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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA, Docket No. 16-20032-JAR

Plaintiff, Kansas City, Kansas

Date: 07/21/2016

v.

LORENZO BLACK,
KARL CARTER,
ANTHON AIONO,
ALICIA TACKETT,
CATHERINE ROWLETTE,
DAVID BISHOP,

Defendants.

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TRANSCRIPT OF
CASE BUDGETING STATUS CONFERENCE
BEFORE THE HONORABLE JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: Ms. Erin S. Tomasic
Mr. D. Christopher Oakley
United States Attorney's Office
360 U.S. Courthouse
500 State Avenue
Kansas City, Kansas 66101

For the Defendant Lorenzo Black:
Mr. John Jenab
Jenab Law Firm, P.A.
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For the Defendant Karl Carter:
Mr. David J. Guastello
The Guastello Law Firm, LLC
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Kansas City, Missouri 64111

(Appearances continued on next page).

1 APPEARANCES:

2 (Continued)

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10 For the Defendant Catherine Rowlette:

11 Mr. Michael M. Jackson
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14 For the Defendant David Bishop:

15 Ms. Cynthia Dodge
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19 Official Court Reporter
20 259 U.S. Courthouse
21 500 State Avenue
22 Kansas City, Kansas 66101

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1 (3:34 p.m., proceedings commenced).

2 THE COURT: All right. You can be seated.
3 All right. We're here in United States versus Lorenzo
4 Black, et al. The case number is 16-20032. Your
5 appearances.

6 MS. TOMASIC: May it please the Court. The
7 United States appears by Erin Tomasic and Chris Oakley.

8 MR. JENAB: Your Honor, Mr. Black is present
9 with counsel, John Jenab.

10 MR. GAUSTELLO: May it please the Court.
11 Mr. Carter appears in person in custody with counsel,
12 David Guastello.

13 THE COURT: All right.

14 MR. HOFFMAN: Mr. Aiono appears not but
15 through counsel, Jason Hoffman, Your Honor.

16 MR. JACKSON: If it please the Court. Your
17 Honor, Catherine Rowlette appears in person and through
18 counsel, Mike Jackson.

19 MS. DODGE: Good afternoon, Your Honor.
20 Cynthia Dodge on behalf of David Bishop, who appears in
21 person.

22 MS. AMBROSIO: Your Honor, Alicia Tackett
23 does not appear, but appears by counsel, Kathleen
24 Ambrosio.

25 THE COURT: All right. I decided to set

1 this for a status conference I think - and Ms.
2 Shaneyfelt is here - based on some communication that I
3 had from her. This case, because of its size and the
4 nature of the charges and all of that, I-- is something
5 that I think should be case budgeted. There are six
6 defendants in this case who all have appointed counsel.
7 And, as I understand it, a lot of discovery, including
8 some discovery I want to talk to you about specifically
9 this afternoon.

10 So Ms. Shaneyfelt let me know that part of
11 the discovery is quite a volume of surveillance videos
12 from the CCA. And Ms. Shaneyfelt advised that the AUSA
13 had said that each defense counsel needed to provide six
14 three-terabyte hard drives in order to download these
15 surveillance videos, which the video, as she
16 understands, it's equivalent to about 200 movies. And I
17 don't know what that means in terms of the length of the
18 movie. But in any event, this is quite an expensive
19 undertaking. That-- but another concern is that there's
20 no index or directory or any means by which the video
21 can be sorted, searched, or organized. So I wanted to
22 talk to you all about that as well. And then as well as
23 any other discovery issues that you may have at this
24 point in the case.

25 So Mr. Oakley or Ms. Tomasic.

1 MS. TOMASIC: Your Honor, I-- I'm fairly
2 concerned based on what you just said that there have
3 been some miscommunications along the line. Because I
4 communicated directly with defense counsel to let them
5 know there is, in fact, an index. We were not provided
6 an index from CCA and the U.S. Attorney's Office worked
7 with the marshals service and CCA and created an index,
8 which is available to defense counsel and I believe is
9 being provided apart from the surveillance footage to
10 defense counsel. So we-- we actually created the index
11 for defense counsel, and for some time defense counsel
12 has been aware that there is an index.

13 And then also, the communications in this
14 case, Your Honor, I would just like to say at the
15 outset, I believe everybody involved in this case would
16 agree we're working together extraordinarily well.
17 There's just a problem that we don't know how to solve
18 in that there is just so much discovery.

