco News the following via email correspondence:

I was the person buying the 20 stingers [shoulder-fired missiles] in Afghanistan not Russia, on behalf of the CIA. We needed to scoop them all up. The old stingers didn't have the chip that prevented shooting them at US aircraft, and when some fell into the hands of Al-Qaeda, we needed to get the rest off the market as fast as possible. I was on the ground running an operation for US military intelligence already, so the CIA let me run with this as well.

I developed a strong relationship with [name redacted] and we began arranging the purchase of stingers based on President Clinton's directive. As well as planning attacks and elimination of UBL [Osama bin Laden] in 1998, [a] couple of years before 9/11.

Yes I played a major role in President Clinton's bombing of UBL's camp in '98. And after 9/11, I went into overdrive on the World Trade Center bombers, their financial network, hunting for operatives still at large, etc., as well as coordination of bombing targets in Afghanistan etc. etc. etc.

[Emphasis added.]

One former CIA officer who spoke with Narco News, but asked that his name not be used, said of Sater's Forest Gump-like claims: "I would not trust him. My sense from being in the intelligence business would be to let him go. If he was in business with Trump, that's Trump's problem. If Russia was using him, then they got suckered too. I simply would not want to get my hands dirty with him."

As evidence of the CIA officer's trust issues with Sater, two statements made by Sater in his account of his alleged Al-Qaeda-hunting adventures don't pass the smell test.

First, it is difficult to imagine US military commanders allowing Sater, a convicted con man with Russian-mob connections, "running an operation for US military intelligence." Second, with respect to Sater's claim that he "played a major role in President Clinton's bombing of UBL's camp in '98," the timeline simply doesn't work.



Those bombings occurred in **August 1998** (<http://nsarchive.gwu.edu/NSAEBB/NSAEBB253/>). Sater didn't become a US government informant until December of that year, nearly five months after the bombings, according to the **cooperation agreement** (<http://narcosphere.narconews.com/userfiles/70/Sater%20Cooperation%20Agreement>) he signed with the U.S. Attorney's Office in Eastern New York.

Finally, in Sater's email to Narco News bragging about his national-security work, he reveals the identity of his alleged source of information in Afghanistan. Narco News chose not to print that information, because even if Sater wasn't telling the truth, that person's life may well still be put in danger if exposed in a news article — simply because some might believe Sater's assertions.

Narco News asked Levine to weigh in on Sater's account of his national-security undercover work. Here's what Levine had to say about it:

*All stool pigeons tell fantastic moviesque stories. This guy is no exception. The stories fall apart when you apply the standards of corroboration that I still teach. Keep in mind that **Operation Agent Brush** (<https://www.youtube.com/watch?v=Jj5idhtZq1c>) revealed that 60 percent of all CIA agents [informants] were selling bullshit to their officer/handlers for decades. The surface of this guy's [Sater's] story reeks of bullshit. He's selling himself not truth.*

Sater's criminal past and his willingness to expose the details of his national-security work, or, as is likely the case, to misrepresent the details of that work, for his own self-aggrandizement, raises serious questions about his credibility as an informant. It also raises serious questions about presidential candidate Donald Trump's judgement in choosing to do business with such an individual, whether he knew of Sater's informant status or not at the time. Once president, the opportunities for being duped by con men with far more power than Sater magnify exponentially.

There is no doubt that Sater was an FBI informant for years, and that he **contributed intelligence** (<https://m.youtube.com/watch?v=xSpFtCmoD5o>) that was deemed by some federal agents as valuable to US national security, but the veracity of that information is still very much an open question, as is the role Trump played in advancing Sater's mechanizations.

"A guy like Sater would make any deal he could [with the government] to get that 'license to commit crimes,'" Levine added.

Share (<http://addthis.com/bookmark.php?v=250&username=narconews>)



[Bill Conroy's Blog \(/Notebook/Bill-Conroy\)](#) [Login \(/User/Login?Destination=Node%2F5151%23comment-Form\)](#) [To Post Comments](#)

EXHIBIT R

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA,

 Petitioner, New York, N.Y.

 v. 10-2095-cr

JOHN DOE.

 Respondent.
-----x

February 14, 2011
1:30 p.m.

Before:

HON. JOSE A. CABRANES, Presiding
HON. ROSEMARY S. POOLER
HON. DENNY CHIN

Circuit Judges

APPEARANCES

TODD KAMINSKY
PETER A. NORLING
MARSHALL MILLER
ELIZABETH KRAMER
Attorneys for Petitioner

RICHARD E. LERNER
Attorney for Respondent

KELLY ANN MOORE
Attorney for John Doe

X12endoen

SEALED

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

APPEARANCES (Continued)

ALSO PRESENT:

RICHARD ROE
JUDY SELMECI
DAVID SNYDER
NADER MOBARGHA
MICHAEL BEYS

X12endoen

SEALED

1 JUDGE CABRANES: Good afternoon. This is United
2 States of America v. John Doe. It has many captions. I will
3 call the roll of counsel and the parties in two appeals that
4 have been consolidated for purposes of argument and that at
5 least for now bear the following captions: Richard Roe v. USA
6 and John Doe, Docket No. 10-2905, and Richard Roe, Petitioner
7 v. USA, Respondent and John Doe 1, John Doe 2, Defendants,
8 Docket No. 11-479. I ask each of the persons whose names I
9 call out to simply answer my confirming his or her presence.

10 This is not the time for anything more than the word
11 "present" and an indication of whether you are admitted to the
12 bar of this court. You will each have time to express your
13 views after this roll call and after I make a brief
14 introductory statement.

15 Richard Roe, also known as Frederick Oberlander.
16 MR. ROE: Present, and I am not admitted in this
17 court.

18 JUDGE CABRANES: We usually stand.

19 MR. ROE: I'm sorry.

20 JUDGE CABRANES: Are you admitted to any federal
21 court?

22 MR. ROE: Southern District.

23 JUDGE CABRANES: Counsel for Richard Roe is Richard
24 Lerner.

25 MR. LERNER: Yes. I am present and admitted to

X12endoen

SEALED

1 practice before this court.

