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UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

UNITED STATES OF AMERICA,
Plaintiff,
v.

LORENZO BLACK (01), Docket No. 16-20032
KARL CARTER (02), Kansas City, Kansas
ANTHON AIONO (03),
ALICIA TACKETT (04), Date: 10/28/2016
CATHERINE ROWLETTE (05),
DAVID BISHOP (06),
Defendants.

.....

TRANSCRIPT OF DISCOVERY CONFERENCE
BEFORE THE HONORABLE JULIE A. ROBINSON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the plaintiff:

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17 Also Appearing:

18 David R. Cohen, Special Master

19 Wayne Bigelow, CCA-Leavenworth

20 Craig Beam, United States Marshals Service

21 Henry Herron, Internal Revenue Service
22 Criminal Investigation

23 John Seuber, United States Secret Service

24 Gary Hart, Attorney at Law
25

1 (Court called to order.)

2 THE COURT: All right. We are here in
3 *United States versus Lorenzo Black, et al.* The case
4 number is 16-20032. And appearing for the government.

5 MS. BARNETT: Debra Barnett, Assistant
6 United States Attorney.

7 MR. OAKLEY: Chris Oakley, Assistant United
8 States Attorney.

9 MR. SLINKARD: Duston Slinkard, Assistant
10 United States Attorney.

11 THE COURT: All right. And for the
12 defendants.

13 MS. BRANNON: From the Federal Public
14 Defender Office, Melody Brannon and Kirk Redmond.

15 MR. JENAB: Your Honor, for Mr. Black, John
16 Jenab. We have filed a waiver of appearance.

17 MR. GUASTELLO: Mr. Carter appears in person
18 and in custody with counsel David Guastello.

19 MR. HOFFMAN: Mr. Aiono appears not but by
20 and through counsel Jason Hoffman, Your Honor.

21 MS. AMBROSIO: Your Honor, Ms. Tackett
22 appears by counsel Kathleen Ambrosio. She filed a
23 appearance of waiver, too.

24 MR. JACKSON: Your Honor, Catherine Rowlette
25 appears in person and by counsel Mike Jackson.

1 MS. DODGE: Cynthia Dodge on behalf of David
2 Bishop who appears in person.

3 THE COURT: All right. Anyone else?

4 MR. LAURANS: Jonathan Laurans for
5 interested party David Lougee.

6 MS. MORGAN: And Melanie Morgan on behalf of
7 Mitchell Reulet who has filed a motion to become part of
8 this litigation as an interested party.

9 THE COURT: All right. And that motion is
10 pending in front of me, Miss Reulet's motion to
11 intervene.

12 All right. So also with us today is David Cohen
13 who is the court's appointed special master. I won't
14 take the time to introduce Mr. Cohen by his very
15 extensive qualifications and experience but the
16 appointment order did include a link to his website if
17 you have any questions about that.

18 We're here to take up the matters that are
19 addressed in a discovery conference order that was
20 issued under Mr. Cohen's signature. Let me just say at
21 the outset, the appointment of special masters in
22 criminal cases is not something that most of us have had
23 a great amount of experience with, but he works under my
24 direction and in close consultation with me.

25 The order that he issued with all of the

1 directives, consider it my order. In fact, anything
2 that you receive from him under his signature is the
3 same as receiving something from me under my signature.
4 So he prepared this order after our conferral and issued
5 it by his signature. And -- but I just say that at the
6 outset so there's no question that anything that comes
7 from him comes from me and shall be complied with
8 because it is, in fact, my order.

9 So consistent with that, there are a number of
10 questions that are posed in the discovery conference
11 order. And before we get to that though, I want to
12 start by directing your attention to pages 5 and 6 of
13 the discovery conference order, the status quo section,
14 and also pages 2 and 3, in particular footnotes 1 and 2
15 because these are the directives that I have given in
16 this discovery conference order. And I'd like to start
17 by learning whether these have been complied with and,
18 if not, what is the status of steps towards compliance.

19 So we'll start with that and then we'll go on to
20 talk about the questions in the order itself. Let me
21 just also say at the outset that the government
22 yesterday filed a motion to reconsider the appointment
23 of Mr. Cohen. That motion is not yet under advisement.
24 The defendants have not had a chance to respond in view
25 of the fact that it wasn't filed until yesterday. So I

1 thought one thing we ought to talk about also, and let's
2 do that now, is to set a response deadline for the
3 defendants at which point I'll consider it under
4 advisement and determine whether to have a hearing or
5 just issue an order.

6 So, Miss Brannon, let's talk about what would be
7 a workable response deadline.

8 MS. BRANNON: Your Honor, I think November
9 14th is a Monday.

10 THE COURT: All right. And I don't know if
11 anyone other than you intends to file a response, but I
12 think that's a reasonable deadline for response. So
13 we'll make November 14th be the response deadline to the
14 motion to reconsider. I will not need any reply I don't
15 believe. The government has filed a very lengthy, I
16 think it's 27-page, motion to reconsider. So I'll
17 consider it under advisement with the filing of the
18 response on or about November 14th.

19 Okay. So let's return to the directives in the
20 discovery conference order. Let's start with the
21 footnotes on page 2 and 3. So footnote No. 1 in this
22 order says, Are there records of when, how why CCA has
23 produced video recordings to the government? This
24 question is not limited in time, nor as to who might
25 have those records. And then footnote No. 1 says, If

1 so, the special master directs these records be
2 preserved as well as the video recordings that were
3 produced.

4 And this directive is really addressed to the
5 U.S. Attorney's Office but also to CCA and Securus. And
6 it really is based on the fact that the court has
7 learned thus far that, although there may have been
8 times that either audio or video were subpoenaed by the
9 government, there are other times that they obtained
10 them in some other way from CCA. Whether that's through
11 the marshal making an oral request or a written request,
12 I don't know. The government's never been clear about
13 that. So this seeks to determine are there records of
14 how these things were -- how, when and why these things
15 were obtained? And, if so, we want those records to be
16 preserved.

17 In a similar vain, with respect to the audio
18 recordings on page 3, footnote 2 asks, Are there records
19 of when, how and why Securus has produced audio
20 recordings to the government? Again not limited in
21 time, nor as to who might have those records. And, if
22 so, the court directs that these records be preserved as
23 well as the audio recordings that were produced.

24 So with respect to this directive to preserve any
25 records of acquisition or production is what it really

1 says, any records of production by CCA or Securus of
2 video and audio recordings, that these be preserved, has
3 that been complied with?

4 MS. BARNETT: With regard to this case, Your
5 Honor, I'm advised we've not retained -- or not obtained
6 any records directly from Securus. Records that we
7 would obtain related to CCA would have been through the
8 Marshal Service that we obtained those records, and it
9 could have been a number of different ways. As the
10 court has already talked about, it could have been with
11 the grand jury subpoena. It may have been by sending a
12 request to the marshals, whether that's through an
13 e-mail or some sort of other written document. I hate
14 to say a letter but it might have been a letter, a memo
15 of some sort making a request.

16 What I will tell the court is we understand right
17 now nothing in our office as related to obtaining
18 information from CCA should be destroyed or gotten rid
19 of in any way. So within our office we have, I guess,
20 put a lockdown, so to speak, on information or records
21 that we would currently have.

22 THE COURT: And you do understand that it
23 goes beyond the bounds of the *Lorenzo Black* case?

24 MS. BARNETT: Yes. Yes.

25 THE COURT: All right. Because, as you

1 know, there are Rule 41 motions pending in dozens and
2 dozens of other cases in this district in this division
3 and in other divisions, and so all of this is relevant
4 to that as well.

5 So what you're telling me is that you have, in
6 fact, through some sort of lockdown procedure, preserved
7 all e-mails, all handwritten notes of, I suppose,
8 conversations where you made a request to the Marshal
9 Service, any communications back from CCA, Securus, the
10 Marshal Service, or anyone else involved in the
11 acquisition -- in the production of videos or audio
12 recordings in this case and beyond this case?

13 MS. BARNETT: Well, I will tell the court,
14 as the court was previously advised, our -- we've gone
15 through a new computer refresh, I guess is what they
16 call it. We have all of the Kansas City computers that
17 have been set aside and maintained. They're not -- they
18 were subject to destruction. They are not. They are
19 being held pursuant to this litigation. We have since
20 been asked -- I think Mr. Slinkard was asked about
21 preserving Topeka's computers. I don't know if it was
22 all of them or specific computers.

23 MR. SLINKARD: It was all of them. And
24 yesterday Miss Morgan made preservation requests based
25 upon her motions that she'd filed. Checked with our

1 computer information systems manager. All of the hard
2 drives of all of the computers used by any Topeka
3 attorney that were refreshed during the -- during the
4 routine replacement process were still available. And
5 so those have all been retained at this point as well.

6 THE COURT: All right. And the Wichita
7 computers?

8 MR. SLINKARD: At this point no one has
9 asked. And the court's original directive, when it
10 inquired -- when you inquired and we responded I believe
11 the September 7th hearing, was the Kansas City. So
12 we've had those since then. I asked yesterday about
13 Topeka and they were still here. And so I asked --
14 directed that they be retained. I have not made any
15 inquiry of him regarding Wichita. So I could do that if
16 that's the court's direction. Be happy to. But we
17 haven't at this point, so I don't have any information.

18 THE COURT: Okay. I want it to be
19 district-wide, all three divisions.

20 MR. SLINKARD: Okay.

21 THE COURT: Yeah. So you've accomplished
22 Kansas City. You're in the process of Topeka. And
23 you'll now be in the process of -- of Wichita as well,
24 okay, audio and video. All right.

25 So let's go to the status quo section then. And

1 this, for the most part, has to just do with
2 preservation of a number of things, and it refers you to
3 pages 7 and 8 of the appointment order for the
4 itemization. So we'll walk through that.

5 But skip to the second paragraph of the status
6 quo section and that has to do with the making of
7 forensic images of the personal computers of Erin
8 Tomasic, Kim Flannigan, Pauletta Boyd, and also any
9 computer used to view the video recordings produced in
10 this case, and also preservation of all e-mails
11 regardless of the device used to send and receive them,
12 and other documents related to these video and audio
13 recordings at CCA-Leavenworth or any other detention
14 facility. So with respect to the preservation of
15 e-mails, Miss Barnett, is that included in what you've
16 already told me?

17 MS. BARNETT: Honestly, Your Honor, our
18 e-mails are already preserved automatically. But, yes,
19 they're available, Your Honor.

20 THE COURT: Okay. And then the forensic
21 imaging, has that been accomplished of those computers?

22 MR. SLINKARD: It has not, Your Honor. That
23 is something that I want to bring to the court's
24 attention today and was part of my conversation with the
25 system's manager as well.

1 Based on the conversation with him -- and so the
2 court's aware, the -- the replacement of computers was
3 conducted on a rolling basis. I don't have the dates
4 for Wichita because until this morning I wasn't aware
5 they were at issue. They would have been, I believe,
6 the first office and a week or two before. All the
7 computers that were replaced in Topeka were replaced on
8 August 26th and August 29th. All the computers that
9 were replaced in Kansas City were replaced on August
10 31st and September 1st.

11 So it's our belief at this time that -- and I
12 should say the computers that were replaced on that
13 rolling basis had been in service for approximately five
14 years. So it's our belief at this time that, at least
15 with respect to the *Black* case, the matters the court's
16 inquired about would all be contained on those computers
17 that were taken out of service and the hard drives
18 retained.

19 Of the computers of the named individuals,
20 there's one laptop that was assigned and used by
21 Miss Flannigan. One laptop that was assigned and used
22 by Miss Tomasic. And eight potential computers that
23 were under -- were used by or under the control of
24 Miss Boyd, including checking those out to others who
25 needed them on a -- on a litigation support basis. Of

1 those one is still in use and was not replaced. That is
2 a workstation or desktop-type computer, tower-type
3 computer. There were five laptops under Miss Boyd's
4 control and two workstations under her control that were
5 replaced. With respect to imaging them --

6 THE COURT: Okay, so stop. So you're saying
7 that basically the cyclical replacements all were
8 completed by September 1 --

9 MR. SLINKARD: Yes.

10 THE COURT: -- the number of devices?

11 MR. SLINKARD: Yes.

12 THE COURT: So but obviously what's
13 pertinent or may be -- may be the new ones but obviously
14 the old ones. So where are the old ones and can those
15 be imaged, the hard drives?

16 MR. SLINKARD: The hard drives are available
17 for all of them. What -- what presents a challenge is
18 the way the laptop drives work. Because they leave
19 secured space, they are automatically encrypted. And
20 the only way to access those hard drives, as I
21 understand it, is using the chassis of the laptop that
22 goes with the drive, and those chassis are preserved.
23 Those laptop hard drives are preserved and then the hard
24 drives which are not encrypted for all the desktop
25 printers are preserved.

1 With respect to imaging them, my understanding
2 from our computer manager is that he didn't believe we
3 presently had the capability to image the laptop drives.
4 He thought we probably did the desktop drives. But if
5 the laptop drives that are encrypted are imaged, it's
6 just imaging encrypted data that would not itself be
7 accessible. And it's an open question because no one
8 that -- we've never had reason to try it, whether you
9 can, for example, take -- let's call it Laptop A, make
10 an encrypted image -- make an image of the encrypted
11 drive in Laptop A, replace the original drive with the
12 imaged drive and see if it's successful in Laptop A.
13 We've never had reason to do that.