19 And so there are 21 terabytes of data.
20 Defense counsel has indicated they were having trouble
21 getting funding because the drives were so expensive.
22 We tossed around the idea that they could just create
23 two copies, one for the Topeka FPD office and one for
24 the Kansas City office and check them out as they wish.
25 I have an additional copy at the U.S. Attorney's Office

1 in Kansas City that anyone could come in and review.

2 I first contacted defense counsel on
3 April 26th of this year and let them know the drives
4 that I needed and that also I would have them available
5 for in-house review. And I believe those 21 terabyte
6 drives have been available for at least six weeks, maybe
7 eight weeks, for in-house review or for copying. And to
8 date, through no fault of defense counsel, I haven't
9 gotten any drives to download a copy because I don't
10 believe they can get the money to do that.

11 So to the extent that Ms. Shaneyfelt
12 reported to you that there is not an index, I have
13 e-mails to defense counsel stating there is an index
14 that we created and they will have access to that.

15 THE COURT: All right. That's good to know.
16 And so 21-- 21 terabytes total?

17 MS. TOMASIC: Yes, ma'am.

18 THE COURT: So I don't know what that means
19 in terms of how many different hard drives would need to
20 be purchased. I guess if they're three-terabyte hard
21 drives, we'd need about-- more than six, need seven.

22 MS. TOMASIC: I guess I stand corrected.
23 Six times three is 18. 18 terabytes.

24 THE COURT: Okay.

25 MS. TOMASIC: And so the way that CCA has

1 provided the data to us, they provided it on six
2 three-terabyte drives, so we would need to copy it in
3 the same manner. We provided defense counsel with a
4 photograph of the make and model of the drives that CCA
5 provided to us because that would help facilitate the
6 copying process.

7 It takes about 20 days to copy one set. But
8 my understanding in speaking with Pauletta Boyd, who is
9 the litigation support specialist in our office - and
10 she's here today to answer any questions - is that once
11 we provide a copy to defense counsel, they could
12 undertake copying additionally amongst themselves or we
13 could do all copies for defense counsel if they so
14 chose, it just would take some time.

15 THE COURT: Okay. I understand. All right.
16 I'll start with you, Mr. Jenab. Have you all-- has
17 the-- the six defense counsel involved directly in this
18 case had discussion about sharing or how to approach
19 this?

20 MR. JENAB: Judge, we-- we've had-- we've
21 had some discussion about it. And I think that some of
22 the defense counsel felt that they would rather have a
23 complete set in their own office. I--

24 THE COURT: Some idea-- I mean, hours and
25 hours of video that you would have to go through?

1 MR. JENAB: Well, that's the problem. I
2 mean, in order to make any kind of headway with the
3 volume that we're looking at, I think a lot of the work
4 is going to have to be done at odd hours, evenings,
5 weekends. It's-- it's not going to be necessarily very
6 predictable when-- when we're going to have the blocks
7 of time to try to do it.

8 And I know that the government is trying to
9 help us with an index, but I think - and-- and Erin can
10 correct me on this if I'm mistaken - I think that the--
11 the index is going to-- it's going to help as a guide,
12 but-- but I'm not sure it's going to, for example,
13 identify where each defendant would be found, right, on
14 the surveillance footage. It's going to identify areas
15 and-- and whatnot. But I don't know that I could take
16 the index and say, "Well, Mr. Black is going to be here,
17 here, here, and here."

18 THE COURT: Is that the case?

19 MS. TOMASIC: That is the case, Your Honor.
20 And I know I've spoken with some defense counsel about
21 this, I don't know that I've spoken with everyone, so
22 I'll just put it on the record. What the government has
23 provided and is providing in discovery is what I believe
24 to be a complete overview of the life cycle of a
25 defendant as far as how he is managed at CCA, which will

1 include exactly which pod each defendant was in at any
2 given date, the dates that he was transferred from
3 certain pods. If he had call-outs for medical, that
4 will also be included in his records.

5 And so defense counsel can look at the
6 Offender Management System for his particular inmate and
7 any other inmate that interests him, for example if a
8 source of supply is identified. Every inmate at CCA, to
9 my knowledge, and I'll have to go back and look, but we
10 have that data for every inmate. And by looking at that
11 data and extracting that data, then the index provided
12 by the government will say, for example, Pod E, Camera
13 3. And then defense counsel can go to the particular
14 date that interests them, look at that particular camera
15 angle. They know their client is in Cell 101, Pod E on
16 that particular date, and they can marry the two to view
17 the footage that they deem pertinent to mounting their
18 defense.