2 JUDGE CABRANES: Thomas W. Hyland.

3 MR. LERNER: He was unable to make it here today.

4 JUDGE CABRANES: Unable to make it today. Judy

5 Selmecci.

6 MS. SELMECCI: I am admitted to practice in this Court.

7 JUDGE CABRANES: You are admitted to the bar of this
8 court. Thank you.

9 Counsel for the United States, Todd Kaminsky.

10 MR. KAMINSKY: Present, your Honor, and admitted.

11 JUDGE CABRANES: Elizabeth Kramer.

12 MS. KRAMER: Present, your Honor, and admitted.

13 JUDGE CABRANES: Marshall Miller.

14 MR. MILLER: Present your Honor add admitted.

15 JUDGE CABRANES: Peter Norling.

16 MR. NORLING: Present and admitted.

17 JUDGE CABRANES: Counsel for John Doe, Kelly Anne
18 Moore of Morgan Lewis & Bockius.

19 MS. MOORE: Present and admitted your Honor.

20 THE COURT: David Snyder of Morgan Lewis & Bockius?

21 MR. SNYDER: Present, your Honor, and not admitted.

22 JUDGE CABRANES: Are you admitted to any federal bar?

23 MR. SNYDER: No, your Honor.

24 JUDGE CABRANES: You are admitted to what bar?

25 MR. SNYDER: State of New York.

X12endoen

SEALED

1 JUDGE CABRANES: Nader Mobargha of Beys Stein &
2 Mobargha.

3 MR. MOBARGHA: Present and not admitted to this Court.

4 JUDGE CABRANES: To what court are you admitted?

5 MR. MOBARGHA: The Southern and Eastern Districts of
6 New York.

7 JUDGE CABRANES: And the State of New York?

8 MR. MOBARGHA: Yes.

9 JUDGE CABRANES: Is there anyone else whose name I
10 have not called?

11 MR. BEYS: Yes, your Honor. Michael Beys of Beys,
12 Stein & Mobargha for defendant-appellee Doe, present and
13 admitted.

14 JUDGE CABRANES: Thank you.

15 We are here for oral argument in two related matters.
16 As I indicated, they bear captions that at least temporarily
17 employ the coined names of "John Doe" and "Richard Roe" -- the
18 cases that, as I noted, are docketed in the Court of Appeals as
19 No. 10-2905-cr. and No. 11-479-cr. Both arrived from
20 long-lived proceedings in the United States District Court for
21 the Eastern District of New York before Judge I. Leo Glasser.
22 The record will reflect that, pursuant to an order of the
23 Court, we are here in a closed courtroom. The proceedings here
24 are being recorded by an official court reporter as well as by
25 electronic means. The record in these cases shall remain under

X12endoen

SEALED

1 seal until further order of the Court.

2 These matters came before this Court on an expedited
3 and emergency basis. In documents placed before us, the
4 government and the district court asserted serious concerns
5 about the public dissemination of certain documents, in and out
6 of state and federal court proceedings. These disclosures
7 allegedly are in violation of court orders and allegedly could
8 risk life-threatening injury to identifiable persons, including
9 the person identified in our cases as John Doe.

10 As a result of the way in which these emergency
11 matters were presented to the Court, and in order to try to
12 maintain the status quo in volatile and confused circumstances
13 until this expedited hearing could be held, this Court has
14 entered a series of temporary sealing orders and/or injunctive
15 orders.

16 Because these orders were entered in response to
17 fast-breaking developments, the captions and references to
18 petitioner and respondent are sometimes the victim of
19 typographical errors. The captions will be adjusted in the
20 course of this hearing or immediately thereafter. Suffice it
21 to say for now that, regardless of any obvious typographical
22 errors in the orders, we are all well aware that the sealing
23 orders and temporary injunctions of the Court of Appeals have
24 all been aimed at Richard Roe, an attorney at law, and at his
25 attorneys. It is not John Doe or the government who have

X12endoen

SEALED

1 sought to disseminate any of the material at issue here. The
2 only parties who have indicated on the record an intention to
3 disseminate the documents at issue here are Richard Roe and his
4 attorneys. That much the court knows and that much all of you
5 here know.

6 Accordingly, to avoid caption issues that may cause
7 confusion on the record, let us speak today of Richard Roe and
8 John Doe, not of petitioner or respondent, nor of appellant and
9 appellees. It is clear from the record, of course, that it is
10 Richard Roe and his lawyers who vigorously and openly wish to
11 disseminate these materials, and thus it is the government and
12 John Doe who wish to prevent Roe and his lawyers from doing so.

13 The first Court of Appeals order of consequence was an
14 order of Judge Livingston sealing the record of this case and
15 referring the emergency motions of the government to a
16 regularly-convened motions panel.

17 We are that panel.

18 After this matter was referred to this motions panel,
19 the Court entered a number of orders that re-affirmed the
20 sealing order of Judge Livingston and otherwise sought to
21 maintain the status quo until this hearing could be held.

22 We have taken precautions to assure that all counsel
23 of record and the party known as Richard Roe receive timely
24 notice of these orders promptly upon entry of the order by
25 e-mail and/or fax and/or phone calls from the clerk's office.

X12endoen

SEALED

1 Unless informed otherwise, we will assume that notice of these
2 several orders was effected.

3 You may wish to take notes of the Court orders to
4 which I refer. In order to assist you in this regard, the
5 Court asked the Deputy Clerk of Court to provide each of you
6 with copies of these orders before we convened here. I am
7 informed that sets of these copies were provided to all counsel
8 of record and that each of you has copies of these orders
9 before you at this time.

10 They include:

11 (1) An order of February 8, 2011 granting the
12 government's motion to temporarily seal the docket here and
13 seeking to prevent any public dissemination of matters subject
14 to existing sealing orders;

15 (2) An order of February 9, 2011 denying a motion to,
16 among other things, vacate the court's earlier so-called sua
17 sponte order closing the courtroom for today's hearing;

18 (3) An order of February 10, 2011 that, among other
19 things, consolidated these two docketed appeals until further
20 order of the Court. It also responded to reports or apparent
21 threats by Richard Roe and/or his counsel to disseminate sealed
22 materials at issue here in other court proceedings or public
23 forums. The Court responded to these reports or apparent
24 threats in the order of February 10 by, among other things,
25 temporarily enjoining "all parties . . . from disseminating or

X12endoen

SEALED

1 distributing in any manner and in any court, proceeding, or
2 forum any documents filed in th[ese appeals] or in related
3 proceedings in the Eastern and Southern Districts of New York
4 or the contents thereof, to any member of the public or media
5 except to those persons directly involved in the parties' legal
6 representation, who shall be bound by this order of
7 confidentiality and sealing."

8 The February 10, 2011 order also affirmatively
9 enjoined Richard Roe, who is a member of the bar, to submit in
10 writing by 5 p.m. on Friday, February 11, "a list of any public
11 or media persons . . . to whom he or his counsel have revealed
12 or distributed in any manner the filings in these proceedings
13 or the contents thereof."