14 Point being, Your Honor, is the drives are
15 available. And subject to concerns that was -- was not,
16 frankly, my purview that Miss Barnett may address with
17 you, if production is later ordered, they are available.
18 They are retained with respect to all the computers in
19 Topeka, all the computers in Kansas City, including
20 those computers. And I'll make the communication with
21 the manager about holding on to all the drives in
22 Wichita.

23 But with respect to imaging them, we may not have
24 the capability, at least at the present time, for the
25 laptops. And there's also going to be the open question

1 of whether an image of the encrypted laptop drives will
2 actually be accessible by anyone to view. It may be
3 using the chassis of the computer. It may not. We
4 simply don't know.

5 THE COURT: Well, it seems to me that based
6 on that then the preservation -- all right. So whose
7 custody is all this in at this point?

8 MR. SLINKARD: Currently all of those drives
9 are being held by the computer systems manager for our
10 office.

11 THE COURT: All right. It seems to me that,
12 although I really just wanted to preserve -- if we're
13 talking about actual equipment and not just an image to
14 preserve, we may need to impound those and put those in
15 a vault somewhere. I don't consider that production
16 because the court won't be touching them or accessing
17 them, but at least they're secured somewhere. What kind
18 of volume of equipment are we talking? I'm sure we
19 probably have the space to put it in a vault but --

20 MR. SLINKARD: The drives themselves, only
21 because I've seen the drives as they were pulled out
22 during the refreshed and stacked up, the drives
23 themselves are not particularly -- I would say are in
24 the neighborhood of a banker's box for each location. I
25 have no idea on the laptop cores or chassis themselves.

1 I don't know how many total laptops we're talking about.
2 You know, obviously they're all the size of a laptop.
3 But how many, I do not know.

4 THE COURT: All right. Well, I think I'm
5 going to order that those be impounded and just held
6 secured for the time being and just similar to the hard
7 drives of the videos and audios that are impounded and
8 nobody's looking at those at this point, although
9 obviously those were produced as part of production. I
10 mean, the court does intend to have the special master
11 start looking at those. But with respect to the hard
12 drives for the computers themselves, I'd like to get
13 those impounded. I'll defer on the whole question of
14 laptops and chassis and hardware at this point. I don't
15 know that we necessarily need to impound that. And I'll
16 have Mr. Cohen talk to you all further about that later
17 after the hearing.

18 MR. SLINKARD: Just a couple of questions in
19 light of the court's order. I don't know whether the
20 hard drives from the laptops were actually removed from
21 them since the whole machine was being replaced. On the
22 desktops, they removed the hard drives because it
23 contained our data and the desktop shells were going to
24 be recycled, remitted to the company, whatever.

25 On the laptops, I don't know whether the drives

1 were actually removed or left in the computers. I'm
2 assuming if they were left in the computers, the court
3 wants impoundment of the computer with the drive in it.

4 THE COURT: Right. But these are -- these
5 are laptops that are in service or not in service?

6 MR. SLINKARD: They are not in service.

7 THE COURT: Okay. So I think it would make
8 sense to impound them. I don't want to impound things
9 necessarily that are in service. It sounds like --

10 MR. SLINKARD: There is one workstation
11 computer in service only.

12 The other issue with respect to that, judge, is
13 simply they're in three locations. So in terms of the
14 mechanics of impoundment, I assume that you want the
15 impoundment to be delivering them to the court clerk's
16 office here in Kansas City.

17 THE COURT: Right.

18 MR. SLINKARD: It will probably take us a
19 week or so to get them transported and all here to be
20 turned in if that's acceptable.

21 THE COURT: Okay. That's fine. After the
22 hearing I think Mr. Cohen contemplates talking to you
23 all and also talking to perhaps some others, but that's
24 something you all can talk about further.

25 Did you have something, Miss Morgan?

1 MS. MORGAN: Yeah, judge. I know we had
2 been talking about computers, you know, that have gone
3 out of service here in this district. But because
4 Miss Tomasic actually works in the Western District of
5 Missouri, I don't know what her computer status would be
6 in her office in the Western District of Missouri and
7 whether she had a laptop that she used there and whether
8 any of that had to do with business in Kansas.

9 THE COURT: I wasn't aware she worked in the
10 Western District of Missouri. Is that something new?

11 MS. BARNETT: I -- I don't know how long
12 she's been a Social Security SAUSA with the Western
13 District, Your Honor. She is a Western District Social
14 Security SAUSA. A couple days a week I think she works
15 over there.

16 THE COURT: She is appointed in both
17 districts?

18 MS. BARNETT: Yes.

19 THE COURT: She offices in Missouri as well
20 as Kansas?

21 MS. BARNETT: Yes. Mr. Oakley says that --
22 the officing -- officing in both offices is just recent.
23 I mean, up until recently she's primarily been in our
24 office here in Kansas City, but she's had the -- I call
25 them the SAUSA-ship. She's had that with the Western

1 District of Missouri for -- we don't know for sure, but
2 we can find out if you want to know, Your Honor.

3 THE COURT: Yeah, follow up on that. If
4 it's fairly recent and she's only there a couple days a
5 week, I'm not real clear on what you're saying. But
6 follow up on that and let me know. And if we need to,
7 we can have further conversation about that,
8 Miss Morgan.

9 Okay. So, Mr. Cohen, was there something? I
10 noticed you slipped a note to Mr. Treaster. Was there
11 something else you wanted me to ask about this?

12 MR. COHEN: I was trying to remember the
13 timing of when Miss Tomasic met with Miss Rokusek, and I
14 think that was before September 1st; is that right?

15 MS. BARNETT: Yes. I think it was the first
16 week of August, maybe the 4th or 5th.

17 MR. COHEN: Miss Tomasic's work in Missouri
18 also postdates that period of time; right? In other
19 words, her -- the -- the trick on those computers and
20 preserving them is to ensure that whatever happened on
21 those computers with regard to watching the videos is
22 preserved. And so I'm not concerned if she was working
23 in Missouri on Social Security matters if that had
24 nothing to do -- if at that time in Missouri she wasn't
25 viewing videos.

1 MS. BARNETT: Which we would believe --
2 which we believe would be the situation. But if you
3 want us to check on that for certain, we will do that.

4 MR. COHEN: Thank you.

5 MS. BARNETT: Okay.

6 THE COURT: We do.

7 Okay, Miss Brannon.

8 MS. BRANNON: Judge, just one other area, if
9 I may. We're talking about computers and e-mails and so
10 forth but there are other means of communication,
11 primarily cell phones and texts. We don't know how
12 those are necessarily synced in the U.S. Attorney's
13 Office. But if there are cell phones independent would
14 have text messages or that sort of communication that
15 might pertain to this, we would ask that be preserved as
16 well.

17 THE COURT: Can you speak to that,
18 Miss Barnett? I don't know if there are iPads and cell
19 phones and that are work-related -- work-related or at
20 least used for work.

21 MS. BARNETT: We have iPads within the
22 district that are issued to some AUSAs but not every
23 AUSA. I will have to check to see if Miss Tomasic had
24 an iPad issued to her from our office.

25 Most of us, the attorneys, have iPhones, as I'm

1 indicating here. With our iPhones, we have the
2 capability of texting. They do not however sync up with
3 our computers as I understand it, and I have a very
4 limited knowledge of how all this works. But I know if
5 I text on my iPhone, it does not necessarily show up on
6 my computer at my desk.

7 However, I am able to check all of my e-mails
8 that I receive at my computer at my desk on my iPhone.
9 So the e-mails that go to my computer go to my iPhone
10 and vice versa.

11 With regard to the texts, I believe the texts
12 would just be with the iPhone itself. But I can check
13 on that also, Your Honor, if you want me to.

14 THE COURT: All right. Mr. Cohen, do you
15 have any questions or concerns about this?

16 MR. COHEN: More than I can ask very quickly
17 right now, so we'll chat about it.

18 MS. BARNETT: Thank you.

19 THE COURT: All right. Let's move on to the
20 rest of the status quo section, and all of this speaks
21 to just preservation, not production. And just to
22 remind you that, for purposes of preserving and
23 maintaining the status quo, this order encompasses not
24 only the U.S. Attorney's Office but CCA-Leavenworth and
25 CCA and the U.S. Marshal Service. And so the

1 categories -- and they're itemized in bullet points on
2 pages 7 and 8 of the appointment order. Let's walk
3 through those and see what the status is of those.

4 So the first, Determine what, if any, steps were
5 taken by CCA or other pretrial holding facilities to
6 protect confidential audio communications such as
7 blocking certain phone numbers or warning callers, and
8 whether those measures were communicated to either
9 detainees or their attorneys.

10 Wait a minute, I think I'm looking -- no, I'm
11 sorry, let's -- it's really on page 8 where -- or the
12 bullet points where it talks about identify --

13 Mr. Cohen, let me talk to you about this, in
14 terms of just the preservation on pages 7 and 8.

15 (The Court conferring with Mr. Cohen.)

16 THE COURT: All right. So I'm not going to
17 walk you through these bullet points on 7 and 8 because
18 they go beyond what we're talking about for
19 preservation. That's really a section, of course as you
20 know, called additional investigative duties that the
21 master is not doing at this time. The court, in those
22 pages of the order, was indicating areas that the
23 investigation might expand to but might not expand to,
24 but at this point it's too early to say.

25 But back to the status quo section of the

1 discovery conference order. Essentially what the court
2 is ordering is preservation of all information and
3 sources of information that may be relevant to the
4 matters on pages 7 and 8. So that's just preservation
5 of e-mails and documents and notes and, you know, all
6 sources of information that may pertain to that. So
7 it's very generic.

8 Again, I go back to your initial statement,
9 Miss Barnett, that you have all sort of understood this
10 anyway, have locked down all of this information; is
11 that correct?

12 MS. BARNETT: Yes, Your Honor. And because,
13 as the court may remember, the Department of Justice has
14 its own archive systems and everything, so we do have a
15 number of things that were preserved even before the
16 court asked us to preserve or protect some of this
17 information.

18 But I would want to make it clear though this is
19 with regard to our materials in the U.S. Attorney's
20 Office. We don't have any control over CCA and their --
21 their records or what they're doing with their
22 materials. So I just want to make that clear to the
23 court.

24 THE COURT: All right. Obviously there may
25 be communications between your office and CCA and/or the

1 Marshal Service, and so you do have control at least
2 with respect to incoming and outgoing communications and
3 sharing of information or whatever interactions you've
4 had with these other entities.

5 MS. BARNETT: Correct, we have control over
6 our side of that equation or communication.

7 THE COURT: All right. I think we're ready
8 now to move on to what the discovery conference order
9 asks.

10 MR. LAURANS: Excuse me, Your Honor.

11 THE COURT: Yes, Mr. Laurans.

12 MR. LAURANS: I don't want to beat a dead
13 horse, I'm a little confused. Procedurally it seems to
14 me there's a gap. Could the court perhaps order a
15 mechanism through which the U.S. Attorney's Office is
16 directed today to make clear communications to CCA and
17 Securus and the marshals to comply with this order?
18 Because what I'm hearing from Miss Barnett is, well,
19 we're just doing our part; we don't have control over
20 these other people. You certainly have enough control
21 to get the video and telephone calls with a grand jury
22 subpoena and without one.

23 So I'm hoping that perhaps there's -- I mean, I
24 don't see counsel for CCA, Securus, or the marshals
25 here. And I had this problem in a motion that was

1 granted by you last month to get some video and I just
2 want to make sure that there's a mechanism in place to
3 at least communicate to these people your order.

4 THE COURT: I can tell you that Mr. Cohen
5 has been in touch with attorneys from CCA. I'm not sure
6 about Securus. Are you the CCA attorney?

7 MS. BROCKERT: Yes, Your Honor. Alyssa
8 Brockert. I'm the local counsel for CCA.

9 THE COURT: Tell us your name again, please.

10 MS. BROCKERT: Alyssa Brockert. I've been
11 in communication with CCA, the corporate office, as well
12 as the Leavenworth detention facility. I also e-mailed
13 Mr. Cohen last month. I'm not sure he received my
14 e-mail.

15 MR. COHEN: I did. Thank you.

16 MS. BROCKERT: We invited Mr. Cohen to visit
17 our facility, to answer any questions he might have,
18 also to discuss any preservation orders CCA -- might
19 pertain specifically just to CCA.

20 In response to -- to the information retained by
21 the AUSA's office, one -- unless we need it -- unless
22 CCA needs it for internal use, they don't retain
23 anything that they provide to the AUSA's office. So,
24 for instance, if video recordings or audio recordings
25 are requested, they would pull that from the DVR,

1 transfer it to a terabyte drive and then give the
2 terabyte drive to the AUSA's office. Eventually that
3 DVR would record over. So we don't keep a copy of the
4 terabyte drive. We don't keep anything that we've
5 pulled.

6 So as far as any future information that you're
7 asking be -- be stored, we would want to know
8 specifically if you're wanting us to go ahead and pull
9 all of the current video. We did obviously remove the
10 video recording pursuant to your order from the attorney
11 conference rooms.