19 THE COURT: So they'll be able through the
20 Offender Management System to determine the pod, not
21 necessarily the camera in the pod, but at least the pod.
22 Would that be accurate?

23 MS. TOMASIC: Yes, and the cell. With the
24 exception that I-- I've learned more about CCA than I
25 ever thought was possible. But from what I understand

1 at CCA, in some instances, if an inmate is assigned to,
2 for example, Pod 101, he may on his own decide he
3 doesn't like his cellmate and move within that pod,
4 switch with someone, and CCA does not always stop
5 inmates from making their own moves.

6 But as far as what CCA records as an
7 inmate's particular pod, yes, defense counsel has-- will
8 have access to those records in the round of discovery
9 that's going out this week.

10 THE COURT: Okay. So the defendants have
11 not yet discovered the Offender Management--

12 MS. TOMASIC: No.

13 THE COURT: Which sounds like it's pretty--
14 it's going to be a pretty voluminous document too?

15 MS. TOMASIC: I--

16 THE COURT: Because it itemizes each
17 person's movement every time they move? Or how does
18 that work?

19 MS. TOMASIC: It is, except that typically
20 an inmate would stay in a particular pod for an extended
21 period of time and only be moved if he was promoted to a
22 particular work assignment or if he was demoted to
23 segregation for getting in some sort of trouble. Then
24 on a daily basis, there would not be anything
25 documenting his movements except that if he had

1 particular medical call-outs or particular types of
2 call-outs for work, that would be denoted within the
3 system.

4 I have not looked at the full Offender
5 Management System. Ms. Boyd has looked at it, and I
6 will tell you I do have concerns that it's-- was
7 produced in somewhat of a messy fashion by CCA, and
8 Pauletta is working to clean that up. There would be a
9 number of blank pages in the middle, hundreds of them,
10 that just made it appear more voluminous than it
11 actually was, but--

12 THE COURT: Okay. What about when an inmate
13 leaves the pod to go visit with a visitor or an
14 attorney? And I don't know, is that in a private room
15 or is there a visitor room or how does that work?

16 MS. TOMASIC: The-- so in order to have a
17 visit, there would have to be some sort of registration
18 for the visit. It should be designated in the Offender
19 Management System, but I will add that to something to
20 check.

21 THE COURT: And there are cameras that are
22 identified with particular-- the visitor room and
23 attorney/client room as well, or no?

24 MS. TOMASIC: Yes. Except that there is
25 no-- there are no audio in attorney/client unless

1 someone at CCA, an employee, took it upon themselves to
2 turn on the audio. But I don't believe it's recorded.
3 It's just that it would allow a particular CCA employee
4 to listen in without recording if-- if the employee
5 believes something was afoot that he needed to be aware
6 of.

7 THE COURT: Okay. All right. Well, now
8 that I have a better understanding, and hopefully maybe
9 you all have a better understanding, because it sounds
10 like Ms. Tomasic's understanding is developing as she's
11 gathering records from CCA, I'm of the mind that we can
12 justify each one of you getting the hard drives
13 individually.

14 It sounds like it's going to be quite an
15 undertaking to go through all of those. And even
16 though, you know, maybe these hard drives include-- I
17 don't know how many pods there are at CCA, I guess I
18 should've asked, but let's just suppose there are eight
19 pods at CCA and you really only need to focus on one, it
20 still sounds like it's going to be a lot of hours of
21 video to go through.

22 So, as I understand it from Ms. Shaneyfelt,
23 the hard drives will cost around \$125 for each or about
24 \$750 per defendant if you buy six; is that correct?

25 MS. SHANEYFELT: Your Honor?

1 THE COURT: Ms. Shaneyfelt.

2 MS. SHANEYFELT: If I might.

3 THE COURT: Yes.

4 MS. SHANEYFELT: We have-- they do think
5 they can get them for about 100 or \$150 per hard drive.
6 Mr. Naseem was good enough to talk with some of his
7 technology experts, and he's come up with a couple of
8 bids that would allow for six defendants in this case
9 and then, by extrapolation, the other defendants who are
10 impacted by this discovery that are charged in other
11 cases, to take-- have a professional company do the
12 copying of the original.