14 This February 10 order also affirmatively enjoined
15 Richard Roe to identify with specificity the documents or
16 contents that were revealed or distributed to each such person.
17 This, too, was to have been done by Friday, February 11 at 5:00
18 p.m.

19 I understand that we have a letter that was indeed
20 filed on Friday but that has come to our attention only this
21 morning and which apparently was not conveyed to opposing
22 counsel. We will deal with that matter in a moment.

23 I think we all know what "under seal" means -- but
24 perhaps not, so I wish to make it clear that for the time being
25 and until this Court is able to sort out the claims of a breach

X12endoen

SEALED

1 of court sealing orders, these proceedings are confidential and
2 the record is subject to a sealing order of this Court, the
3 violation of which will subject any violator of our sealing
4 orders to punishment for civil and/or criminal contempt of
5 court.

6 It should likewise be clear that the parties hereto
7 are always free to seek review of our orders from the Supreme
8 Court of the United States. That said, while our sealing
9 orders remain in effect, as they may be supplemented by
10 additional orders today or in the near future, any and all
11 papers filed in the Supreme Court referring to matters or
12 documents subject to extant sealing orders shall be filed in
13 the Supreme Court under seal.

14 I have also been informed today that there is a copy
15 of a purported petition for certiorari that was filed or was to
16 be filed in the Supreme Court. Apparently, it was not filed
17 under seal. We will expect that counsel of record will take
18 all the necessary precautions to seek to place that material
19 under seal until further order of this Court or of the Supreme
20 Court.

21 These preliminary matters having been completed, I
22 will ask the representative of the U.S. Attorney's Office for
23 the Eastern District of New York to come forward and provide a
24 general status report on the proceedings to date and to provide
25 a brief statement of what relief, if any, the government seeks

X12endoen

SEALED

1 today.

2 We will then hear from counsel for Richard Roe, from
3 whom we likewise will seek a statement of the relief he seeks
4 from this Court.

5 MR. KAMINSKY: Good afternoon. May it please the
6 Court, I'm Todd Kaminsky. And I represent the appellee, the
7 United States. And the government is here today to argue for a
8 continued sealing of the appellate docket and now what is the
9 consolidated dockets before this court.

10 The government, as laid out in its brief, believes
11 that an unsealing of the docket at this time and a public
12 filing and release of the documents that opposing counsel would
13 like to, and Roe and his attorney would like to release at this
14 time pose a substantial probability of prejudice to Doe's
15 safety in this case.

16 JUDGE CABRANES: Could you tell us whether at the
17 moment all the documents in Doe's criminal proceeding and in
18 the Southern District of New York civil matter, are they all
19 now under seal as far as you know?

20 MR. KAMINSKY: The Southern District, your Honor, they
21 are not all under seal. Although I am not a party to that
22 civil proceeding, I've gone on to the electronic PACER system
23 and several documents can be accessed. The main document at
24 issue in that case, the complaint filed by Mr. Roe that
25 contains all of the damaging information about Mr. Doe, that

X12endoen

SEALED

1 cannot be accessed publicly at this time.

2 The Eastern District docket, currently being presided
3 over by the Honorable Judge Glasser, is completely under seal.
4 There are no accessible documents at this time.

5 JUDGE CABRANES: Can you describe in general terms why
6 these documents are so sensitive, particularly since some of
7 them seem to be somewhat antique, and there have been in the
8 past some news accounts of the activities or purported
9 activities of John Doe?

10 MR. KAMINSKY: Yes, your Honor.

11 Mr. Doe's cooperation was of an extraordinary depth
12 and breadth, almost unseen, at least in this United States
13 Attorney's Office.

14 He cooperated, unlike some cooperators who cooperate
15 within one type of organized crime family or over one type of
16 crime, Mr. Doe's cooperation runs a gamut that is seldom seen.
17 It involves violent organizations such as Al Qaeda, it involves
18 foreign governments, it involves Russian organized crime. And,
19 most particularly, it involves various families of La Cosa
20 Nostra. By that specifically I mean an individual on the
21 ruling board of the Genovese crime family, a captain in the
22 Bonanno crime family, a soldier in the Gambino crime family,
23 the list goes on and on.

24 The reason why I bring that up, your Honor, is that
25 all of the documents that are currently within the 1998 docket

X12endoen

SEALED

1 in front of Judge Glasser mention Mr. Doe's name or refer to
2 his cooperation.

3 Now, at the time of the sealing in 1998 and through
4 the beginning of 2008, Mr. Doe worked in a proactive capacity
5 actively aiding grand jury investigations that involved
6 surreptitious recordings of individuals as well as other
7 undercover actions.

8 JUDGE POOLER: Counsel, are you satisfied that he's
9 told the truth in all cases?

10 MR. KAMINSKY: Your Honor, from the record that I have
11 seen, and it was my job for his sentencing to review all of his
12 statements to the FBI, I was not the individual that worked
13 with him, but I have no information that he has been untruthful
14 for any purpose or to any extent.

15 JUDGE POOLER: You are relying on his information in
16 other cases?

17 MR. KAMINSKY: Yes.

18 There are no current prosecutions that involve the
19 necessary testimony or information from Doe at this time. But
20 there got to be a situation where ten years of constant
21 undercover work and arrests and indictments as well as
22 convictions, some very extensive, made as a result of his
23 actions got to a point where it became too dangerous to allow a
24 confirmation of his cooperation to be known.

25 There have been public accounts. They have been

X12endoen

SEALED

1 extensive in terms of their allegations, but they have been
2 lacking in terms of their corroboration and the government seal
3 of approval, if you will. The government feels that is an
4 important difference.

5 JUDGE CABRANES: At this particular proceeding I take
6 it that the government is seeking a temporary injunction, that
7 is, for the time being, during the pendency of the appeal,
8 which presumably would sort out all of these issues.

9 MR. KAMINSKY: That's correct. The government
10 certainly envisions a time when part of this docket will be
11 unsealed, and I note to the Court that the actual filing
12 occurred in May, meaning the Southern District complaint that
13 started this whole incident. But only on February 3 and 4 did
14 Mr. Roe or counsel for Mr. Roe finally make a motion, it was
15 actually a demand below to unseal the docket. And I do not
16 know what procedures the district court intends to employ. As
17 U.S. v. Doe from 1995 states, there are numerous ways for a
18 district court to go about determining --

19 JUDGE CABRANES: How many cases are there, as far as
20 you know, in the Southern District of New York that are
21 arguably related to these matters?