12 And but again obviously we can talk with
13 Mr. Cohen. I am here. I am making notes. We do intend
14 to comply and cooperate as fully as possible with the
15 court's and Mr. Cohen's orders.

16 THE COURT: All right. And when -- when a
17 request is made by you by -- to you by the U.S.
18 Attorney's Office or the Marshals Service or otherwise
19 for recordings, whether they're audio or video, do you
20 all keep a record of that request whether it's a phone
21 conversation or whatever it might be?

22 MS. BROCKERT: Well, pursuant to our
23 contract with the U.S. Marshal Service -- and I keep
24 saying "our." I'm local counsel only. I don't
25 necessarily speak on behalf of CCA. But my

1 understanding is that pursuant to the CCA's contract
2 with the U.S. Marshals Service, the information that's
3 retained by CCA is considered property of the U.S.
4 Marshal Service. So whatever request is made from the
5 U.S. Marshal Service, be it oral or written or e-mailed,
6 it's provided. Otherwise, we require the formal
7 procedure with regard to either a search warrant or
8 grand jury subpoena which then involves our counsel.
9 But with regard to requests by the U.S. Marshal Service,
10 it -- any of those methods could be used to obtain
11 information.

12 We certainly do retain e-mails and -- and letters
13 that are submitted and it filters through a very small
14 department in the -- in the facility. So it should be
15 easy to obtain anything that is written. As far as oral
16 goes, there would be no way to collect that information.

17 THE COURT: All right. Thank you,
18 Miss Brockert.

19 Mr. Laurans, so we've talked about the U.S.
20 Attorney's Office and CCA. The other leg of this stool,
21 so to speak, is the Marshal Service. And Mr. Cohen will
22 be in conversation with them as well. I can tell you
23 that Mr. Miller -- I don't know if he's here -- but he's
24 been very helpful, and the Marshal Service in general
25 has been very helpful, in terms of some other requests

1 the court has had in this case. So --

2 MR. LAURANS: Thank you, judge.

3 MR. COHEN: Just ask if counsel for Securus
4 is present.

5 (No response.)

6 MR. COHEN: Thank you.

7 THE COURT: All right. Mr. Cohen, are you
8 ready to work on the questions?

9 And I don't know -- I guess I should find out
10 from you, Miss Barnett or Mr. Oakley, whoever, in the
11 discovery conference order it's -- based on Mr. Cohen's
12 extensive review of the record, he had some idea of some
13 people that may have firsthand information to answer
14 some of these questions. I don't know if any of those
15 folks are here such as Miss Brockert or whether you
16 conferred with them and that's how you're going to
17 answer some of these questions. I mean, what -- what is
18 -- how do you intend to proceed?

19 MS. BARNETT: Actually, Your Honor,
20 Mr. Oakley reached out to the agents that were
21 identified. Excuse me, having trouble with the chair.
22 So we can provide answers to the questions that are
23 related to the way that the U.S. Attorney's Office or
24 Secret Service received the information or the evidence
25 in the case.

1 But there are some of the questions -- and we've
2 kind of mapped out the ones that we think that CCA is in
3 a far better position to respond to those if CCA's
4 counsel can address those, because we simply don't know
5 internally how certain things occur there or would not
6 want to try to explain it. It would be better if
7 somebody at CCA could explain that to Mr. Cohen.

8 So we're prepared to go forward and give answers
9 to the questions that we feel we can answer about our
10 own internal processes and procedures.

11 THE COURT: All right. Mr. Cohen, let's
12 proceed.

13 MR. COHEN: Hello. My name is David Cohen.
14 I'm from Cleveland. Go Tribe. And what I propose that
15 we do -- I'm going to sit down obviously, so I apologize
16 if I'm not looking at you directly. But I think that
17 what we ought to do is go through this discovery order
18 topic by topic and not person by person. And I'll just
19 ask you to give me the information that you have about a
20 given topic. The information might be something that
21 the AUSA's Office provides. It might be something CCA
22 wants to get up and chat about. It might be something
23 the Marshal -- Marshals Office or Secret Service or
24 Securus talks about.

25 So I'm not going to divide it up by who speaks.

1 I'm going to divide it up by topic. And really it's as
2 an informal a chat as you can have in a courtroom in
3 front of a judge. But I just want to try and get some
4 information so that I can understand what we have and
5 how it works so that I can, as quickly as possible, get
6 you all what you need, which is video and audio that
7 isn't privileged.

8 I understand that the government has said we'll
9 just forego the video altogether, that might make it a
10 lot simpler depending on whether -- that's where we end
11 up, and also that you may request only very few audio
12 recordings. I still need to know how it was gathered,
13 how it's kept, how I can view it, what problems I might
14 have, whether metadata was kept and so on.

15 So let's just go through this. We'll have a
16 conversation. If you have anything that is relevant on
17 that topic, raise your hand and tell me. Doesn't matter
18 who you work for or how you got that information. Does
19 that make sense?

20 MS. BARNETT: Yes.

21 THE COURT: Except that I'd like you, when
22 you do that, to identify yourself by name so the court
23 reporter can identify who you are and the court as well.

24 MR. COHEN: So I'm looking at the discovery
25 order at page 2 on the top and we'll just go through

1 this. And we'll add now I expect, as I mention in here,
2 that after this formal hearing maybe some of us will get
3 together and we'll sit around a desk and you'll show me
4 how it works on a computer and talk about how the
5 software works, that kind of thing.

6 But we'll start on the top of page 2 with the
7 video recording operation at CCA. And if somebody could
8 explain, you know, how that works. There are a whole
9 bunch of cameras that are all recording. They go on
10 to -- the recording goes onto a hard drive. How is that
11 segregated?

12 There's a list of hard drives that show which
13 cameras. How is that list created?

14 Is that the only -- is that for sure the only
15 thing that could possibly be on that hard drive because
16 of the hardware? Those kinds of things.

17 So that's the question. Who wants to start?

18 MR. BIGELOW: I'm Wayne Bigelow.

19 THE COURT: We're going to need you all to
20 come forward. I'm sorry, we're having a great deal of
21 difficulty hearing even the lawyers. So I'll ask the
22 lawyers to also use the lectern, anyone who --
23 Mr. Bigelow, right here at this lectern, you can use
24 that microphone.

25 MR. BIGELOW: All right. I'm Wayne Bigelow.

1 I'm the Security Threat Group Coordinator at Leavenworth
2 Detention Center and I basically in -- in my purview,
3 with covering the gang situations there and individuals,
4 I have occasion to make recordings of phone calls.

5 As far as the Pelco, or video system, we have six
6 DVRs that are in a room that record video over a 24-hour
7 period in different parts of the facility from the
8 parking lot to the hallways and the dorms where the
9 individuals -- the inmates are kept.

10 I believe -- I'm not an expert on this but I
11 believe that the -- each one of the DVRs recycle every
12 so many days. I think it's every 30 days and then they
13 record over, and we can access those to make video
14 recordings.

15 MR. COHEN: Who is the expert?

16 MR. BIGELOW: Our IT officer is Charles
17 Atkins.

18 MR. COHEN: Can you spell his name for me?

19 MR. BIGELOW: A-T-K-I-N-S.

20 MS. BROCKERT: I'm just going to interject.
21 Alyssa Brockert again. The DVR -- there are no hard
22 drives. They -- they're DVRs that record over. Nothing
23 is stored on that. And -- and the 30-day period is the
24 -- is usually the minimal time frame for rerecording
25 where it starts to record over. It depends on the size

1 of the recording that's being stored on that DVR. So
2 there's a capacity to each DVR. And depending on the
3 number of cameras associated with that DVR or the amount
4 of data that's starting to collect, it can be anywhere
5 from 30 to 90 days before it starts to roll over.

6 CCA does not, unless there is a specific incident
7 that occurs that we need for our -- if internal
8 processes need to pull video or unless there's a request
9 received, it just continues to -- to feed over itself --

10 MR. COHEN: I understand.

11 MS. BROCKERT: -- and nothing is retained.

12 MR. COHEN: It sounds like this is something
13 I'll need to chat with Mr. Atkins about. But a given
14 DVR is receiving video from only certain cameras?

15 MR. BIGELOW: That's correct.

16 MS. BROCKERT: Right.

17 MR. COHEN: So if there are ten cameras in
18 attorney-client rooms, they are going to one DVR let's
19 say and not to another DVR?

20 MR. BIGELOW: That's correct.

21 MS. BROCKERT: Potentially. And I wouldn't
22 know which -- which cameras. I'm not sure if some of
23 the cameras in the attorney's rooms were one DVR and
24 some -- how that's set up. But, yes, that's
25 potentially.

1 MR. COHEN: Okay. Mr. Atkins presumably
2 would know?

3 MS. BROCKERT: We would hope so.

4 MR. COHEN: What that suggests is that I
5 would only need to review a small subset of what has
6 been produced; is that right?

7 MS. BROCKERT: Yes. And I'm skipping ahead
8 a little bit to your order, but in regards to the camera
9 roster --

10 MR. COHEN: Right.

11 MS. BROCKERT: -- how that was created, it
12 is my understanding, after speaking to the warden, that
13 that camera roster is automatically created,
14 automatically pulled based on which cameras are assigned
15 to which DVR. So each DVR has a roster of what is -- is
16 the feed that's being -- being recorded onto that DVR.

17 And when it's downloaded onto the terabyte drive,
18 it was our understanding that that camera roster was
19 downloaded as well. So it is something that's
20 available. It was not something that was created, we
21 believe, outside the -- the purview of a software system
22 that we record the data on.

23 MR. COHEN: So information was downloaded
24 from the DVR to the hard drives that were produced to
25 the court.

1 MS. BROCKERT: Once we received -- once CCA
2 received the request, they pulled what they had and --
3 and transferred it to a terabyte drive at which point we
4 then gave the drives to the AUSA office.

5 MR. COHEN: Tell me who "they" is and what
6 they did actually.

7 MS. BROCKERT: Who "they" is?

8 MR. COHEN: They.

9 MS. BROCKERT: I'm not sure who the
10 individuals were that actually did the downloading.

11 MR. BIGELOW: At the previously the -- the
12 previous IT guy.

13 MS. BROCKERT: Kenneth --

14 MR. BIGELOW: Kenneth Lageness.

15 MS. BROCKERT: Kenneth Lageness was the
16 individual sort of integral with this initial request.
17 He no longer works at CCA. We do know where he's
18 working now but we're not sure if we would be able to
19 get him to come and speak to you about this. But
20 Mr. Bigelow essentially replaced most of Mr. Lajiness'
21 duties; correct?

22 MR. BIGELOW: Well, I deal with the Securus
23 stuff.

24 MS. BROCKERT: Since he's left, there's been
25 no person that is -- exactly did his job that's been

1 replaced. So he would be the one that could really
2 speak particularly to this -- this response to this
3 subpoena.

4 MR. COHEN: What is his last name, please?

5 MS. BROCKERT: It's Lageness. And I believe
6 it is spelled L-A-G-I-N-E-S-S.

7 MR. BIGELOW: L-A-J.

8 MS. BROCKERT: L-A-J -- L-A-J-I-N-E-S-S.

9 MR. COHEN: If you were to receive a request
10 today for video, who would do it? Who would make that
11 transfer as Mr. Lajiness did?

12 MR. BIGELOW: It would be Mr. Atkins.

13 MS. BROCKERT: Mr. Atkins.

14 MR. COHEN: There's a lot -- a lot to read
15 and I've tried to read it all at least once, and I think
16 that I understand that there -- that the Secret Service
17 played a role in making the copies. I don't know if
18 this is something the government wants to chat about.
19 Go ahead.

20 MR. OAKLEY: Yes, I can.

21 THE COURT: You -- actually, you can stay as
22 long as you use the microphone. You can stay there.
23 I'm fine with that.

24 MR. OAKLEY: Yes, Your Honor. My
25 understanding is --

1 THE COURT: Go ahead and be seated.

2 MR. OAKLEY: My understanding, the United
3 States Secret Service Agent, Special Agent Andrew
4 Matushek, physically went to CCA. He had coordinated
5 with CCA to know what type of DVR, the make and model,
6 and so he physically brought -- brought them brand new
7 blank DVRs and physically took the DVRs that CCA had.
8 So he obtained the originals.

9 MR. COHEN: He met -- presumably he met
10 with -- Mr. Atkins gave him these.

11 MR. OAKLEY: I believe it was Mr. Lajiness.

12 MR. COHEN: Lajiness. Received the copies
13 from Mr. Lajiness.

14 MR. OAKLEY: He physically got the
15 originals.

16 MR. COHEN: I see. The original DVRs?

17 MR. OAKLEY: Yes.

18 MR. COHEN: Go ahead.

19 MR. OAKLEY: He took them back and made a --
20 duplicate copies. For drives one through three, and
21 five through six, he simply did this using the File
22 Manager application and the Windows operating system.
23 However, he had an issue with DVR No. 4. And so in
24 order to make the copy of that one, he used a program
25 called FTK Imager Lite along with the -- the File

1 Manager application. He then labeled the exterior of
2 the box with each DVR number and provided the U.S.
3 Attorney's Office with a copy and both. The original
4 and the copy have been provided to the court.