13 And for these six defendants, the total of
14 that would be \$10,800. That is at \$300. It costs \$100
15 for each actual hard drive and then \$200 for the labor
16 of transferring the materials to the hard drive. But
17 instead of it taking 20 days for each defendant, they
18 could have a whole project done in 30 to 45 days for
19 each of the six defendants in this case. So that might
20 be another alternative.

21 THE COURT: Okay. So it would be a total of
22 \$10,800, but that would suffice to take care of the
23 defendants in this case, as well as the defendants that
24 are pending sentencing?

25 MS. SHANEYFELT: No. That would just be the

1 six defendants in this case.

2 THE COURT: Okay.

3 MS. SHANEYFELT: That would provide six
4 defendants with the six three-terabyte hard drives of
5 discovery. Both the hardware and the labor of moving
6 the discovery from one place to the next.

7 THE COURT: Is that-- and so is that a
8 quicker timeline than what the U.S. Attorney's Office
9 could do if they provided each-- each defendant with
10 copies?

11 MS. SHANEYFELT: It's my understanding that
12 it's taking about 20 days for the U.S. Attorney's Office
13 to do each-- each copy.

14 THE COURT: Okay.

15 MS. SHANEYFELT: And so that would be
16 20 times six defendants.

17 THE COURT: Obviously they have limited
18 resources, they're not in the business to typically be
19 doing this, so--

20 MS. SHANEYFELT: Right.

21 THE COURT: Okay. Well, I think that's
22 reasonable then to do it all in one fell swoop, 30 to 45
23 days. So-- so I guess the way to handle this is to
24 submit-- break it into-- evenly across all vouchers and
25 submit it to me that way.

1 MS. SHANEYFELT: I'm happy to do that on
2 behalf of all defense counsel, just to do it in one
3 voucher and then we'll divide it between the defendants.

4 THE COURT: Okay. All right. We'll do
5 that. So-- and then the-- the index is available, but
6 is it-- have you all received the index yet?

7 MS. TOMASIC: They have not. They-- each
8 defense counsel has provided a one-terabyte hard drive
9 and we are copying those for each defense counsel at
10 this time. And the index is on that one terabyte hard
11 drive. It should go out by Monday.

12 THE COURT: Okay.

13 MS. TOMASIC: I do want to say just because
14 I-- obviously defense counsel all needs a copy of this
15 surveillance footage, but I don't want the Court to be
16 surprised at a later point. We are working on charging
17 additional defendants and a significant number of them.
18 Obviously it takes a lot of time to get the evidence
19 together. So I don't want to mislead the Court down the
20 road if a number of additional defendants are charged
21 that would create additional need for surveillance
22 footage to be produced to each of those defense
23 attorneys at a later date.

24 THE COURT: And you're planning to supercede
25 and do it in this case?

1 MS. TOMASIC: I-- if the time frame allows,
2 yes. If not, it would be-- it would be a related case,
3 filed as a related case.

4 THE COURT: Okay. All right. So the index
5 will be going out on the one-terabyte hard drive
6 everyone has already provided. The Offender Management
7 System, you're trying to clean that up first but then
8 push that out. And then look at the professional
9 company going on making the copies.

10 Is there anything else that we need to talk
11 about as far as discovery and-- I should tell you
12 because I decided this was a case budgeting case, even
13 without Ms. Shaneyfelt telling me-- me about her
14 concerns, I would schedule it for an earlier status
15 conference. I think we had this scheduled for a status
16 conference maybe in August or September, but that's
17 probably too late.

18 It's probably-- it's good to get-- kind of
19 get ahead of it in a case like this where there's going
20 to be a lot of money spent and time spent. So-- but I'm
21 glad to hear it's-- it seems like it's-- it's being
22 well-managed. And even though it's daunting, it's being
23 well-managed. So what else can we talk about at this
24 point, if anything.

25 MS. TOMASIC: There are some additional

1 discovery concerns that have arisen. So in speaking
2 with Ms. Boyd, I know that typically the U.S. Attorney's
3 Office sends out discovery in searchable PDF format. We
4 have obtained a number of e-mails. I know the e-mails
5 from one account was about - is it correct - 37,000?

6 MS. BOYD: (Nods head up and down).

7 MS. TOMASIC: 37 [sic] e-mails from one
8 account from CCA, which would take about 200 days to
9 convert to searchable PDF format. CCA has provided all
10 e-mails in the last three years for CCA Leavenworth,
11 which is about 40 million e-mails.