22 MR. KAMINSKY: Only one, your Honor.

23 JUDGE CABRANES: Only one?

24 MR. KAMINSKY: Yes.

25 JUDGE CABRANES: This is the one before Judge

X12endoen

SEALED

1 Buchwald?

2 MR. KAMINSKY: Correct.

3 JUDGE CHIN: Judge Buchwald never sealed that case,
4 right? She just sealed the complaint as opposed to the entire
5 case?

6 MR. KAMINSKY: That's correct. Your Honor, I stand
7 corrected. I have not been involved in the civil matters. I
8 turned to Mr. Doe's counsel. I have been informed the answer
9 is three, three related matters.

10 JUDGE POOLER: Counsel, I read an article in the New
11 York Times that seems to have vital information about John Doe.
12 How can you keep it secret when it's been in the New York
13 Times?

14 MR. KAMINSKY: Your Honor, there are a number of
15 things, a number of responses to that.

16 JUDGE POOLER: That was submitted to me I didn't go
17 searching for it. It was submitted with one filing. I guess
18 must be from Richard Roe.

19 MR. KAMINSKY: The government alerted the Court to
20 that.

21 JUDGE POOLER: OK.

22 MR. KAMINSKY: In that filing, your Honor, there were
23 three individuals who pleaded guilty together as part of the
24 underlying crime who became cooperators together and then who
25 worked for the government. One of those cooperators became

X12endoen

SEALED

1 disgruntled, spoke to the New York Times and said, I was there
2 I saw it happen. But the Times itself couldn't find any
3 confirmation of that.

4 It may be that during a future determination of how
5 much could be unsealed that article will play a role. But the
6 government feels that opposing counsel's actions in this case
7 of unilaterally deciding to out the cooperator within the
8 context of a current litigation is just not an acceptable way
9 of doing that.

10 However, your Honor, the government also feels that it
11 is a world of difference between the Times speculating about
12 something and it being enough of a government stamp of approval
13 to warrant retaliatory action against somebody. The government
14 feels at this time that the threats are still extensive enough
15 that even with that article it would be extremely dangerous to
16 have Mr. Doe's cooperation revealed.

17 JUDGE CABRANES: To the extent that we may be
18 restraining dissemination of these materials to the press or to
19 other media, I have a number of questions for you. These
20 questions will be a little specific. They might seem a bit
21 redundant, but I want to make sure that we have everything set
22 forth very clearly on this record.

23 And now I'm turning to the famous question of prior
24 restraint. One way of evaluating a prior restraint is to
25 examine the gravity of the evil discounted by the impossibility

X12endoen

SEALED

1 that it will occur.

2 What exactly is the danger you fear here if the
3 information in these documents becomes public?

4 MR. KAMINSKY: Your Honor, it's twofold: I'll start
5 with the, if you will, less grave one first.

6 As this Court stated in Amedeo II, the knowledge that
7 someone who is a cooperator and has gone to the extent that
8 Mr. Doe has will be an outed individual who will have to live
9 his or her life in fear I think is something that will dissuade
10 such cooperation in the future. As that Court said, if such
11 informants in the present or future cases anticipate that their
12 cooperation will likely become a matter of public knowledge,
13 valuable cooperation might cease.

14 Second of all, I think it's a very real harm that
15 could come to Mr. Doe himself. The very families that Mr. Doe
16 cooperated against have killed witnesses in the past. That's
17 been recorded. And his cooperation --

18 JUDGE CABRANES: You are speaking of organized crime
19 families?

20 MR. KAMINSKY: That's correct. And his cooperation
21 was not just the type of cooperation not to be noticed. It
22 shut down an enterprise that shut off the valve to tens of
23 millions of dollars.

24 JUDGE POOLER: Do they know who the cooperator is?

25 MR. KAMINSKY: Your Honor, there are a number of

X12endoen

SEALED

1 different individuals whom they may suspect. But Mr. Doe was,
2 depending how one looks at it, fortunate to not have to testify
3 over his 11-year career as a cooperator and none of the
4 individuals in organized crime had ever received any, as far as
5 the government knows, any official acknowledgement of that
6 cooperation.

7 JUDGE POOLER: Has he been sentenced for his
8 conviction?

9 MR. KAMINSKY: Yes.

10 JUDGE CABRANES: So I take it that in your experience
11 you are telling us that the danger here can be characterized as
12 great and certain?

13 MR. KAMINSKY: Your Honor, the government certainly
14 affirms the word "great." "Certain" is something the
15 government is a little bit less comfortable with. I'm
16 comfortable with the words in Doe of a substantial probability.
17 I believe that probability is substantial.

18 JUDGE CABRANES: So, if I understand you correctly,
19 you're saying that the critical government interest here is
20 protecting the life of the cooperating witness, among other
21 things?

22 MR. KAMINSKY: Yes, your Honor.

23 JUDGE CABRANES: Are there any less intrusive measures
24 other than sealing that would be adequate to prevent the danger
25 we are talking about?

X12endoen

SEALED

1 MR. KAMINSKY: The government thinks not, your Honor.

2 The extent of what sealing would be left on this
3 record is still something that is to be worked out. But the
4 government advocates for a sealing that does not release the
5 real name of Mr. Doe and does not reveal facts that would alert
6 other individuals to his cooperation or conviction.

7 JUDGE CABRANES: Is it the case that various orders
8 entered by the district court and the Court of Appeals involve
9 no prior restraints on the press or media?

10 MR. KAMINSKY: That's correct.

11 JUDGE CABRANES: That is, we are not talking about
12 preventing a news organization from publishing a matter of
13 public concern or impinging on editorial discretion.

14 MR. KAMINSKY: No, your Honor, and the government
15 feels that's particularly salient in this case. The Supreme
16 Court in Gentile v. State of Nevada has laid out a clear
17 distinction between attorney speech, especially that in the
18 context of ongoing litigation, meaning not an attorney as a
19 private citizen but as an attorney acting as a hired legal
20 representative and that of the press. It is regulated by an
21 entirely different standard, and the Supreme Court has said
22 that an attorney's First Amendment rights do not give him a
23 blanket opportunity to commit what are clearly unethical acts.

24 JUDGE POOLER: Indeed, as we discussed a moment ago,
25 this has been published information about this case has been

X12endoen

SEALED

1 published.

2 MR. KAMINSKY: That's correct, your Honor.

3 JUDGE CABRANES: Let me understand something about the
4 proceedings before Judge Glasser.

5 Do I understand correctly that Judge Glasser only
6 issued a permanent injunction with respect to the presentence
7 report?