5 MR. COHEN: And there was reference to some
6 white ones and some black ones.

7 MR. OAKLEY: We're not sure what that
8 references to, if that refers to the color of the
9 exterior box. I'm not sure.

10 MR. COHEN: I think -- so --

11 MR. OAKLEY: We don't have --

12 MR. COHEN: I think a copy made of the copy
13 as to some of them?

14 MR. SLINKARD: No. Well, again the under --
15 the understanding that I have is the same as Mr. Oakley
16 had is the -- what Secret Service obtained from the CCA
17 facility was the original drive CCA had been using.
18 They provided them with blank drives that CCA could use
19 for their purposes moving forward, took the DVRs of
20 CCA's, then they duplicated those.

21 I may have this exactly backwards because I
22 handled them at the earlier hearing when turning them
23 in. My recollection is that the larger boxes that I
24 believe were white in color are the DVRs that were the
25 copies that were made for the U.S. Attorney's Office

1 that were surrendered to the court and the smaller box
2 packaged DVRs, which I believe may have been black in
3 color, were the original drives --

4 MR. COHEN: Originals.

5 MR. SLINKARD: -- by Secret Service and
6 copied onto the white box drives.

7 MR. COHEN: I understand. That's helpful.
8 Thank you. All right. This is something that I -- this
9 next question I anticipate we'll talk more about after
10 we're done, but with whom will I sit to learn how to
11 actually view these and how the software works?

12 MS. BARNETT: I think Pauletta Boyd in our
13 office is probably in the best position to maybe try to
14 sit down. She actually prepared directions, as I
15 understand it, for defense counsel in anticipation of
16 the evidence.

17 THE COURT: We're having trouble hearing
18 you.

19 MS. BARNETT: I'm sorry, Your Honor. She --
20 Pauletta Boyd can actually sit down with you and explain
21 that. However, Miss Boyd is out yesterday afternoon and
22 today on vacation time. So but I do believe she'll be
23 back next week, but she would be the one who I think
24 could do the best job talking you through it.

25 THE COURT: Is there someone that can assist

1 him this afternoon since he's here from Cleveland?

2 MS. BARNETT: Well, we can try. We have the
3 software and the instructions here with us right now.
4 So we could sit down and try or get maybe one of our IT
5 people to help with it, although they -- they didn't
6 have any exposure to it whatsoever.

7 MR. COHEN: I think I saw at one point
8 Miss Rokusek's investigator kind of knew how this
9 worked. Is he here?

10 MR. REDMOND: No.

11 MS. MORGAN: I'm going to text him right
12 now. I'm going to text him and see if he's available.

13 MS. BRANNON: I thought Miss Rokusek was
14 going to call in to be part of this hearing. Perhaps
15 not. But he is the one, in fact, that assisted the
16 court in looking at these videos originally and I think
17 he had a fairly good working knowledge of it and we'll
18 try to get him here this afternoon.

19 MR. COHEN: Yeah, I mean, I would just like
20 to get started. Okay. Did I identify correctly, the
21 software? I called it DX8100.

22 MR. OAKLEY: I believe so. That's the label
23 on the disk that I have.

24 MR. COHEN: That may be Windows version
25 specific. So I think there might be one that if I have

1 Windows 10 I might need something different, but we'll
2 have to figure that out.

3 Okay. I think that I already know the answer to
4 this, I think you've partly addressed it, and that is
5 about the index or folder structure. It sounds like
6 that is there. I think given what you've told me that,
7 to the extent there's metadata, it's been copied, but do
8 you know? Have you been able to chase that down?

9 MS. BARNETT: We haven't had access to it,
10 so we -- we don't know if --

11 MR. COHEN: That's okay.

12 MS. BARNETT: Do I understand correctly
13 you're asking us if we know there's metadata there?

14 MR. COHEN: More in particularly if the
15 copying process would have retained all the metadata on
16 to the copy?

17 MR. SLINKARD: Secret Service made the copy,
18 so I -- we have no idea.

19 MS. BARNETT: Don't know.

20 MR. COHEN: And that was Mr. Matushek; is
21 that right?

22 MR. OAKLEY: Yes, sir.

23 MR. COHEN: And he's not here?

24 THE COURT: Are you here?

25 MR. OAKLEY: He's not here, but of course

1 one of them's the original. So presumably the metadata
2 would still be contained on the original.

3 MR. COHEN: Good point.

4 MR. OAKLEY: To the extent using the File
5 Manager system transfers the metadata, then presumably
6 it's on the copy. But I'm not for sure the answer on
7 that. He may know.

8 MR. COHEN: Miss Brockert, do you know over
9 the last several -- several years how often there has
10 been production of video or audio to the government?

11 MS. BROCKERT: I don't know that. I -- the
12 -- I usually get involved when there's a subpoena or
13 search warrant but rarely what -- really just as a
14 subpoena. Search warrants are usually done without my
15 knowledge. As far as the informal request from the U.S.
16 Marshals Service, I would have no idea.

17 MR. COHEN: And I guess this next one would
18 be a question for you, Miss Brockert, and that is what
19 is CCA's normal video recording retention policy? You
20 have talked a little bit about it kind of records over
21 itself every 30, say, 120 days. Is that the answer? Is
22 there anything more to that?

23 MS. BROCKERT: Only if we have to -- if
24 there's an incident, there's an injury to an inmate or a
25 fight or there is -- somebody notices that there might

1 have been introduction of contraband or something into
2 the facility, then they'll pull that tape for -- and
3 hold on to it and if it becomes necessary use in the
4 future. So really in those cases there might be some
5 video that is still in the possession of CCA for its own
6 internal use. And again I would have no way of knowing
7 specifically what that pertains to but I know the
8 facility could make that available. I'm just not sure
9 how much. Looking back we have to do --

10 MR. COHEN: I understand and you're still
11 doing that today. You're still recording over?

12 MS. BROCKERT: Yes, its -- the DVRs that
13 were seized by the -- by the AUSA's office -- or by the
14 Secret Service essentially were replaced and now they're
15 recording over. And then again if there's an issue,
16 then we'll pull that video. But otherwise it's just
17 recording over and over again.

18 MR. COHEN: Okay. So the next question goes
19 to you also but probably more directly to Sergeant
20 Bigelow, and that is can you explain to me how this OMS
21 works? The Offender Management System, every inmate's
22 got a GPS chip?

23 MR. BIGELOW: What was your question again,
24 sir?

25 MR. COHEN: How does the Offender Management

1 System work? Can you explain that to me, what it is and
2 how it works?

3 MR. BIGELOW: Specifically it's our way of
4 keeping track of our inmate population. What they're --
5 we've got information on what they're charged, whether
6 or not they're adjudicated or non-adjudicated and what
7 their classification level is according to what their
8 charge is based on their charge and their history.

9 MR. COHEN: So it has nothing to do with
10 knowing where they are in Leavenworth at a given moment?

11 MR. BIGELOW: Just in our facility.

12 MR. COHEN: Just that -- there at
13 Leavenworth, not where they are in Leavenworth?

14 MR. BIGELOW: (Witness nods head.)

15 MR. COHEN: Okay. So I misunderstood.

16 THE COURT: I'm not understanding. I
17 thought there was a system that you were able to tell
18 when an inmate was in their pod versus when they had
19 gone to medical versus when they were in an
20 attorney-client room.

21 MR. BIGELOW: No, ma'am, not specifically.
22 We -- I can go into the system and put the individual's
23 federal ID number in or their name and pull them up and
24 it will show me a profile. It will tell me where
25 they're housed. I can check whether or not they're

1 adjudicated or non-adjudicated, what their
2 classification level is. I mean, there's a -- there's a
3 lot of information there but I cannot chart their
4 movement inside the facility with that system.

5 MR. COHEN: Okay.

6 THE COURT: And there is -- just so I
7 understand, so there is no other system or other way of
8 keeping track of, for example, when an inmate leaves
9 their pod for a reason such as to go to medical or to
10 meet with their lawyer or to go to the visitor room?

11 MR. BIGELOW: No, ma'am. If they leave the
12 facility for court or for a medical appointment or
13 something of that nature, then we -- we do, that shows
14 up.

15 MS. BROCKERT: That's in the OMS system.
16 It's only their arrival to the facility and then any
17 moves outside of the facility gets recorded in that
18 Offender Management System. So if they have an outside
19 doctor appointment or court appearance, that will show
20 up in the Offender Management.

21 When they're in the facility, the only way to
22 really monitor their movement is through their case
23 manager who would certainly need to be made aware of any
24 time they leave an area that they're not supposed to be
25 in for that specific time of day.

1 THE COURT: Okay. But no logging in, for
2 example, when they're meeting with their lawyer?
3 There's no -- there's no log of where the offender is.
4 Now there is a log though that shows when lawyers come
5 to visit.

6 MS. BROCKERT: That's correct, yes.

7 THE COURT: And how does that work?

8 MS. BROCKERT: Essentially the attorneys,
9 normally they'll either make a request of I'm going to
10 be here on this date and can I, please, see my client,
11 or they'll -- they can just show up if they know
12 specifically when. Because there are times during the
13 facility where they're in lockdown, if there's count or
14 if they're eating, and visitation really can't occur at
15 that time.

16 But once that occurs, they'll sign in. They're
17 handed a visitor's badge and have to go through the
18 security system, and then they are directed to a
19 conference room and the inmate is retrieved and brought
20 to them in that conference room and the meeting occurs
21 and they sign out when they leave.

22 MR. COHEN: So the log of visitors who come
23 to meet with inmates includes attorneys, other folks as
24 well, including sometimes, for example, agents who are
25 interviewing inmates to find out what they know. And is

1 that all one log or are attorney -- is the attorney
2 visitor log separate?

3 MS. BROCKERT: I believe the sign-in sheet
4 is for everybody; family members, attorneys. You sign
5 in and those logs are -- are retained. I'm not sure how
6 far back they've gone but the -- both the logs and any
7 written request to meet with the inmate have all been
8 retained. So that's all available for inspection.
9 Obviously if -- if we're going to produce them, we'd
10 need to redact any personal information that might be on
11 there.

12 THE COURT: Are they specific to time,
13 time-in, time-out?

14 MS. BROCKERT: That -- yes, yes.

15 MR. JACKSON: Your Honor, I have a copy of
16 what we're talking about visitation-wise if that would
17 help.

18 MR. COHEN: Can you identify yourself
19 please, sir.

20 THE COURT: This is Michael Jackson,
21 attorney for Catherine Rowlette.

22 MR. JACKSON: Here you are.

23 MR. COHEN: Thank you, sir.

24 MR. JACKSON: Sure.

25 THE COURT: Thank you, Mr. Jackson.

1 MR. JACKSON: Yes.

2 MR. COHEN: Where did you get this, sir?

3 MR. JACKSON: That came from government
4 discovery. On the sticky note it gives the file
5 location.

6 MR. COHEN: And were there any redactions in
7 here?

8 MR. JACKSON: No.

9 MR. COHEN: Do you know whether this
10 includes --

11 MR. JACKSON: Attorney-client -- attorney
12 names.

13 MR. COHEN: It does include attorney names,
14 yes?

15 MR. JACKSON: Yes.

16 MR. COHEN: It does include non-attorney
17 names?

18 MR. JACKSON: Yes, it does.

19 MR. COHEN: Do you know whether it includes,
20 for example, names of agents visiting with inmates?

21 MR. JACKSON: I didn't see any in there, no.

22 MR. COHEN: I'm sorry, who produced it?

23 MR. JACKSON: That was produced by the
24 government and I've got the file location there.

25 MR. COHEN: So this runs from August 2014

1 through March of 2016; is that right?

2 MR. JACKSON: No, it's inclusive of all the
3 time that the inmate would have been at CCA. So if
4 you'd look at a different individual, their start date
5 would be different.

6 MR. COHEN: I see this is particularly to an
7 inmate. I understand now.

8 MS. BRANNON: If I may, this is Melody
9 Brannon. Just in terms of the records that are kept for
10 attorney visitation, CCA requires us to schedule
11 24 hours ahead of time for anyone we're seeing. We can
12 do that by phone or by e-mail. So there should be an
13 e-mail record of that as well.

14 When we arrive, there is a sign-in at the front
15 desk that has who we are, who we're seeing. Then
16 there's also another CCA guard who has a spreadsheet of
17 which attorneys are meeting with which clients in which
18 rooms. That is not -- it doesn't follow exactly because
19 sometimes they switch the rooms around, but there should
20 be at least three sets of records on these visitations.

21 MR. COHEN: Miss Brockert, do you know
22 anything about the last log she said, the spreadsheet?
23 And is that electronic this -- attorneys where they're
24 meeting with clients?

25 MS. BROCKERT: I can't speak to that.

1 MR. BIGELOW: It's printed -- it's printed
2 for the beginning of the day, issued to -- the lobby
3 officer has a copy. The receptionist has a copy and we
4 have an officer that is -- that their position is to --
5 to pick up the inmates and to coordinate with the lobby
6 on getting the attorneys in and out of their given areas
7 they're supposed to meet with inmates.