12 And, Your Honor I just want to explain that
13 CCA's system is set up so that every day that passes,
14 the front end of their retention period was deleting
15 e-mails. And given that this case keeps identifying -
16 at an alarming rate actually - new targets, I asked if
17 CCA would consent to provide us all employee e-mails for
18 CCA Leavenworth, to preserve those e-mails so that they
19 would no longer be deleted. They have done that. The
20 government is in possession of those e-mails.

21 Obviously that's an overwhelming amount of
22 data, not only for the government but to defense
23 counsel. As a prosecutor, I am in the untenable
24 position of feeling like I need to turn over, pursuant
25 to the U.S. Attorney's Office open file discovery

1 system, everything I have out of concern that there may
2 be something exculpatory in there. I know, for example,
3 possession of contraband, one of the defenses to
4 possession of contraband would be acquiescence of people
5 in a position of supervisory authority within the
6 facility, for example hypothetically.

7 So I would prefer to be able to turn over
8 all the e-mails not in PDF format because it simply--
9 they could not be converted in a timely manner. It
10 would take years to do that. To turn them over in the
11 PST format, which is their native format, and allow
12 defense counsel to upload those to Outlook and then they
13 can search by user a particular account holder. And at
14 this point, there may be less than ten account holders
15 who would be relevant in the government's view.

16 I don't want to obviously suggest to defense
17 counsel how to conduct their search. But moving
18 forward, I think defense counsel will identify
19 additional employees of CCA that they may wish to search
20 their e-mails. I just wanted to throw that out to the
21 Court. I don't know at this point what size drive
22 defense counsel would need to provide to upload that,
23 but I assume it will be a few terabytes, I want to say
24 maybe three or four, but--

25 (Ms. Tomasic and Ms. Boyd confer).

1 MS. TOMASIC: Okay. And then in addition to
2 that, there were approximately 50 electronic devices
3 seized on the day of takedown. The imaging of those
4 devices is complete. And if defense counsel wants a
5 copy of the complete imaging, they will need to provide
6 two 3,000-gigabyte drives. The images from those
7 devices were seized from the residences of Lorenzo
8 Black, Alicia Tackett, Anthon Aiono, Cathy Rowlette, and
9 David Bishop. So I definitely believe that those
10 devices are pertinent to those defendants.

11 And I leave it to the rest of the defense
12 counsel to decide if they would like to provide two
13 3,000-gigabyte drives. If not, the Secret Service is in
14 the process of generating forensic reports, which would
15 be much more manageable and smaller in size. And those
16 will be produced to defense counsel in short order.

17 Other than that, I would just like to put on
18 the record that proffers and interviews are being
19 redacted and they will be available for in-house review
20 next week. And I know the Court has expressed concern
21 in the past about maintaining cooperator information
22 in-house. And I just want to represent that I have in
23 all other cases moved to the position that proffers can
24 be sent out in unredacted form pursuant to a protective
25 order.

1 But I can put on the record I do believe
2 there is a substantial and significant reason to operate
3 differently in this case. And I do believe there is a
4 sufficient safety concern that proffers and interviews
5 should be kept in-house in redacted form at least until
6 much closer to trial.

7 I have arranged with Ms. Boyd to make
8 multiple copies. And if defense counsel wants to come
9 and view them, we have multiple copies available. We
10 will find rooms to make them available. There should
11 not be a single instance in this case of defense counsel
12 wishing to review proffers or interviews at the U.S.
13 Attorney's Office and not being able to do so because
14 there is not a copy or a room available. We will find a
15 room.

16 THE COURT: And can you do that both at your
17 Topeka and Kansas City branches?

18 MS. TOMASIC: Yes, absolutely. And I
19 believe that concludes my concerns.

20 The only other concern that I would have,
21 and we would have to work this out with defense counsel,
22 is we're sending out the one-terabyte drive that defense
23 counsel provided. Obviously they're going to need to
24 send either that drive back or a new drive back in the
25 next two weeks so that the-- the last big round of

1 discovery can go out. Until we determine the size of
2 the 40 million e-mails, though, I won't know exactly
3 what size.