8 MR. KAMINSKY: Correct.

9 JUDGE CABRANES: And the cooperation agreement, the
10 proffer agreement, and the sealed indictment, what's their
11 status, and do they remain in the possession of Richard Roe?

12 MR. KAMINSKY: They remain in the possession of
13 Richard Roe. I believe the copies of these documents remain in
14 the possession of Mr. Roe and other individuals to whom he
15 originally sent them when he filed the complaint.

16 But Judge Glasser has currently not reviewed them, has
17 not resolved that issue. It was clear to Judge Glasser that
18 the PSR, according to Charmer was a clear issue of law where
19 the document had to be returned by Mr. Roe, but he asked for
20 briefing on what powers he had to ask for documents to be
21 returned that were taken.

22 The issue there was, your Honor, who did the original
23 sealing order apply to, and if Mr. Roe was not a party to that
24 original proceeding did Judge Glasser have the authority to
25 enjoin him. The government has written on that matter and has

X12endoen

SEALED

1 briefed the issue that, according to the all writs act, Judge
2 Glasser does have such power.

3 JUDGE CABRANES: And that matter is still before Judge
4 Glasser?

5 MR. KAMINSKY: That's correct.

6 I would just like to remind the Court that there was I
7 standstill agreement between Roe and Doe for about four months
8 where nothing happened at all, and then in the fall the
9 litigation resumed again. And that's when the government filed
10 a letter in furtherance of another injunction.

11 JUDGE POOLER: Does the government have a theory as to
12 how Roe got ahold of these documents?

13 MR. KAMINSKY: We do, your Honor. Judge Glasser held
14 a day of hearings where he called Roe to testify, and Mr. Roe
15 stated that it was a client of his --

16 JUDGE POOLER: Not John Doe?

17 MR. KAMINSKY: No. A client of his had given them to
18 him. Mr. Doe testified that he kept them in his office, and
19 Judge Glasser came to the conclusion at the end of the hearings
20 that a client of Mr. Roe had stolen them from Mr. Doe, from his
21 office, and had provided them to Mr. Roe. Judge Glasser said
22 on the record that it was clear that they were taken under
23 less-than-legal circumstances.

24 JUDGE POOLER: And Mr. Roe still has them? Attorney
25 Roe still has them.

X12endoen

SEALED

1 MR. KAMINSKY: Yes, and copies.

2 JUDGE POOLER: And copies of them?

3 MR. KAMINSKY: Yes.

4 JUDGE POOLER: Have you asked for them back?

5 MR. KAMINSKY: I don't know if we specifically have
6 spoken on a one-to-one basis with them, but we have certainly
7 made clear our position that they are not entitled to them.

8 JUDGE POOLER: You have never requested them to be
9 turned in to the U.S. Attorney's Office.

10 MR. KAMINSKY: Your Honor, Judge Glasser directed
11 Mr. Roe to return the PSR to the U.S. Attorney's Office, and
12 we've never received his copy, so we did not.

13 JUDGE CABRANES: Did that happen as far as you know?

14 MR. KAMINSKY: No, we haven't been given anything.

15 JUDGE CABRANES: You don't know of any reason to
16 believe that the presentence report was returned.

17 MR. KAMINSKY: At this time the government is positive
18 that Mr. Roe has copies of the PSR that he says that he is
19 under no obligation to return to anyone.

20 JUDGE CABRANES: But there is an order directing him
21 to return his copies of the PSR?

22 MR. KAMINSKY: Yes, and he appealed that.

23 JUDGE CABRANES: But we don't know whether he has
24 obeyed that order.

25 MR. KAMINSKY: He has clearly not obeyed that order,

X12endoen

SEALED

1 your Honor.

2 JUDGE CABRANES: I see. Are you aware whether any
3 authorities in the federal or state governments are
4 investigating or considering criminal prosecution of the people
5 who apparently stole these documents in the first place?

6 MR. KAMINSKY: I have. I recently been in contact or
7 received a call from assistant district attorneys in Manhattan
8 where Mr. Doe's office was. I guess that would be the
9 jurisdiction for the theft. But I am not involved in that and
10 don't know how far it's gone.

11 JUDGE CABRANES: Thank you.

12 Let's hear from -- unless my colleagues have any other
13 questions?

14 JUDGE POOLER: No.

15 JUDGE CABRANES: We'll turn to counsel for Roe.

16 MR. KAMINSKY: Thank you, your Honor.

17 MR. LERNER: Good afternoon, your Honors. I would
18 first like to correct the record. The PSR which Mr. Roe
19 received directly from the former client at the company, who I
20 shall not name, that was handed up to the Court as an exhibit
21 during the proceedings. That original is in the Court's
22 possession.

23 There was further briefing --

24 JUDGE CABRANES: In possession of Judge Glasser?

25 MR. LERNER: Yes.

X12endoen

SEALED

1 JUDGE CABRANES: Do you or your client continue to
2 have copies of the presentence report?

3 MR. LERNER: Yes, electronic copies.

4 Now, there's affidavits -- I don't know whether your
5 Honors have seen the affidavit from the company's general
6 counsel. He states that when he received the complaint in the
7 Southern District action from Mr. Roe, and this was before
8 there was any injunctive relief or a sealing order issued, that
9 attorney, Mr. Schwartz, disseminated it to many people.

10 JUDGE CABRANES: Who is Mr. Schwartz?

11 MR. LERNER: He was the general counsel of the company
12 who I think I am -- shall I name the company here?

13 JUDGE CABRANES: Yes, I think so.

14 MR. LERNER: Bay Rock. He was the general counsel of
15 Bay Rock. He disseminated when it was received, when that
16 complaint was received from the attorney for Bay Rock. The
17 firm was Akerman Senterfitt. Akerman Senterfitt, a Miami firm,
18 represented Bay Rock. That complaint was provided as a
19 courtesy to the Akerman Senterfitt firm with all of the
20 exhibits.

21 That e-mail was then forwarded to Bay Rock's general
22 counsel who disseminated it.

23 JUDGE CABRANES: Those exhibits of court documents
24 included the presentence report?

25 MR. LERNER: Included the presentence report.

X12endoen

SEALED

1 JUDGE CABRANES: Anything else? Any of these other
2 documents? Cooperation agreement?

3 MR. LERNER: The complaint, the cooperation agreement,
4 and the criminal information.

5 So what's before the Court below --

6 JUDGE CABRANES: Well, you've submitted today a letter
7 dated February 11 which I have not been able to fully digest
8 shall we say. You know the letter I'm referring to.