8 MR. COHEN: Do you think you could produce
9 to me all of the records that have to do with
10 attorney-client meeting rooms for the period that
11 matches for every inmate in every room that matches the
12 video recordings?

13 MS. BROCKERT: Yes. We -- I would need to
14 go back and make sure I had a list of the inmates that
15 were showing up on the list of video recordings because
16 again we didn't retain any copies of that information.
17 So I just need to know which inmates you're talking
18 about and we could pull that.

19 MR. COHEN: Every inmate who met with an
20 attorney during that period of time.

21 MS. BROCKERT: Okay.

22 MR. COHEN: Thank you.

23 MS. BROCKERT: During March 2014 through --

24 MR. COHEN: (Nods head.)

25 MS. BROCKERT: Yeah, that can be provided.

1 MR. COHEN: It sounds like there's more than
2 one --

3 MS. BROCKERT: -- log. I'll pull whatever
4 it is that we -- that CCA retains.

5 MR. COHEN: Does the government have any
6 concern about that?

7 MS. BARNETT: Well, I think our only
8 concern -- I thought I understood you're asking for --
9 just for the log of an attorney meeting with a client.
10 We would want to make sure it doesn't also capture an
11 agent meeting with somebody and reveal the possibility
12 of cooperation or an ongoing investigation.

13 MR. COHEN: Right. So I think you'll need
14 to work together because at least one of those logs
15 probably contains more than just attorney names. I
16 understand I don't need it, don't want it and shouldn't
17 get it.

18 I asked this of Miss Brockert but I may as well
19 ask you too, may as well ask the government, can you
20 give me any idea of how often you've received records,
21 video or audio, in the last five years, just choose a
22 number?

23 MS. BARNETT: No, I really can't. We don't
24 have a central filing system where we log every time we
25 would make a request to CCA or the marshals. Our

1 recordkeeping system is really very case and file
2 specific.

3 MR. COHEN: How would you go about, if the
4 court asked you to produce information regarding all
5 requests for the last five years that you've made of the
6 marshals or CCA, whoever it was to, or Securus, for
7 audio and video recordings, how would you compile that?

8 MS. BARNETT: Several different ways to make
9 sure we captured it as many times as possible. It would
10 be actually polling employees and staff and it would
11 actually be a physical pulling of every file that has
12 been opened in our office for the last however many
13 years and actually physically going through them.

14 Bear in mind though, up until recently we're
15 mandated by our own internal policies, once a case is
16 closed because of an end of prosecution or we've decided
17 an investigation will go no further, we have
18 requirements about purging or the destruction of
19 information in our files. So it may be there are some
20 files we closed or purged back in May that we wouldn't
21 have then a record of whether or not we'd made a request
22 in that case and it would just simply be up to
23 somebody's memory.

24 MR. COHEN: Would the request be made to --
25 to whom would the request normally be made? I've heard

1 the marshals. I've heard Securus. I've heard CCA.
2 Some of those, all of those, how does it usually happen?

3 MS. BARNETT: With regard to our Kansas City
4 office, I think -- and if I understand you correctly who
5 would we ask for that evidence, I think generally it
6 goes through the marshals because our office works
7 closely with the Marshal Service, and the marshals are
8 perceived to be the people that are in charge of CCA.

9 MR. COHEN: And you don't know about their
10 record retention?

11 MS. BARNETT: No, I do not.

12 MR. COHEN: Judge, do we know who we would
13 ask at the U.S. Marshal Service about their record
14 retention?

15 THE COURT: Mr. Craig Beam is here.
16 Mr. Beam.

17 MR. COHEN: Hi.

18 MR. BEAM: Hello. My name's Craig Beam.
19 I'm the chief deputy with the U.S. Marshals Service here
20 in the District of Kansas. The Marshal Service does not
21 keep a log whenever a request is made to us to go to CCA
22 for recording. It's strictly a case-by-case basis. So
23 I cannot think of a way where we would be able to pull
24 all of the requests that were made. So it would be much
25 like how Miss Barnett referred to it, we would have to

1 poll each individual and agency and rely on their memory
2 to see if -- what was requested of CCA through us.

3 MR. COHEN: How often does it occur?

4 MR. BEAM: It's hit and miss. I mean,
5 sometimes we receive a lot of them. Sometimes we don't
6 receive any for several weeks.

7 MR. COHEN: And that's audio and video,
8 requests for audio and video?

9 MR. BEAM: Correct.

10 MR. COHEN: When you receive a request for
11 audio, you go to Mr. Atkins or Lajiness or somebody in
12 that role?

13 MR. BEAM: I personally don't know. We have
14 a COR contract oversight specialist position in our
15 office who generally makes a request to CCA if the
16 request is made of our agency.

17 MR. COHEN: You said COR?

18 MR. BEAM: Right, Contracting Officers
19 Representative.

20 MR. COHEN: Who is that?

21 MR. BEAM: Currently it's Patricia Cook.
22 She's in our office here in Kansas City. That's not to
23 say every request is made through her but generally I
24 would say the majority of them are.

25 THE COURT: Mr. Beam, so when a request is

1 made, I assume it's made by -- and I'm speaking to jail
2 calls, not video, made by name of the detainee and isn't
3 there typically a time parameter, I want every phone
4 call or of Joe Blow, or more often I want the jail calls
5 Joe Blow between January 1 and June 1? How does that
6 work?

7 MR. BEAM: Yes, typically it could be an
8 agent, a case agent involved in the inmate's case.

9 THE COURT: It's not necessarily initiated
10 by a call from the U.S. attorney, it could be just an
11 agent?

12 MR. BEAM: Right.

13 THE COURT: Okay.

14 MR. BEAM: And that -- and of course we want
15 to know -- if the inmate's been there for several weeks
16 or months, we would obviously need to have a time frame
17 to tell CCA we need calls from, you know, the first of
18 the month to the last of the month or whatever the case
19 may be.

20 THE COURT: So the reason I ask that, I
21 mean, because so the requests are given to you with some
22 sort of parameter detail that you then have to convey to
23 CCA. So doesn't somebody take a note of that if it's a
24 phone call or a -- isn't there e-mails or something that
25 -- I mean, the court would be able --

1 MR. BEAM: I can check. I can check. I'm
2 not aware of any log that we keep on that. Generally
3 we're just kind of the go-between between the case
4 agents or and CCA typically.

5 MR. COHEN: And the requests for -- we've
6 been talking about requests for video that you make to
7 CCA. There are requests for audio that -- is that made
8 to CCA or made to Securus?

9 MR. BEAM: I can't speak to CCA on what
10 Securus capabilities are or what it contains.

11 MR. COHEN: I guess what I'm asking is do
12 you go ever directly to Securus or do you just go to
13 CCA?

14 MR. BEAM: CCA.

15 MR. COHEN: So you don't have any -- if a
16 request is made for audio recordings of phone calls by
17 an inmate at Leavenworth, an agent asked you to procure
18 that, you would never call Securus, you would go to CCA
19 and they would presumably go to Securus?

20 MR. BEAM: Correct.

21 MR. COHEN: All right.

22 MS. MORGAN: Melanie Morgan. I would move
23 to join in this litigation because phone calls that have
24 been acquired of my client, at least some of them, are
25 being acquired by a subpoena, a DEA subpoena that is

1 just broadly requesting all of her telephone calls. So
2 I guess my concern would be a subpoena is issued to CCA,
3 is it going directly to CCA and they are complying with
4 the subpoena directly or is it being directed to the
5 U.S. Marshals Office as the conduit to CCA?

6 MS. BROCKERT: We receive subpoenas
7 directly. Particularly in this case we receive
8 subpoenas directly and have responded to them directly.
9 Now because we contract with Securus for our audio
10 recording, if we receive a subpoena, eventually that
11 information comes from Securus. We -- but we are the
12 ones that make that request. It comes through us and
13 then we pass it on to the individual issuing the
14 subpoena.

15 MR. COHEN: Okay. Judge, we've been going
16 for a while. Do you think we might take a ten-minute
17 smoke 'em if you got 'em?

18 THE COURT: Yeah, let's do that, I'd like to
19 talk to you for a few minutes. So let's reconvene at
20 noon and what's our best estimate on how far we are? I
21 mean, are we going to need to take a lunch break as well
22 or do you -- I can't tell where you're at. I guess we
23 can talk about it on the break.

24 MR. COHEN: That's fine.

25 THE COURT: All right. Let's be in recess

1 for 15 minutes.

2 (Recess.)

3 MR. COHEN: Thank you, judge. Welcome back.
4 So we're going to pick up where we left off and that is
5 on page 3 of the discovery order and that is to say
6 audio recordings. And I understand that Securus isn't
7 here, so I think this may mostly be directed,
8 Miss Brockert, to you and to Mr. Bigelow, and again if
9 you don't mind taking the lectern. If you could,
10 explain to me how the audio recording works, how you
11 obtain audio records when requested and also about the
12 blocking of attorney phone calls.

13 MR. BIGELOW: The procedure as it stands now
14 is that attorneys that request to have a phone number
15 blocked, they will send me a fax or a letter with their
16 -- their firm letterhead on it and the list of numbers
17 that they are requiring to be and we -- I set them in
18 there as -- there's a category for attorney-client
19 privilege and that's the block that we put them under.

20 I install each of the numbers individually with
21 the -- when I finish the procedure, I just put the --
22 pluck the number in, I check the box on it that says
23 "attorney-client privilege" on it and then there's a --
24 a box at the bottom of the screen that -- that gives the
25 -- I put in the firm number, their -- or the attorney's

1 number, both, whichever's on the -- on the letterhead,
2 and then at the bottom it says "create" and that
3 establishes the -- the number as -- as not being able to
4 be monitored or recorded. And -- and after that
5 procedure, then it will come back up, display the screen
6 to show me it's actually been completed.

7 At that point I will fax that letter back to the
8 -- to the law firm with a letter stating the date, which
9 is usually the same day, that this procedure was done
10 and those numbers that were on the -- on the letter that
11 they have, in fact, been -- been set up to where they
12 can no longer be recorded or monitored. And I -- I then
13 I get a confirmation obviously back from the fax and I
14 file those.

15 MR. COHEN: So you described you're sitting
16 in a computer when you do this.

17 MR. BIGELOW: Yes, sir.

18 MR. COHEN: And is the -- is it a piece of
19 software that you're using to do what you just
20 described?

21 MR. BIGELOW: It's a -- it's a -- the
22 computer that Securus actually owns. It's a -- it's a
23 desktop and it's got the Securus platform on it. I have
24 a password obviously and I log in and go through this
25 process.

1 MR. COHEN: And you said you receive letters
2 and then fax something back. Is that something that
3 Securus asks you to do?

4 MR. BIGELOW: No, sir. No, sir.

5 MR. COHEN: You just do that?

6 MR. BIGELOW: I've been doing it since this
7 whole thing came about. And I was -- initially I was
8 getting phone calls and I obviously didn't know who
9 these people were. So I requested them to send me
10 some -- something in documentation so I could have
11 something tangible and that's how it evolved. I decided
12 on myself that these individuals wouldn't have any way
13 of knowing whether I'd actually did it or not, so I
14 composed a letter and -- and run it by the Warden Thomas
15 and she gave it her blessing and that's the way we been
16 doing it.

17 MR. COHEN: And I think I read that you
18 haven't been doing this for a real long time.

19 MR. BIGELOW: I actually took this position
20 the last week of December 2015. I've actually been
21 doing it for probably, I'm going to say, about seven
22 months physically.

23 MR. COHEN: Do you know who did it before
24 that?

25 MR. BIGELOW: Mr. Lajiness did it.

1 THE COURT: Okay. So there's also been some
2 testimony, some evidence that some folks have tried to
3 do what you just described, some attorneys have supplied
4 a phone number and said, hey, this is -- I'm an
5 attorney, and if a call goes out to me or call comes in
6 from me, I suppose, I don't know if that ever happens,
7 the system should know that it shouldn't be recorded but
8 that it was recorded. Do you know how or why that would
9 happen?

10 MR. BIGELOW: I can't speak to that. I
11 don't know that the system is designed to identify those
12 numbers. I mean, the process that I go through puts
13 them in there and identifies them because we've
14 established that that's through this process that that
15 number is not to be listened to. But without that, I
16 don't know how the system can recognize it. I'm really
17 not an expert on the system.

18 MR. COHEN: Do you know, is every outgoing
19 call recorded unless the system has been told not to
20 record it because there's an attorney number?

21 MR. BIGELOW: To my knowledge, yes, sir, if
22 it's not been -- been put under privilege or blocked,
23 every call is recorded by Securus. Now, the process I
24 have to go through to -- to record on a disc, I have to
25 get -- I have to get an e-mail from Securus to get

1 permission to make the recording and that process has to
2 be done within a 24-hour period.

3 MR. COHEN: I'm sorry, can you explain that
4 again to me, what you just said?

5 MR. BIGELOW: When I get a request for a
6 phone -- a record --

7 MR. COHEN: From?

8 MR. BIGELOW: -- on a -- from -- from --
9 it's usually the Marshal Service.

10 MR. COHEN: Okay.

11 MR. BIGELOW: If I get a subpoena and it's a
12 subpoena, they'll ask me for those, I need it for such a
13 date and from the time the individual arrived at the
14 facility until they left or a specific time frame. Then
15 I go in, go through a process where I pull those calls
16 up and flag them for -- to be recorded. And then the
17 system is set up to where it sends an e-mail to Securus
18 to make that request. And then I get a response back
19 from Securus giving me authorization to make those
20 recordings, and I have to do it within a 12-hour period.

