



June 4, 2019

Office of the United States Attorney  
Northern District of California  
150 Almaden Blvd., Suite 900  
San Jose, CA 95113  
Attn: Yvette Baird, Victim/Witness Specialist

Re: Victim Statement re Sentencing of Ross Colby in USA v Ross Colby (5:17-cr-00168-LHK)

As President and CEO of Embarcadero Media, the victim in the above-referenced case, I would like to submit the following statement to update and supplement my original victim statement submitted to you on August 17, 2018.

On October 31, 2018, the original sentencing date, Ross Colby was remanded into custody by Judge Koh and ordered to undergo a mental competency evaluation requested by Colby's defense counsel, on the theory that his transmittal to the judge of a surreptitious recording of his May 17, 2016 proffer interview the day before sentencing might be suggestive of delusional behavior.

As a result, Colby was in custody between October 31, 2018 and April 10, 2019, or almost six months. During this period we gained some insight into how incarceration might affect him. He was, at times, deprived of the medication the court had ordered, which led to significant anxiety for him and his family and potentially negative health effects. He was also in an altercation with other inmates at Santa Rita jail.

I expressed to the government at the time my concerns over his treatment and his impending transit to Texas for his competency evaluation. I suggested that the U.S. Attorney bring a motion asking the court to release him into the custody of his family and be allowed to travel to Texas under their supervision. This did not occur, although I am grateful that the government did eventually stipulate to his release in April when he returned from Texas.

Based on references made in court on May 7, 2019, the original recommendation from the probation department (which is not in the public record) was apparently for a sentence of 12 months plus one day. I assume that the probation department is reviewing and updating its recommendations based on the events of the last several months.

I believe that justice will best be served in this case if Mr. Colby is not returned to prison and is placed on supervised probation. Further, I would urge that the terms of his probation not deny him the use of computers or the opportunity to engage in computer-related employment.

My reasons for urging this sentence are as follows:

1. He has no prior criminal record.
2. He was a victim himself, in that he committed the crimes at the behest of an individual who made him feel afraid for his safety, a fear that was completely rational in light of

this individual's background. (The context for this was investigated by my staff and is described in detail in my May 9, 2019 letter to the court and the accompanying timeline.)

3. He admitted to his conduct long before he was indicted, explained the circumstances of why he committed the crimes and attempted to provide useful information to the FBI that could lead to the prosecution of Hiruy Amanuel, the alleged instigator and beneficiary of the hacking. The fact that the FBI and U.S. Attorney chose not to investigate Colby's assertions further and/or pursue a cooperation agreement does not negate his willingness to expose the co-conspirator in the case.
4. He has a well-documented history of complicated health issues that require very careful management of a delicate drug regimen.
5. The notion that a prison term will serve any rehabilitative purpose is far-fetched, and in fact, I think he is likely to leave prison with additional emotional and health problems than he currently experiences, making a return to a normal life more difficult. That does not further justice nor the goal of a convicted criminal being able to successfully return to society and resume his life.
6. The deterrent effect of his serving a prison sentence would appear minimal or non-existent given the unusual circumstances of this case.
7. His primary skill that will enable meaningful future employment relates to computers. With almost any occupation today requiring the use of computers and technology, a sweeping prohibition on Colby's use of computer devices would impede, not support, his rehabilitation and return to society.

In summary, as I wrote to the U.S. Attorney's office on May 22, 2019, I believe that in the interest of justice the U.S. Attorney office should consider reducing the two felony counts to misdemeanors and/or recommending a sentence that does not require Mr. Colby to serve additional time incarcerated. Such a recommendation would acknowledge that prison time under the circumstances achieves no criminal justice objective other than retribution and that Colby has already suffered sufficiently to achieve this purpose.

As the victim of Colby's crime my primary objectives in supporting this prosecution were to 1) bring to justice the person or persons who sought to illegally inflict damage on our company, 2) deter those with hacking abilities from using their talents for criminal purposes, especially against a news organization, and 3) recover some of our financial losses arising from the hacking.

Unfortunately, I don't think either of the first two objectives was achieved in this case. While Colby carried out the attack on our computer systems, I believe he did so under pressure from the person with actual animus toward our company and primarily out of fear for his safety. And the unusual circumstances of this case aren't likely to deter others from committing similar crimes regardless of the sentence imposed on Colby.

Another purpose for recommending this sentence is to reduce the likelihood of an appeal. From a purely practical standpoint, an appeal in this case would be a tremendous waste of

resources—by the government, the federal court system and the Colby family. If that can be averted through a smart and compassionate approach to sentencing, justice will have been served and all parties can move on.

I recognize that this letter expresses significantly different views than my original victim statement submitted on August 17, 2018. This primarily reflects the events that have happened since Colby's October 31, 2018 sentencing hearing, including the opportunity to listen to the audio recording of the 2016 proffer session and to observe the impacts of incarceration during the period that he was awaiting his evaluation.

Thank you for the opportunity to share these recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. S. Johnson', written in a cursive style.

William S. Johnson  
President