9 MR. LERNER: Yes, if I may summarize it, simply
10 indicating the attorneys with whom Mr. Roe has consulted with
11 regard to various issues that are connected with this.

12 JUDGE CABRANES: Does the list of persons or the
13 number of persons to whom you just referred as having received,
14 electronically or otherwise, these documents, are they listed
15 in your filing?

16 MR. LERNER: I don't think we mentioned Mr. Schwartz.

17 JUDGE CABRANES: Are you going to be able to give us
18 that information in another letter?

19 MR. LERNER: I think we can supplement that. I
20 indicated that it was to the best of our abilities at the time.

21 JUDGE CABRANES: But you think you will be able to do
22 that, to supplement it as best you can?

23 MR. LERNER: I know that I provided full information
24 as to who I personally disclosed it to.

25 And that included --

X12endoen

SEALED

1 JUDGE CABRANES: What about your client Richard Roe?

2 MR. LERNER: Mr. Roe, as he indicated in his
3 declaration, to the best of his knowledge he has disclosed
4 that.

5 JUDGE CABRANES: This letter to which I have just
6 referred was submitted to the Court. Was it submitted under
7 seal?

8 MR. LERNER: It was not.

9 JUDGE CABRANES: It was not. Was a copy conveyed to
10 counsel for the government?

11 MR. LERNER: No. I indicated in the letter that I am
12 providing privileged information, however, if the Court wishes
13 to disclose it --

14 JUDGE CABRANES: I am a little confused. You didn't
15 file it under seal. You didn't feel it was necessary to keep
16 it from the world. You felt it was only necessary to keep it
17 from the government. But, of course, they can go on the
18 electronic site and print it out. So you don't mind if this is
19 copied and given to the government?

20 MR. LERNER: I would not strongly object.

21 JUDGE CHIN: Was it filed electronically?

22 MR. LERNER: Actually, I did not know that it would be
23 filed in the docket. I was asked by the calendar clerk to
24 provide the letter by 5:00 p.m., and I faxed it directly to the
25 calendar clerk.

X12endoen

SEALED

1 JUDGE POOLER: Attached to your letter is the
2 declaration of Richard Roe using his real name?

3 MR. LERNER: Yes.

4 JUDGE POOLER: Wasn't that a violation of previous
5 orders?

6 MR. LERNER: I don't know that Roe could sign a
7 declaration in the name of Roe. I don't know. As I indicated
8 in my letter, I didn't know how to deal with that from a
9 technical perspective.

10 JUDGE CABRANES: Inasmuch as you have no objection to
11 sharing this letter of February 11 with the government, for the
12 sake of expedition, I am going to give my copy to the clerk to
13 pass it to the government, since we can get our own copy off
14 the computer.

15 MR. LERNER: I would like to correct another statement
16 that was made earlier, and then I would like to proceed with
17 the argument.

18 The Court directly asked the government whether any of
19 these documents are out in the public domain. The answer, and
20 now that I can, I think I can fairly -- well, may I state a
21 publication on the record as to where -- OK. Business Week
22 published an article in 1998. That article is called, The Case
23 of the Gym Bag that Squealed. That article indicates that
24 Business Week has a copy of the complaint. That article is
25 still up on the website.

X12endoen

SEALED

1 I submit that if Business Week has the right, as they
2 obviously do, to disseminate that complaint and to discuss that
3 complaint, so too --

4 JUDGE CHIN: Did you say 1998?

5 MR. LERNER: Yes. And that article is still up.

6 JUDGE CHIN: And the complaint, which complaint are
7 you talking about?

8 MR. LERNER: The complaint in the Eastern District
9 action.

10 JUDGE CHIN: In the criminal case, OK.

11 MR. LERNER: The Eastern District action, the criminal
12 case, yes. That article, which remains on the website,
13 indicates that Business Week has a copy of the criminal
14 complaint, which means that they got it from the government or
15 they got it from the FBI. OK. So it is not --

16 JUDGE POOLER: Why does it naturally follow that they
17 got it from the government or the FBI?

18 MR. LERNER: Well, one would presume that Mr. Doe did
19 not give it to Business Week.

20 JUDGE POOLER: And Mr. Roe was not involved at that
21 point?

22 MR. LERNER: No. Mr. Roe wasn't involved in anything
23 related to Bay Rock until I believe he was retained to
24 represent the aforementioned person or assist in prepping an
25 individual for a deposition.

X12endoen

SEALED

1 JUDGE POOLER: When was that? When did he come in
2 contact with the facts of this case?

3 MR. LERNER: Well, he's been involved with the facts
4 of the Bay Rock matter for about two years. He's been
5 preparing a RICO complaint. It was only in March of 2010 that
6 the employee at Bay Rock who Mr. Roe was assisting to prepare
7 for a deposition said, I know you are working on this case,
8 these documents might be of use to you.

9 JUDGE CABRANES: Can you set forth precisely how your
10 client obtained the sealed presentence report, the cooperation
11 agreement, and the other documents from those criminal cases?

12 MR. LERNER: Yes. There was testimony on the record
13 that Mr. Row obtained them from that individual who he was
14 assisting to prep for a deposition.

15 We supplemented that with e-mails that we submitted to
16 the judge below. That indicated that these documents were
17 maintained on the Bay Rock company's website -- I'm sorry,
18 internal computer system.

19 Mr. Doe had directed that witness who I'm referring
20 to, the deponent, as part of his job --

21 JUDGE CABRANES: Who was that witness?

22 MR. LERNER: May I state his name?

23 JUDGE CABRANES: Yes.

24 MR. LERNER: Bernstein, Joshua Bernstein.

25 -- had instructed Joshua Bernstein to keep backup

X12endoen

SEALED

1 copies of all documents, all important documents.

2 So, these documents were on the Bay Rock server. Now,
3 Mr. Doe testified below that he wasn't a partner in the
4 company. He was a mere employee. There's nothing in the
5 record to indicate that he had an expectation of privacy as to
6 e-mails, e-mail documents maintained on the company server.
7 But these documents were -- downloading these documents and
8 archiving them and reviewing them was part of Mr. Bernstein's
9 job.

10 JUDGE POOLER: Is that a public website or --

11 MR. LERNER: No, it is a private internal company
12 website.

13 JUDGE POOLER: Right.

14 MR. LERNER: So it was obtained lawfully. And I will
15 not point out that under the Pentagon papers case it is
16 irrelevant whether the documents were obtained lawfully or
17 unlawfully. They may be used and published as --

18 JUDGE POOLER: The PSR's have their own sealing
19 regimen that does not relate to any order of the court.

20 JUDGE CABRANES: We are not dealing here with prior
21 restraint of the press or the media. That's what the Pentagon
22 papers case was about.