21 MR. COHEN: I see. And so you're -- you
22 yourself make those recordings --

23 MR. BIGELOW: Yes, sir.

24 MR. COHEN: -- or copies --

25 MR. BIGELOW: Yes, sir.

1 MR. COHEN: -- of the recordings? How do
2 you do that?

3 MR. BIGELOW: It's just a regular desktop
4 that has the ability to burn DVDs and CDs and I go
5 through the process. And once I have the -- the e-mail
6 authorization from Securus, then I just put the disc in
7 and download the file of recordings onto the disc.

8 THE COURT: When you send the e-mail to
9 Securus for getting -- to get authorization --

10 MR. BIGELOW: Yes.

11 THE COURT: -- do you give them the name of
12 the person and the time frame that you want?

13 MR. BIGELOW: Well, it -- it e-mails them a
14 file and the list of the phone calls. So, yes, they
15 would have the names.

16 THE COURT: I'm not understanding.

17 MR. BIGELOW: They would have the names of
18 the inmates. The inmates, when they make calls outside
19 the facility, have -- have to use their PIN ID number or
20 their federal ID number to access the phone system.

21 THE COURT: Okay. But that wasn't my
22 question. My question is I think what you've described
23 is you contact Securus and say I have a request to make
24 copies of certain recordings by a person's name and for
25 a particular time period; correct? You send an e-mail

1 request to Securus to get that authorization?

2 MR. BIGELOW: I send them an e-mail but I
3 don't give them a specific request by this individual.
4 I'm -- according -- as far as they know, I'm the only
5 one requesting it.

6 THE COURT: Okay. So what are you
7 requesting authorization for then? I'm not
8 understanding.

9 MR. BIGELOW: To -- to make a physical
10 recording of the phone calls.

11 THE COURT: So you send an e-mail to Securus
12 that says I need authorization to make a copy of a
13 recording, period?

14 MR. BIGELOW: That's right.

15 THE COURT: You don't tell them of who, of
16 what time frame, just I need authorization?

17 MR. BIGELOW: Well, the -- the way the
18 system is, it's a step process. And the process I go
19 through, once I've -- I've established the calls,
20 they're flagged and the number of calls and the dates
21 involved and -- and it -- it -- I can't do random --
22 several random inmates. It would be one individual.

23 THE COURT: Okay.

24 MR. BIGELOW: And then the system has my
25 e-mail address and I just -- I just click "create image"

1 and that sends the e-mail automatically to Securus.

2 THE COURT: Okay. So if I were to see this
3 e-mail because of the multiple steps you go through on
4 the platform or whatever, the e-mail's going to tell me
5 information about what it is you're recording what
6 dates?

7 MR. BIGELOW: Yes.

8 THE COURT: And it's going to be specific to
9 an inmate?

10 MR. BIGELOW: Yes.

11 THE COURT: That inmate's name may not be on
12 there or would it be on there?

13 MR. BIGELOW: Well, yes, it would be. It
14 would be their inmate name and PIN number, yes.

15 THE COURT: Okay. And that information's
16 going to be in the substance of the e-mail?

17 MR. BIGELOW: That's correct.

18 THE COURT: And that's an e-mail that CCA is
19 preserving in its system?

20 MR. BIGELOW: No.

21 THE COURT: Even though I'm --

22 MR. BIGELOW: It would be -- it would be in
23 Securus' system as I understand it.

24 THE COURT: Even though your system
25 generates an e-mail?

1 MR. BIGELOW: Right.

2 THE COURT: Does your system not preserve
3 outgoing e-mails?

4 MR. COHEN: I think I understand. It's a
5 Securus computer that you're using?

6 MR. BIGELOW: That's correct.

7 MS. BROCKERT: Right, e-mail --
8 auto-generated e-mail from the system. It's his Securus
9 login that's sending an auto-generated e-mail from the
10 system. It doesn't go through CCA's e-mail procedures.

11 THE COURT: Okay. We're going to need
12 Securus to preserve that. And obviously they're not a
13 party to this litigation but they are producing evidence
14 that's part of this case and a number of other cases in
15 which the courts -- this court has pending motions. We
16 need all of that preserved.

17 MS. BROCKERT: We do have a contact with
18 Securus and I will reach out to them this afternoon and
19 make sure that's being done.

20 THE COURT: All right. That contact person,
21 also if you can provide that name to Mr. Cohen. I know
22 he'll want to talk to them as well.

23 MR. COHEN: Is that Mr. Martin?

24 MS. BROCKERT: Who's your --

25 MR. BIGELOW: Michael Kenyon.

1 MS. BROCKERT: Michael Kenyon.

2 MR. COHEN: Do you know what position he
3 holds, Mr. Bigelow?

4 MR. BIGELOW: He's -- as I understand his
5 title is the district supervisor for the system.

6 MR. COHEN: I think we probably tried --
7 need to speak with Mr. Martin too, his Securus' counsel.

8 Thank you, this has really been very helpful. I
9 appreciate your -- I do have some more questions. So I
10 understand then that when you make a request for a
11 recording that you ask Securus essentially for
12 permission to do it. They authorize you to do that.
13 The request that you make identifies which recordings,
14 the inmate, and the time that you're requesting
15 authorization for.

16 MR. BIGELOW: Yes, sir.

17 MR. COHEN: They say yes. You make those
18 recordings. Securus never knows who it is that
19 originally requested it. They don't know that it was
20 Agent Jones or the government. All they know is that
21 you're asking for permission.

22 MR. BIGELOW: That's correct, sir.

23 MR. COHEN: Do they ever say no?

24 MR. BIGELOW: Haven't so far.

25 MR. COHEN: Do you have any idea why they

1 would say no if they did?

2 MR. BIGELOW: I do not, sir.

3 MR. COHEN: Okay. I'm being asked to listen
4 to some of these recordings. How do I do that?

5 MR. BIGELOW: You would -- you would either
6 have to have a -- a copy of a recording or access to the
7 system.

8 MR. COHEN: The copies that you make that
9 you then give to, let's say, Agent Jones, can he just
10 put that in his computer and double check on it and
11 listen? Is it that simple?

12 MR. BIGELOW: Yes, sir.

13 MR. COHEN: And do you know, is the -- is
14 the recording of that phone call somehow tagged as to
15 when it was made?

16 MR. BIGELOW: When I do it, I -- I just use
17 a felt-tip and I put on there the information that was
18 requested. I also print up a list or a log
19 corresponding with the -- the graduation of the calls on
20 the disc so they corresponded so they know the times and
21 the dates in reference to.

22 MR. COHEN: The Securus system produces a
23 log of the file -- of the files that are on the disc?

24 MR. BIGELOW: Yes.

25 MR. COHEN: And that corresponds with the

1 recordings?

2 MR. BIGELOW: Yes, sir, it does.

3 MR. COHEN: I'm not sure, Mr. Bigelow,
4 whether you know the answer to this question. The
5 recordings that have been produced to the court, is
6 there a log that -- kind of log of all of those
7 recordings? Does anybody know?

8 MR. BIGELOW: Any of them that I have made,
9 sir, there is.

10 MR. COHEN: So you believe that the
11 recordings the court has also have a log identify them?

12 MR. BIGELOW: Yes, sir. I do not provide
13 the -- the disc recording without the log. I do both.

14 MS. BARNETT: Mr. Cohen, there is an agent
15 here who could address that if you would allow him to.

16 MR. COHEN: That would be great.

17 THE COURT: Tell us your name and come
18 forward.

19 MR. HERRON: Special Agent Henry Herron, IRS
20 Criminal Investigation. The discs that the agents get
21 to review, they come with several files on there. The
22 audios are MPEG files. There is a file on there called
23 Index HTML. When you click on that index, it does not
24 go out to the web. It simply opens up a browser that
25 then has a list of calls associated with each MP3 file

1 that then will tell you the date the call was made, the
2 number it was made to, the PIN number that was
3 associated with that call, the length of the call in
4 seconds I believe, and there may be one other piece of
5 that on there that I'm forgetting right now.

6 If you attempt to look at the files individually,
7 you will not be able to discern which is which. You
8 have to view it -- at least the discs that we get, you
9 have to view it through the index; otherwise, all you're
10 going to get is machine language or machine code
11 associated with each file. So you have to open the
12 index. And then the index can also be printed, which is
13 what the gentleman here is referring to as the log.
14 That can be printed from the screen and it will have all
15 that same information in it.

16 MR. COHEN: And does it identify only the
17 phone number that the inmate is calling?

18 MR. HERRON: No. And to be -- to be exact
19 here, these are all outgoing calls.

20 MR. COHEN: Right.

21 MR. HERRON: These are not incoming calls
22 and these are the number dialed. If that inmate dials
23 one number and then gets on the phone with somebody,
24 they make a three-way call and put the phones together
25 and talk, you don't know who's doing the talking on the

1 other end. You just know the number that was dialed
2 from that inmate's -- or associated with that PIN.

3 Also, these PINS are often -- outside of CCA
4 policy often shared or sold or however exchanged between
5 inmates. So you can -- you can ask for phone calls for
6 a particular inmate or for a particular number. And if
7 he made that number -- that call using another inmate's
8 PIN, then you would get information associated with
9 that.

10 So it's not just a matter of getting just that
11 one inmate's call if you're doing an investigation, you
12 have to be aware that they know we're listening and they
13 try to circumvent that by using another inmate's PIN
14 number. So you will see the PIN numbers on there.

15 What it does not show is the name of the party
16 called. There's no way to know that. There's just the
17 phone number, the duration. The other piece of
18 information, it will tell you if the call was a hang-up.

19 MR. COHEN: I'm sorry?

20 MR. HERRON: If the call was a hang-up. In
21 other words, on the CCA audios, if the call party
22 refuses to accept the call -- which there is a preamble
23 at the beginning of each call that we get. There's a
24 preamble that states this call is being monitored or
25 recorded, proceed at your own risk basically. It also

1 asks whether or not the receiving party chooses to
2 accept that phone call. If they say no, then it's a
3 hang-up.

4 MR. COHEN: And that recording comes on upon
5 the phone being answered?

6 MR. HERRON: No. If I had an example here
7 today, as soon as you click on that call -- if we wanted
8 to listen to it, as soon as we click on that call,
9 there's a preamble comes up says -- I believe it
10 announces this is Securus -- it's kind of a machine
11 language -- or machine voice, This is Securus. This
12 call is being monitored and/or recorded. There may be a
13 little bit of -- of other information on there like how
14 much more time the inmate has on his PIN number, that
15 sort of thing.

16 But the thing that we get is the preamble warning
17 them this call is being recorded. They choose to go
18 forward with the call and then the call gets placed to
19 the receiving party. That party then has to agree to
20 accept the call. If they refuse to accept it, then it's
21 listed on the log as a hang-up I believe. If they
22 accept it, then the two parties are linked together and
23 the conversation begins.

24 MR. COHEN: So when an inmate makes a call,
25 there are two machine language recordings. One is when

1 the inmate places the call and he hears your call's
2 going to be recorded.

3 MR. HERRON: Yes.

4 MR. COHEN: Also when the call is connected,
5 somebody picks up on the other end, there is a recording
6 that says this is being recorded and someone can then
7 choose to continue with -- the recipient can choose to
8 continue with the call or hang up.

9 MR. HERRON: Right. With the exception that
10 the inmate may not get to hear the portion where the --
11 where the equipment is asking the receiving party
12 whether or not they want to take it. All the -- if I
13 understand it correctly, the inmate does not get to hear
14 that portion of it. All they know is whether or not the
15 call gets -- gets continued. So...

16 THE COURT: But when you -- so when you
17 listen to this, you do hear two preamble recordings?

18 MR. HERRON: No, at first --

19 THE COURT: On the MP3 there's the one the
20 inmate hears when he or she places the call.

21 MR. HERRON: Correct.

22 THE COURT: Then when the call is answered,
23 another recording that says this call may be monitored,
24 et cetera?

25 MR. HERRON: The first thing you hear is

1 that this call may be recorded or monitored. The second
2 one that you may hear is the one where it's advising the
3 received party this is a call from CCA, is kind of how
4 it's laid out. On the other end what's happening is
5 whether or not they agree to accept it.

6 THE COURT: Okay. But let's focus on that
7 one. The recipient of the call, the recording that they
8 hear through the Securus system, This is a call from
9 CCA, does it then go on to say this call may be
10 monitored or recorded? Do they get that same warning,
11 the recipient gets that same warning the person placed
12 the call got?

13 MR. HERRON: Yes, I believe so. I believe
14 the recipient gets -- from the agent point of view, we
15 don't know who the recipient is until -- until Securus
16 completes that call.

17 THE COURT: I understand that but we're -- I
18 just want to make sure that -- and is this something
19 that we'll hear when we listen to the MP3 recordings,
20 we're going to hear two of these warnings? I know
21 there's a -- there's a piece of it, when someone answers
22 the call, This is a call from CCA, you can or cannot --
23 you can accept this call or not and they may hang up and
24 not, I know they hear that. But do the MP3 recordings
25 also record the system telling the recipient, Your call

1 may be monitored or recorded?