4 THE COURT: Okay. Let me ask you, just for
5 clarity on the e-mails. So there are employees that are
6 charged?

7 MS. TOMASIC: There's one employee charged.

8 THE COURT: One employee charged.
9 Potentially more employees charged, I assume.

10 MS. TOMASIC: (Nods head up and down).

11 THE COURT: But I'm not-- when you say 40
12 million e-mails over the last three years, that's for
13 all employees?

14 MS. TOMASIC: Of just CCA Leavenworth. And
15 I would point out that lower-level employees in the
16 hierarchy, my understanding is, they do not have access
17 to e-mail. So it's going to be e-mails solely for
18 individuals in a supervisory position or at least
19 corrections officers. But support staff such as like
20 janitorial services, kitchen services, delivery
21 services, those individuals do not have access to
22 e-mail. That is how it was represented to me by CCA.

23 THE COURT: And explain to me why you think
24 you need to disclose all of-- all of the e-mails.

25 MS. TOMASIC: Well, I think I need to

1 disclose all the e-mails because there's potentially
2 exculpatory information in there. That way it's up to
3 defense counsel to decide if there's a particular person
4 whose e-mails they would like to search, then they can
5 do so. Otherwise, I'm picking and choosing what I think
6 may be exculpatory. And I don't want to be placed in
7 that position.

8 Given the evidence we have at this time, the
9 evidence suggests that there were a significant number
10 of employees involved and that e-mails are pertinent to
11 this investigation as far as designating what CCA
12 employees knew was going on at the time and what they
13 were doing to quell contraband and drug smuggling inside
14 the facility, or rather not doing.

15 And then there would also be, in addition to
16 that, there would be e-mails, for example, related to
17 movement of inmates, the basis for movement of inmates,
18 discipline of inmates for particular acts, decisions not
19 to discipline inmates for particular acts.

20 THE COURT: So the e-mails might include
21 communications about the charges, but also might include
22 just communications about these particular defendants?

23 MS. TOMASIC: Yes, ma'am. Yes, Your Honor.
24 And also about potential sources of supply, potential
25 cooperators, other individuals involved in the drug and

1 contraband trafficking.

2 At this point, based on wire transfer
3 information, the government believes that 95 inmates or
4 more were involved in this conspiracy and 60 individuals
5 or more on the outside working with them. And so it is
6 a fairly widespread conspiracy. And I do believe a
7 number of inmates, in addition to those charged here,
8 their information would be contained in-- in the e-mail
9 communications.

10 THE COURT: Okay. As far as the e-mails,
11 what is your plan of action in terms of how to go about
12 disclosing those in a way that-- well, you started off I
13 think by saying you typically disclose things in a PDF
14 format that's searchable. Is there a problem with
15 respect to these e-mails?

16 MS. TOMASIC: The e-mails could not be
17 converted in a timely manner to PDF. And so the
18 government's plan is to distribute them in PST format,
19 which is their native format, so that defense counsel
20 can upload them into Outlook.

21 And, for example, the U.S. Attorney's Office
22 has the same system for e-mails, and we have a search
23 platform within Outlook that I use on a daily basis.
24 You can search by content, you can search by user, you
25 can search by date, you can search by recipient. And in

1 many ways, it's more usable, more user-friendly than
2 just searching in searchable PDF format.

3 THE COURT: Okay.

4 MS. TOMASIC: And I want to clarify, I don't
5 have my notes in front of me as to the exact number. My
6 recollection from e-mail communications and from
7 conferences with CCA's counsel, it's 40 million. But I
8 could be wrong. They-- they provide an estimation as to
9 all corporate CCA e-mails and then CCA Leavenworth
10 specific. I believe it's between 30 and 40 million, but
11 I couldn't give an exact number today.

12 THE COURT: All right. And you said-- you
13 keep stressing that it's only specific to Leavenworth
14 CCA, is that because there's some other institution
15 involved?

16 MS. TOMASIC: No. CCA-- CCA's corporate
17 headquarters is in Nashville. And they had to segregate
18 out CCA Leavenworth's particular e-mails. I believe
19 they have between 60 and 80 facilities nationwide that
20 they manage.

21 THE COURT: Okay. Okay. Thank you.

22 Okay. Now that we've heard-- well, at least
23 I've heard, maybe you all were aware of these additional
24 types of discovery that are-- that will be coming, are
25 there any concerns or questions or anything that-- from

1 the defense side that we need to discuss? Yes.

2 MS. DODGE: Yes, Your Honor. I don't know
3 what the dates are as to what-- you know, how far back
4 the government is going. I now have a new concern. I--
5 I don't know whether there's going to be conflicts of
6 interest that are going to come out of this because of
7 previous clients that we have represented that have been
8 housed at CCA, whether it be through the Western
9 District of Missouri or through the District of Kansas.