23 MR. LERNER: Well, your Honors, I would respectfully
24 submit that petitioning the government for redress of
25 grievances by filing a complaint in an action --

X12endoen

SEALED

1 JUDGE CHIN: Do you acknowledge, right or wrong,
2 whether the sealing order was correctly issued or not correctly
3 issued, do you acknowledge that your client has to comply,
4 subject to his right to appeal?

5 MR. LERNER: Your Honor, I am not certain which
6 sealing order you're referring to.

7 JUDGE CHIN: Any order. If there is an order in place
8 prohibiting him from disclosing certain things, do you
9 acknowledge that he must comply with that order subject to his
10 ability to appeal and get relief from a higher court?

11 MR. LERNER: May I read directly from the transcript
12 below with respect to that issue?

13 JUDGE CHIN: I would like it if you would answer my
14 question.

15 MR. LERNER: The answer to the question was answered
16 on the record by Mr. Roe. He said, My understanding is that a
17 sealing order is directed to court personnel and it is not an
18 in personam -- it is not an order against other individuals.

19 JUDGE CABRANES: Judge Chin directed his question to
20 you.

21 MR. LERNER: My answer is no, a sealing order is
22 directed to court personnel. It is not directed to
23 individuals. A sealing order may be accompanied by an
24 injunctive order prohibiting speech.

25 JUDGE CHIN: What is the point of a sealing order if a

X12endoen

SEALED

1 party could freely disseminate the document? It would
2 completely undermine the point of the sealing order.

3 MR. LERNER: Judge Glasser stated on the record that
4 there is no sealing order in the case, so he could not have
5 violated a sealing order. Moreover, in the testimony, Mr. Roe
6 stated, My understanding is that a sealing order is not an
7 injunction, and he cited in his testimony a case called Roman
8 Catholic Diocese, a Kentucky case, the Supreme Court. And
9 Judge Glasser stated, Your understanding is correct.

10 JUDGE CABRANES: When Roe obtained these documents,
11 were any of them marked in any way that suggested that they
12 were under seal?

13 MR. LERNER: Not the criminal information, not the
14 complaint, not the cooperation agreement. There were markings
15 on the PSR. I don't recall the exact language of the PSR, but
16 it is not a 65(d) injunction, which must be directed to
17 specific individuals. It must state the basis for the
18 injunction. It is not a court order directed to
19 Mr. Oberland -- Mr. Roe.

20 JUDGE CABRANES: You can refer to him by name here.
21 It's all right. We are all under seal here. But, of course,
22 you may not believe in sealing orders. But you can feel free
23 to refer to anyone here by the correct name or the code name,
24 as you wish.

25 MR. LERNER: Well, the PSR doesn't have injunctive

X12endoen

SEALED

1 language in accordance with Rule 65(d). Therefore, it is not
2 subject to -- it is not an injunction. It could not bar the
3 dissemination by Mr. Roe.

4 JUDGE CABRANES: Take 60 seconds and wrap up your
5 argument.

6 MR. LERNER: Your Honors, we are here before the Court
7 on a motion to seal the docket. There has been no record
8 finding in support of the sealing of the docket. There's no
9 evidence that has been submitted, there's argument, but no
10 evidence to support the sealing of the docket. And in order to
11 seal a docket, there must be on-the-record findings
12 demonstrating its propriety. I would also like to state --

13 JUDGE POOLER: Don't we have an admission from Mr. Roe
14 that he has these documents? Isn't that per se evidence?
15 Isn't that enough?

16 MR. LERNER: To seal the appellate docket?

17 JUDGE POOLER: Yes. He has records that the judges
18 thought were under seal already. He has them and admitted he
19 has them.

20 MR. LERNER: Yes, he has them.

21 JUDGE POOLER: Why isn't that enough evidence to seal
22 the record until further order of this court?

23 MR. LERNER: Because in Hartford Courant this court
24 said it is inappropriate to seal an entire court docket.

25 JUDGE POOLER: But that is also a newspaper case.

X12endoen

SEALED

1 MR. LERNER: I would submit, your Honors, that under
2 Citizens United all individuals have the same First Amendment
3 rights. The Supreme Court stated it expressly. We no longer
4 distinguish between newspapers and individuals.

5 JUDGE POOLER: But newspapers have a special charge in
6 publishing information for citizens. Mr. Roe doesn't have any
7 charge in making this information available to citizens.

8 MR. LERNER: Mr. Roe has the charge to represent his
9 clients, who have the charge to represent, as they are acting
10 in a fiduciary role, they represent they are acting
11 derivatively and representing many investors. So he has a
12 First Amendment right to use and publish these documents as he
13 will.

14 Now I will state very directly, your Honor, the fact
15 that this is not out in the public proves Mr. Roe's good faith.
16 He has never circulated this publicly. He asserts his absolute
17 right to do so, but he has not done so.

18 We ask that the Court abide by U.S. Supreme Court
19 precedent, and if it is to hold that this proceeding is to be
20 closed, that the docket is to be closed, that record findings
21 be made on evidence, and there is no evidence here to support
22 the burden of proof that is on the government.

23 JUDGE CABRANES: Let me ask you directly, you have
24 filed a petition for certiorari with the Supreme Court?

25 MR. LERNER: We have filed a petition to stay this

X12endoen

SEALED

1 proceeding. Every name that could give anyone notice as to
2 what is going on here was redacted. I provided that to this
3 Court in advance before filing it. I provided it to counsel in
4 advance before filing it.

5 JUDGE POOLER: Did you file it at noon as you said you
6 were going to do?

7 MR. LERNER: It was filed precisely at noon.

8 JUDGE CABRANES: Today?

9 MR. LERNER: No, it was filed at noon on Friday.

10 JUDGE CABRANES: Noon on Friday.

11 MR. LERNER: It was denied.

12 JUDGE CABRANES: It was denied already?

13 MR. LERNER: Yes.

14 JUDGE CABRANES: So there's nothing pending before the
15 Supreme Court at this point?

16 MR. LERNER: That is correct.

17 JUDGE CABRANES: Lest there be any confusion, we think
18 that you should make whatever arrangements are appropriate with
19 the Clerk of the Supreme Court to make sure that this
20 now-defunct proceeding remains under seal for the time being.
21 That is for you to apply, and you can indicate to them on
22 notice to the government that you are doing so at the request
23 of the Court.