2 MR. HERRON: I do not -- I cannot say for
3 sure right now that it -- that we hear that portion of
4 the call to the recipient where it warns them that it's
5 being recorded. I don't remember off the top of my head
6 if the recipient version of that is audible to us. I --
7 we do know that the recipient hears a part where, This
8 is a call from CCA.

9 THE COURT: Okay. All right. I understand.

10 MR. COHEN: Do you have direct interaction
11 with Securus yourselves?

12 MR. HERRON: No. We -- as an agent, I
13 wouldn't even know how to contact Securus. The only
14 reason I know Securus exists is because when you click
15 on the tape it tells you this -- it gives you the
16 Securus preamble. When you pull up the index that's in
17 the set of files on the disc that we get, the actual
18 browser that pops up I believe actually has Securus'
19 logo on it.

20 MR. COHEN: I understand. Very helpful.
21 Thank you.

22 MR. HERRON: Yes.

23 MR. COHEN: Mr. Bigelow, the copy of the
24 recordings that the court has, did you make that?

25 MR. BIGELOW: I made -- I believe I made

1 some of them, sir, not all of them. There was -- there
2 was -- as I understand, there was a few and I -- I
3 assisted Mr. Lajiness but I was in -- at that time I was
4 in the training phase. So...

5 MR. COHEN: So the two of you --

6 MR. BIGELOW: Yes.

7 MR. COHEN: -- would have made them?

8 MR. BIGELOW: Yes.

9 MR. COHEN: Okay. And this is a question
10 that I would ask Securus but, Miss Brockert, I'm forced
11 to ask you. Do you know what their policy is as far as
12 retention of these recordings?

13 MS. BROCKERT: No, I don't, sorry. I can't
14 answer that at all.

15 MR. COHEN: Okay. I think without Securus
16 here, we're probably at the end of what I can learn
17 about the audio recordings unless someone else has
18 something to offer.

19 THE COURT: Do any of the attorneys want to
20 speak to my question, which is when you receive a call
21 from a client, do you hear a recording that the call may
22 be monitored or recorded?

23 MS. MORGAN: I think I can speak for most of
24 the attorneys here that we do not have that on our end.
25 There is not a call that says this is a recorded call

1 from CCA. It alerts us to the fact it is coming from a
2 detention facility, it is a collect phone call, if it
3 happens to be a collect phone call, but not that it is a
4 recorded phone call.

5 THE COURT: Anyone disagree with that?

6 MR. JACKSON: Yeah, that's not my
7 recollection, judge. Mike Jackson. I think if you
8 listen to it, it will --

9 THE COURT: Come up to the microphone.

10 MR. JACKSON: -- it will tell you, you'll be
11 able to tell. Now as a business practice, I always say,
12 before the client starts talking, that, oh, this is a
13 conversation between an attorney and client and it's
14 privileged.

15 THE COURT: Okay, wait, back up. So when
16 you get a call from a client at CCA, you have heard a
17 recording that the call -- that -- what does it say?
18 Tell me what the recording says.

19 MR. JACKSON: It says this is a call from a
20 person at CCA-Leavenworth. This call may be monitored
21 or reviewed. I can't say if that happens all the time.
22 There are some calls that are collect calls and I'm not
23 sure they work that way. But that was my experience.

24 THE COURT: All right. Thank you.

25 MR. JACKSON: Okay.

1 THE COURT: Has anyone else on any calls,
2 even if it's not all the time, heard -- heard a warning
3 that the call may be recorded or monitored?

4 MS. BRANNON: Judge, there are probably
5 different categories of calls. If we were the ones who
6 notified CCA that we did not want our legal calls
7 recorded, it may be that there's a different recording
8 that shows up at that point. Because certainly if we
9 heard "this call may be recorded or monitored," we would
10 have done something about it because it's our
11 understanding it was not to be recorded even though we
12 found out that it was.

13 There is a system set up so they can call certain
14 offices directly. Other calls have to be collect and
15 there may be a different recording if it's a collect
16 call or if, for example, it was to an attorney's cell
17 phone that may not have been on the list.

18 It is supposed to be set up, if they are notified
19 that our phone calls are not to be recorded from this
20 number, there should be no such recording on our end of
21 it and there should be no recording that we heard on our
22 end of it.

23 THE COURT: All right. It would be
24 interesting to know if Mr. Hart was here, and I don't
25 think he is, since he sent the requisite notice again

1 and again on an annual basis but learned through
2 Mr. Jackson's investigation nonetheless some of his
3 calls were recorded. It would be interesting to know
4 those calls -- what kind of recording those calls had
5 Mr. Hart received. There's several of you that want to
6 speak to this. Mr. Slinkard and Miss Brannon,
7 Mr. Laurans.

8 MR. SLINKARD: The way Miss Brannon just
9 described it is what the agents were just flagging me to
10 get my attention. Their understanding is the recording
11 that the recipient would hear that is not recorded on --
12 the note -- I'm going to call it a notice to avoid
13 ambiguity -- the notice of possible recording that a
14 recipient of the call would hear, that is not recorded
15 on the phone call that we -- they, we, whoever would
16 obtain because it's on a line with the recipient. If
17 the recipient doesn't accept, then it never is
18 connected. It's a hang-up and nothing on the
19 recipient's line is ever recorded.

20 But that notice would only be for recipients who
21 were themselves going to be subject to recording. Like
22 Miss Brannon indicated, if the call was to a recipient
23 who had opted out from recording, they would not get
24 that recorded notice that this might be a recorded call
25 because it wasn't going to be a recorded call. That's

1 the agent's understanding of why they believe that they
2 understand that that notice is provided to the recipient
3 of the call. But defense attorneys who have properly
4 opted their number out from recording wouldn't have
5 received that notice because the call isn't subject to
6 recording, it's been opted out.

7 THE COURT: All right.

8 MR. SLINKARD: Mr. Hart is here, judge.

9 THE COURT: He is. I'm sorry.

10 MS. BRANNON: Just to be clear, even though
11 we didn't get that and they weren't supposed to be
12 recorded, they were recorded. That's one of the reasons
13 we're here. Also the phone calls, Mr. Hart, I believe
14 those were subpoenaed directly from Securus.

15 MR. HART: Gary Hart. Your Honor, I believe
16 your question was what was on the recordings --

17 THE COURT: Because you --

18 MR. HART: -- when I receive a call.

19 THE COURT: Yes.

20 MR. HART: My clients are told to call me
21 collect and I tell them that I've made a request of CCA
22 not to monitor or record the calls, and I have received
23 written confirmation from CCA that they're not recording
24 them. So I cannot say with specificity that every
25 single call doesn't have some kind of a warning on it

1 like it's being recorded but I've always interpreted
2 that as some kind of a mistake in the system because
3 I've -- since 2001 I've been under the belief that none
4 of my calls are recorded, though the affidavit I
5 submitted back in September there were some calls that
6 were, in fact, recorded even though I had written
7 confirmation that they weren't recorded. I don't know
8 if that answers your question or not but...

9 THE COURT: Well, what will be interesting
10 is to listen to the MP3 recordings of calls to you and
11 since they weren't -- presumably weren't hang-up calls,
12 you accepted them, whether -- whether the system had
13 that warning or not and whether it had it consistently
14 or not. That's just something that we might want to
15 look at.

16 MR. HART: Well, the calls Securus gave me,
17 these would have been ones that they improperly
18 recorded. And I believe when I clicked on the index, it
19 does have the -- the warning on there but this -- these
20 are ones they weren't supposed to be recorded in the
21 first place.

22 THE COURT: I understand.

23 MR. HART: And to another question the
24 master asked, Securus has told me that they have a
25 five-year retention policy. So anything prior -- well,

1 it's a rolling five years. So you back up five years
2 from now and they're -- they're purging everything
3 unless you take some action or the court takes some
4 action to tell them to quit purging them.

5 MR. COHEN: You're --

6 MR. HART: And the -- the -- when I asked
7 Securus for calls, they sent me an e-mail, which I think
8 is similar to what the CCA representative was saying,
9 that gave me a link that I could click on and it's only
10 good for 24 hours. And I could click on that link and
11 it will download all those calls onto a disc that I
12 would have to put in my computer. After 24 hours, the
13 link wasn't good anymore.

14 MR. COHEN: When you refer to the five-year
15 purging, are you saying they're purging calls they have
16 recorded or purging the phone numbers you gave them that
17 indicated they shouldn't record that phone number?

18 MR. HART: No, purging recordings.

19 MR. COHEN: Okay.

20 MR. HART: I don't know Securus ever
21 receives, other than what Mr. Bigelow indicated what he
22 enters into the system, Securus system, an attorney
23 request not to have their calls monitored. And it shows
24 up on the Securus system in a column called P-R-I-V for
25 private is where it shows up on the printouts that I've

1 received from Securus.

2 MR. COHEN: And you don't know whether
3 there's a life to how long a phone number is private?
4 For example, you don't know whether that is supposed to
5 last forever or just has to be renewed every year? Do
6 you have any knowledge of that?

7 MR. HART: I have never been told that I
8 have to renew it. I -- as a matter of business
9 practice, I have renewed it about five times. I put it
10 in an affidavit as part of this case. I think -- I
11 think I did it in 2001, 2011, 2012 and 2014, but I just
12 do that as a matter of practice to try to make sure that
13 the number's in there.

14 MR. COHEN: Thank you.

15 MR. HART: Okay.

16 MR. COHEN: Mr. Jackson, you submitted what
17 has been referred to as Exhibit 449 and it -- can you
18 explain to me how you compiled that?

19 MR. JACKSON: The discovery received from
20 the government, we had four sets of discovery so far;
21 two DVDs, one terabyte hard drive, and now we've gotten
22 a thumb drive. On the terabyte hard drive, it's called
23 Volume 2A. There's recordings of approximately 39
24 inmates and they're organized by the inmate's name. If
25 you open those up, you first get the MPG3 files. You

1 have to go to the index, which is an HTML file which is
2 an Internet link, and as far as I know that takes me to
3 Securus and would go through Internet Explorer. But if
4 you get to that point, you do have information on each
5 call, including most importantly the phone number
6 called.

7 Because I had 39 of these, I figured that there
8 might be attorney-client conversations among the
9 recordings. So it was a matter of matching up the
10 inmate with his attorney, determining the attorney's
11 phone number, and then doing a search within that
12 inmate's folder and it worked and my results are that
13 449.

14 MR. COHEN: So that's just a list of what
15 you found using a couple hour's time and knowing some
16 attorneys' phone numbers?

17 MR. JACKSON: That's correct. Yeah, I
18 referred to the visitation log, the attorney
19 registration database for Kansas, and -- and a lot of
20 cases I just went through each phone call.

21 MR. COHEN: You said the audio recordings
22 that you were given were on -- you identified it a disc
23 drive?

24 MR. JACKSON: Yeah, they're on the terabyte
25 drive and you have to go to Volume 2A and from there you

1 go to -- I believe it's called CCA calls and then that
2 will get you to the individual inmate's name.

3 MR. COHEN: And that was produced to you by
4 the government?

5 MR. JACKSON: Pardon?

6 MR. COHEN: I'm sorry, that was produced to
7 you by the government?

8 MR. JACKSON: Yes.

9 MR. COHEN: Can I ask the government if they
10 know how that was produced, how it was manufactured?

11 MS. BARNETT: It's my understanding that we
12 took the disc that we were provided with the information
13 on it and then we put it onto a thumb drive or some
14 other electronic media, provided it to defense counsel
15 and that's how we produced it.

16 If you -- I don't know if you're asking for the
17 specifics of the programs or whatever, but we could get
18 that information for you. And then of course the
19 original, I call it original but it's really just a copy
20 of the recordings that we were given, we've since turned
21 over to the court.

22 MR. COHEN: But you were first given, let's
23 call that the original, you procured yourself from whom?

24 MS. BARNETT: The phone calls, we got them
25 from the Marshals Service.

1 MR. COHEN: And the Marshal Service
2 presumably got them from?

3 MS. BARNETT: From CCA.

4 MR. COHEN: CCA or Securus?

5 MS. BARNETT: CCA.

6 MR. COHEN: Mr. Bigelow and Mr. Lajiness,
7 okay.

8 MR. JACKSON: I can show you how that works,
9 you know, after this hearing if that would help.

10 MR. COHEN: Yes, thank you.

11 THE COURT: Before -- I don't know, do you
12 have other questions of Mr. Jackson at this point?

13 MR. COHEN: No, judge.

14 THE COURT: Because Mr. Laurans was the one
15 we didn't call on earlier had something to say.

16 MR. LAURANS: All I'm going to say, in terms
17 of categories of warnings, I think that there may also
18 be categories. Depending upon whether the inmate has
19 prepaid the call or whether it's collect, you get
20 different warnings. And the problem for most of us, I
21 think, are that we have clients in different
22 jurisdictions and different phone companies but you get
23 a different warning from every facility if it's a
24 collect call as opposed to whether it's a prepaid call,
25 right.