10 And so I-- and I don't know that the
11 government-- maybe they have-- I know they're-- they're
12 very concerned about that as well. And so maybe they've
13 checked all that out. I don't know what suspects
14 they're looking at or targets they're looking at. But
15 as to the people who were inmates that were in there, I
16 think there's a good chance that out of the six of us,
17 that we may have other inmate-- we may have other
18 clients that are-- that are somehow going to be woven
19 into this conspiracy.

20 And that-- that is a concern. You might be
21 bringing in lawyers from the East and West Coast to
22 handle this case in the future, I don't know.

23 THE COURT: That's a concern. That is a
24 legitimate concern. What do you think your time frame
25 is, Ms. Tomasic, in terms of additional indictments and

1 what-- can we expect those all in one fell swoop or
2 waves or--

3 MS. TOMASIC: I have--

4 THE COURT: Because obviously there may be
5 withdrawals and we've got quite a management problem on
6 our hands here.

7 MS. TOMASIC: I've been maintaining a log of
8 defense counsel, past and present, for individuals I
9 intend to charge or who are already charged. And of the
10 six attorneys that are currently representing charged
11 defendants, I have not identified any conflicts.

12 As far as timing, we're moving as quickly as
13 we can. We intend to charge-- given the volume of
14 defendants, ultimately the goal is to charge in two
15 separate cases so that the marshals service is not, and
16 the Court also, and just as far as space, required to
17 have more than 20 defendants in a courtroom at a
18 particular time.

19 THE COURT: So you may be superseding to add
20 another ten or so here. But then if-- beyond that,
21 there would be a separate case.

22 MS. TOMASIC: Yes, Your Honor.

23 THE COURT: Which hopefully won't be
24 assigned to me.

25 MS. TOMASIC: Yes, Your Honor.

1 THE COURT: Okay. Thought I'd go on record
2 saying that, for whatever it's worth. Okay. Any other
3 questions or concerns? Ms. Ambrosio?

4 MS. AMBROSIO: Your Honor, I just want to
5 clarify because I'm concerned about the number that I've
6 heard today that I haven't heard before as to what each
7 individual defense counsel is supposed to provide in
8 terms of disks.

9 I provided, and I think most people have, a
10 one-terabyte disk. That was my understanding was going
11 to cover a substantial amount of discovery. Of course,
12 not that 18 terabytes that we talked about originally.
13 But then I wrote down, maybe I heard it wrong, that we
14 would have to return that one terabyte to get another
15 terabyte or provide another terabyte disk? We can't
16 really return it because there's really no place to put
17 that terabyte once we get it on there.

18 THE COURT: Okay.

19 MS. AMBROSIO: And then I heard additionally
20 that, and maybe I wrote this down wrong, that we would
21 need two 3,000-gigabyte disks for the electronic
22 devices, which I think is another six terabytes. Maybe
23 I'm wrong about that.

24 THE COURT: Yeah, I think-- well, I-- so I
25 heard the same. So 2 to 3,000 gigabytes for the image

1 devices. There's also going to be some Secret Service
2 reports that will hopefully make that a little bit more
3 manageable. But if you want the actual images of
4 everything, 2 to 3,000 gigabytes.

5 The 40 million e-mails I think you
6 estimated, Ms. Tomasic, that it could be three to four
7 terabytes, but that you intend to produce it in native
8 format that can be uploaded to Outlook, which would be
9 searchable. And-- and that's one question I have, is
10 how does that work for the six of you, what are we going
11 to have to do to manage that piece of it? And then,
12 yeah, I think that covers it for now, so--

13 MS. AMBROSIO: Okay. So it sounded to me
14 like I need to provide two individual one-terabyte disks
15 and then one that would hold up to three terabytes for
16 the 50,000-- or for the 50 electronic devices. And then
17 we'd have to deal with the e-mails at some other time.

18 MS. TOMASIC: Your Honor, as for the-- the
19 50 electronic devices, whether a defense attorney wants
20 to provide the 3,000-gigabyte drives, the two
21 3,000-gigabyte drives is entirely up to them. That is
22 just an image, a complete, perfect mirror image of all
23 the devices that were downloaded.

24 Oftentimes defense attorneys do not want to
25 take on that extraction because they couldn't do

1 anything with it, they would have to send it off to some
2 sort of service to analyze how the device was
3 downloaded, whether they believe it was accurately
4 downloaded. This comes up sometimes in child porn cases
5 and also in terrorism cases.