24 In any event, any further appeals to the Supreme Court
25 should be, unless you hear otherwise from this Court, properly

X12endoen

SEALED

1 denominated as under seal. Is that understood?

2 MR. LERNER: Yes, absolutely, your Honor.

3 JUDGE CABRANES: It is so ordered.

4 JUDGE CHIN: Is it understood that it applies not just
5 to Court personnel but to anyone with notice of it, including
6 your client, without prejudice to your position, but otherwise
7 we are going to be right back to square one.

8 MR. LERNER: I think we will understand it to mean
9 that any petition will not be widely disseminated. It will go
10 from my hands --

11 JUDGE CABRANES: Will not be disseminated, period.

12 MR. LERNER: Will not be disseminated, period. It
13 will be in my hands, Mr. Roe's hands, counsel's hands.

14 JUDGE CABRANES: We will recess, and we may have
15 something for you. We would like you to stand by, and we are
16 going to consult with the Clerk of Court and others and we hope
17 to have something for you promptly.

18 Thank you.

19 (Recess)

20 JUDGE CABRANES: It is 2:53 p.m. I have asked the
21 clerk to enter an order that was entered formally at 2:45 p.m.,
22 copies of which are being delivered at this very moment to
23 those counsel who are present.

24 We will take a moment or two to review the order.

25 Page 2 of course is a description of past proceedings.

X12endoen

SEALED

1 Page 3 deals with the petition information, the writ
2 of mandamus, which you will note has been denied, and the
3 docket in that proceeding and all documents referenced therein
4 shall remain sealed until further order of the Court.

5 On page 4 we turn to the request by the government for
6 injunctive relief. There will be a remand to the district
7 court for the limited purpose of enforcing this Court's orders
8 and the related district court orders while the appeal goes
9 forward on the merits. And the appeal will be expedited.

10 There is a briefing schedule on page 5. This is a
11 remand under U.S. v. Jacobson. This panel shall retain
12 jurisdiction over the pending appeal both for the disposition
13 of the appeal on the merits as well as with respect to any
14 further motions practice.

15 Any other appeals from the district court's order
16 granting the permanent and temporary injunctions at issue and
17 any appeals arising from any further proceedings in the
18 district court, including any further petitions for
19 extraordinary writs, including the writ of mandamus. It is so
20 ordered.

21 Is there anything else anyone wishes to.

22 Why don't you come to the microphone so we can have
23 the benefit of your comments?

24 MR. LERNER: The matter in the Southern District is
25 presently stayed with an order to Mr. Roe to file a

X12endoen

SEALED

1 supplemental complaint upon the completion of the proceedings
2 before Judge Glasser.

3 We understand that he's been enjoined from making any
4 further applications. However, he would like to submit
5 application to Judge Buchwald to request further --

6 JUDGE CABRANES: He has not been enjoined from making
7 any further applications. You have misread this order. He has
8 been enjoined from making any dissemination of any of these
9 documents.

10 You can appear before Judge Buchwald at any time you
11 think appropriate, and the only condition that I would place on
12 that would be that you should, in making any presentation to
13 Judge Buchwald, attach to any filing a copy of this order.

14 MR. LERNER: Thank you, your Honor.

15 JUDGE CABRANES: It is so ordered.

16 Yes? Any further applications or comments?

17 MS. MOORE: Your Honor, my name is Kelly Moore. I'm
18 with the firm of Morgan Lewis & Bockius. We have been
19 representing Mr. Doe for sometime now. Unfortunately our legal
20 fees have gone through the roof on this matter, and a couple of
21 months ago he retained a former colleague of mine, Mr. Beys, to
22 represent him in connection with the Southern District.

23 JUDGE CABRANES: That's fine.

24 Let me just say I handled your application as a
25 one-judge application, but frankly, not knowing what was going

X12endoen

SEALED

1 on at the time that your application arrived, I denied it
2 without prejudice. I gather that you are now renewing your
3 application to withdraw and to be substituted?

4 MS. MOORE: Yes, your Honor.

5 JUDGE CABRANES: The application is granted.

6 MS. MOORE: Thank you.

7 MR. BEYS: Thank you.

8 JUDGE CABRANES: Anything else?

9 Does the government need any comment or application?

10 MR. KAMINSKY: Very briefly, your Honor.

11 The government during the brief recess had an
12 opportunity to first look at opposition's letter in terms of
13 which further counsel they've spoken to and submitted the filed
14 documents. The government is very concerned generally, but
15 particularly concerned about one specific attorney who
16 represents a large amount of individuals accused of being part
17 of organized crime families.

18 JUDGE CABRANES: I don't mean to minimize the
19 importance of what you are saying, but I think my colleagues
20 will agree that your concerns should now be addressed to the
21 district court. I think you will wish to contact Chief Judge
22 Dearie to determine who exactly is going to handle the
23 implementation of the court's mandate. And that judge can hear
24 any concern or application by you with respect to that.

25 On the other hand, you may wish to complete the record

X12endoen

SEALED

1 before our Court and state whatever you think appropriate. You
2 may wish to include some of that in the briefing on the merits,
3 but I think if you're asking for relief or you want to apply
4 for relief in that regard, you should take it up in the Eastern
5 District of New York.

6 Is that agreeable?

7 MR. KAMINSKY: Absolutely, your Honor. There was just
8 more of a technical question of whether today's sealed
9 proceeding would bar the government from speaking with one of
10 those attorneys and asking for the documents back.

11 JUDGE CABRANES: No.

12 MR. KAMINSKY: Thank you.

13 JUDGE POOLER: Counsel, before you sit down, this
14 matter before us was triggered by your motion for a temporary
15 stay of the unsealing.

16 MR. KAMINSKY: Yes.

17 JUDGE POOLER: Do you have reason to believe that the
18 documents were about to be unsealed?

19 MR. KAMINSKY: Yes.

20 JUDGE POOLER: What is the basis for that?

21 MR. KAMINSKY: We spoke to the Clerk of the Court here
22 and we were informed that, unless someone makes a motion, it's
23 going to be unsealed. It was sealed as a matter of course when
24 the appeal was filed.

25 JUDGE POOLER: That is, the appeal in this Court?

X12endoen

SEALED

1 MR. KAMINSKY: Yes. Correct. That was sealed pro
2 forma, and when we called to inquire about it they said not for
3 long, so we made this motion.

4 JUDGE POOLER: Thank you. Thank you for clearing that
5 up.

6 JUDGE CABRANES: Thanks very much. We are in recess.

7 (Adjourned)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25