1 Because I get a lot -- I'm an appellate
2 post-conviction lawyer most of the time, so I'm getting
3 calls all the time from people I don't know that are
4 inquiries. They've already been sentenced. So it's
5 going to make a difference whether I take a collect call
6 from a stranger whereas I'll take a prepaid call from
7 anybody. And the warnings do differ.

8 THE COURT: And the warnings differ from
9 perhaps CCA and one of the other jail detention
10 facilities?

11 MR. LAURANS: In Missouri, for example.

12 THE COURT: Or in Kansas.

13 MR. LAURANS: Correct. I think the warnings
14 are also -- whether or not you're warned of the
15 recording, I think that may be where some of the
16 confusion is. Unless Securus can come forward and say
17 that the -- this call may be subject to monitoring and
18 recording is on both the prepaid and the collect, and
19 I'm not -- I'm not sure the -- of either, but I do know
20 I get a different warning, a difference series of
21 warnings on a prepaid call as opposed to a collect call.

22 MR. COHEN: I'd like to move on to the topic
23 of the law library computers. Is that -- Miss Brockert,
24 is that going to be you talking about that? Thank you
25 for coming today.

1 MS. BROCKERT: I'll answer what I can. I
2 can give you the name of the person that manages the law
3 library and could give more specific information. She
4 wasn't able to be here in person today. Her name is
5 Cynthia Collins. And let me make sure that I'm right
6 about her. She is the education staff member at
7 CCA-Leavenworth's facility. But I do have some general
8 information that I can give to you.

9 MR. COHEN: Go ahead.

10 MS. BROCKERT: With regard to the law
11 library computers, it's my understanding that in
12 response to some of this -- my understanding was that
13 the -- the computers themselves at some point were
14 seized pursuant to a search warrant. Throughout the --
15 this investigative process everything, all the hard
16 drives were -- were seized. The physical -- we had to
17 replace the computers essentially because they were gone
18 and were not going to be returned any time soon.

19 So what was on the computers was -- I believe it
20 was Lexis, a search -- law library search engine I'm
21 sure we're all familiar with. And I don't believe that
22 there was any other real -- there was no Internet
23 access. The inmates at CCA do not have access to e-mail
24 through those computers. And so as far as communicating
25 with attorneys through those computers, there would be

1 no way to do that.

2 However, we -- in my discussions with corporate
3 and sort of going down the rabbit hole, we talked about
4 how if you have the right education and ability you
5 could measure key strokes and you could pull -- if
6 somebody was making notes -- there are word processing
7 software that were on the computer, so if somebody was
8 making notes, if an inmate was making notes about his
9 case and saying, you know, next time ask my attorney,
10 remind me to do this, or I need to ask my attorney about
11 this, whether or not if -- if there was metadata that
12 was preserved on those computers as a result of that
13 document being created or printed, or if you could
14 measure the key strokes to determine what was -- what
15 was done.

16 So in answer to your question with regard to how
17 much attorney-client privilege might be available or
18 privileged information might be available on those
19 computers, that would be the only way that that would be
20 -- be available.

21 MR. COHEN: Can an inmate save a document?

22 MS. BROCKERT: I don't -- they can save it
23 on the -- there is a hard drive on each computer. So if
24 they wanted to, they could save it on the -- on the
25 actual computer itself. It would be on the hard drive

1 at that point. It obviously wouldn't be recommended
2 because they're public computers so -- and I believe
3 that's something that I'm not sure if that's discussed
4 with them. But if it was, it could potentially be on
5 the hard drive.

6 MR. COHEN: Okay. So, I mean, maybe they
7 didn't even mean -- maybe they did mean to, but I just
8 want to know what I might find. And so it could be that
9 a -- an inmate saved a document. The computer has the
10 capacity of doing that?

11 MS. BROCKERT: It does.

12 MR. COHEN: Okay. Is there any way that you
13 can think of to use the computer to send a message to
14 somebody else? For example, I save a document called
15 "look at this" and Inmate 2 comes along 10 minutes later
16 and knows to look for a document "look at this" and
17 opens it, is that possible?

18 MS. BROCKERT: I believe it is possible. I
19 believe that the -- there -- the computers are subject
20 to review by the facility employees. So that would be
21 -- that would be something that would be monitored just
22 to make sure there was no improper communication going
23 on for the safety and security of the institution. But
24 it could be -- it could be done potentially, yes.

25 MR. COHEN: Okay. So these computers were

1 seized. How many in -- seven is it?

2 MS. BROCKERT: I believe it was six or
3 seven. I think six is what I'm remembering.

4 MR. COHEN: And the court has those; is that
5 right?

6 MR. SEUBER: No.

7 MR. OAKLEY: And the reason we brought this
8 to the attention of the court and this -- our concern
9 was we were told that they did not have access to
10 Internet or e-mail but we conceived of a situation,
11 since they did have access to a Word program, that it
12 was possible that they had drafted a letter to an
13 attorney. And so under that theory is why we brought
14 the court's attention to the law library computers.

15 MR. COHEN: Why do you want them at all?

16 MR. OAKLEY: We have some information that I
17 would -- I would prefer to not share openly, but as you
18 indicated, it's possible to pass on information.

19 MR. COHEN: I'm sorry. Okay. Do you know
20 what other programs, what programs are actually on the
21 computers?

22 MS. BROCKERT: I'm not sure what the -- the
23 operating software is or whether it's Microsoft or what
24 the word -- Word or Word Perfect. I'm not sure what the
25 software is. That would be something that Miss Collins

1 could probably answer for you.

2 MR. COHEN: Where are these computers now?

3 MR. OAKLEY: They are in Secret Service's
4 evidence vault, or at least an image of them are.

5 MR. COHEN: All right. So let's talk about
6 that. There's an image of the computers. Where is the
7 original hard drive that was seized?

8 MR. OAKLEY: Well, my understanding is that
9 the United States Secret Service physically removed the
10 CPUs and collected them as evidence and then used a
11 software program called Tableau device.

12 MR. COHEN: I'm sorry, called?

13 MR. OAKLEY: Tableau, T-A-B-L-E-U, device.
14 I think it's a software and hardware program that
15 allowed them to create a read-only image of the drive.
16 They then ran software on that read-only copy to verify
17 it was, in fact, an exact copy and then -- then uploaded
18 the data to a -- to a secure server where it currently
19 resides.

20 MR. COHEN: And so they still retain the
21 original CPUs?

22 MR. OAKLEY: Yes.

23 MR. COHEN: The images and the server, all
24 of those?

25 MR. OAKLEY: The server is not -- the data

1 was uploaded to a Secret Service server but they have
2 the original CPUs and they are read-only --

3 MR. COHEN: Read-only.

4 MR. OAKLEY: -- copy of the data that was
5 obtained from those original CPUs.

6 Additionally, a Secret Service agent using a
7 program called Internet Evidence Finder then created two
8 discs that he pulled any Word documents, did not review
9 them but had a software program put them on a disc.
10 Those were marked and may contain attorney-client
11 privilege are sealed and in evidence.

12 MR. COHEN: Just Word documents?

13 MR. SEUBER: Sir, John Seuber, Secret
14 Service. It was any Word-based pdf or text-type file
15 that would be -- possibly contain material and then that
16 was, as Mr. Oakley indicated, downloaded to two DVDs and
17 secured in our evidence locker.

18 MR. COHEN: That -- is that the only
19 evidence the government would want to look at itself?

20 MR. OAKLEY: Yes.

21 MR. COHEN: So I don't need to look at
22 anything else really? I just need to look at those
23 text-based files because that's all you would
24 conceivably use?

25 MR. OAKLEY: That's correct.

1 MR. COHEN: Okay. So if I came out to
2 Leavenworth, would I be able to chat tomorrow with
3 Miss Collins, for example, or Mr. Atkins and all those
4 other names we've heard today?

5 MS. BROCKERT: I can certainly see what we
6 can do. I know tomorrow's a Saturday so I'm not sure
7 what the schedule is for those employees, but I can get
8 working on that this afternoon and give you an update
9 e-mail.

10 MR. COHEN: Thank you. I'm pretty tuckered
11 out, judge.

12 THE COURT: I bet. All right. I just want
13 to stress this whole preservation issue again. And
14 although I have the assurance obviously of the U.S.
15 Attorney's Office they're preserving evidence and
16 Miss Brockert's assurance she's going to talk to Securus
17 with the investigative agencies, I look to the U.S.
18 Attorney's Office to make sure they're preserving
19 whatever they need to preserve. Are there any other
20 discovery issues before we break for the day?
21 Miss Brannon?

22 MS. BRANNON: Your Honor, if -- I don't know
23 if this falls within discovery. We wanted to point out
24 a couple of things.

25 THE COURT: Why don't you come up. You're

1 very soft spoken.

2 MS. BRANNON: I wanted to point out
3 Mr. Bussell is here to help access the video. I believe
4 he knows how to do that.

5 We also -- the government made a reference to
6 purging case files at some point and I didn't really
7 catch what the parameter of that was. But if there is
8 an ongoing system that purges government case files,
9 we'd ask that that cease until this investigation is
10 done. I don't really know everything it encompasses. I
11 just heard about it from Miss Barnett today.

12 THE COURT: All right. Miss Barnett, what I
13 understood you to say is DOJ has an archive system. But
14 in terms of purging, you have an internal policy. Is it
15 a manual purge of actual paper files?

16 MS. BARNETT: Yes, it is a manual purge but
17 I understand that the court wants us to maintain
18 whatever records we have with regard to any requests to
19 CCA for video recordings or audio recordings. So I will
20 take --

21 THE COURT: Investigative -- or even just
22 anything to do with that whether it's conversations with
23 investigators or direct conversations with CCA, et
24 cetera.

25 MS. BARNETT: I will take the steps to

1 preserve those things, Your Honor.

2 MR. COHEN: That would be directly or
3 indirectly.

4 MS. BARNETT: Yes.

5 MS. BRANNON: Lastly we don't want to miss
6 one category of evidence which we remain concerned
7 about, video conferencing. There was the capacity to
8 video conference with clients from the courthouse at
9 CCA. We don't know anything about whether that was
10 recorded or how it was turned over or anything of that
11 nature, but we didn't want to lose track of that.

12 THE COURT: Okay. So Mr. Cohen will be in
13 conversation with CCA and Securus about the video
14 conferencing itself. I know for a while it was shut
15 down, or at least no one was using it out of concern for
16 privacy and privilege, but I think it's back up and
17 operational. So that's something else we need to
18 explore with CCA and with CCA specifically I think.

19 Okay. The *Reulet* motion to intervene I'm going
20 to grant consistent with granting Mr. Laurans --
21 Laurans' similarly filed a motion to intervene on behalf
22 of his client. That's not to say I'm going to grant
23 every individual motion to intervene. There are dozens
24 of these Rule 41 motions pending in front of me and
25 Judge Murguia and Judge Crabtree and I'm not sure if

1 there are any other judges that have them at this point.

2 But that is something that I actually had a
3 preliminary conversation with Mr. Cohen about because
4 the -- all the judges remain concerned about these and
5 it doesn't make sense to me, at least at this time, to
6 do some sort of piecemeal decision-making on these. But
7 for now they're all sort of in a holding pattern and at
8 some point I'll be -- I've already talked to my
9 colleagues about it, and at some point I think we'll
10 make a decision whether one judge ought to manage those
11 or whether they should remain disbursed. But in the
12 interim I will grant the motion to intervene,
13 Miss Morgan, at this time.

14 All right. So we're going to break. It's about
15 five till 1:00. I think what Mr. Cohen wants to do at
16 this point is have a fairly brief conversation with the
17 Assistant U.S. Attorneys privately and then maybe after
18 that take a break for lunch and I think what he'd like
19 to do is, say, at 2:30 have a conference with -- I'm
20 sorry, I met you. Ms. Rokusek's investigator who's
21 here to help him with the -- looking at the videos and
22 to talk to you, Miss Brannon, and any other defense
23 counsel that want to be a part of that conversation. If
24 you all can meet here at 2:30, then we'll have a private
25 conference room available for you to do that.

1 Miss Brannon, can you be available at 2:30? Is
2 that a problem?

3 MS. BRANNON: Your Honor, I'm presenting a
4 CLE at 3:30 today over in Western District.

5 THE COURT: Okay. So that is a problem.

6 MS. BRANNON: I can work around that.

7 MR. COHEN: Why don't we make it
8 two o'clock.

9 THE COURT: All right. Then -- and you
10 don't have to stay for the whole time obviously. All
11 right. So meet here at two o'clock and Ms. Scheurer
12 will get everybody back to a conference room. But in
13 the meantime, as soon as we break, I know he'd like to
14 talk to the three AUSAs who are here.

15 Do you want to talk to Miss Brockert or anyone
16 else before they leave the building?

17 MR. COHEN: Yes.

18 THE COURT: Okay. Why don't I recess and
19 you can kind of come up with a plan of action hopefully
20 is convenient for everyone and then we'll recess the
21 hearing portion of this for now. All right. Thank you
22 all for being here and appreciate your assistance.

23 (Proceedings adjourned.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: November 10, 2016

/s/Kimberly R. Greiner
KIMBERLY R. GREINER, CSR, RMR, CRR
United States Court Reporter