6 Whether defense counsel wants to undertake
7 that here, I take no position. I'm just making it
8 available to them. Otherwise, Secret Service is in the
9 process of providing reports, which are forensic
10 reports, which are easily readable and in PDF format,
11 which will summarize from where certain data was
12 extracted and then the nature of that particular data.
13 So that's generally what's provided, but I did want to
14 make that option available.

15 As far as the size of additional external
16 drives that will need to be provided, I should have a
17 better estimation of the total amount in the next week.
18 The agent who needs to look at that, the amount, the
19 volume of space that the 40 million e-mails takes on is
20 at the Republican National Convention and he is in a
21 supervisory position there and was not able to get away.

22 But as soon as he gets back, which I believe
23 is early next week, that will be his first order of
24 business. I will send out an e-mail to defense counsel.
25 And I do not anticipate any additional large volumes of

1 discovery surfacing during the course of this case.

2 THE COURT: All right. So will you have
3 available in the U.S. Attorney's Office a way that they
4 can go in and at least view the entire mirror image
5 first before-- and then decide whether they want to
6 download it or copy it?

7 MS. TOMASIC: It is not-- I just spoke with
8 Pauletta Boyd. It is-- the images are not in a format
9 that our office can read. The agents could. And if--
10 if defense counsel did want to go to the Secret Service
11 and meet with the agents who undertook that image
12 process, I could make them available to assist them in
13 doing that.

14 Now, to the extent that defense counsel
15 wanted to spend several full days there reviewing it,
16 unless they have-- are extraordinarily computer savvy, I
17 don't know that that would be fruitful for them, but I
18 will make the agents available should they choose to at
19 least see the process by which the devices were
20 downloaded.

21 THE COURT: Well, it sounds like the best
22 approach would be for them to start by looking at the
23 Secret Service reports themselves. And when do you
24 anticipate those will be available?

25 MS. TOMASIC: I have been in e-mail

1 communication with the agents, and the time frame I was
2 given was five weeks. But that was contingent upon them
3 having headquarters cooperate with them to download
4 them, because so many of the Secret Service agents are
5 at the Republican National Convention and then the
6 Democratic National Convention.

7 I assure you I'm being very aggressive in
8 trying to get them to get it done in a timely manner
9 because I do understand the need to get this discovery
10 to defense counsel. And I will continue to do so. I
11 hope no more than five weeks.

12 THE COURT: Okay. I think maybe at our next
13 status conference I'll just see where you're at on that.
14 At this point I'd say don't go out and buy any
15 additional hard drives for the images. Let's just get
16 the reports in your hands and then we'll go from there.
17 You've already spent money on one terabyte for the index
18 and you're going to need to keep that on hand. The
19 videos we've talked about. And then the e-mails being
20 produced in native format, we're going to have-- well,
21 when will those be ready to be disclosed in that format?

22 MS. TOMASIC: They are ready. The only
23 issue is I don't know the total size that they occupy,
24 and I will know that early next week. And I will e-mail
25 defense counsel next week and let them know exactly what

1 size drive I need to provide them all of the e-mails.

2 THE COURT: Okay. So we're going to have a
3 similar issue with this as we have with the CCA videos.
4 And the question is whether it would make sense to have
5 some professionals deal with that, too. If they're in
6 native format, the way the U.S. Attorney's Office uses
7 it is to download it into Outlook, which allows them to
8 search. I don't know if all six of you have that
9 capability individually or not. I know Outlook is a
10 pretty common software, but that doesn't mean everybody
11 has it.

12 Do any of you not have it or not have that
13 capability or not sure?

14 MS. DODGE: I don't know. I mean, I have
15 Outlook, but I-- I don't know how you can-- I don't know
16 how it handles that much.

17 MR. HOFFMAN: Judge, Jason Hoffman on behalf
18 of Mr. Aiono. We're kind of delving-- in my-- my mind,
19 we're delving over into issues related to some case
20 budgeting and defense counsel issues, as I see it. And
21 I'm kind of wondering if maybe this might be more
22 appropriate for an ex-parte proceeding now that we know
23 what we're going to get, so that we can have that
24 conversation about whatever issues anybody may have with
25 regard to dealing with this discovery without the need

1 to have the government in the middle of it.

2 THE COURT: Okay. That's a good point. I
3 think it's a little premature, too, until they give you
4 all the information they have about the volume involved,
5 et cetera, so-- which it sounds like you'll-- they'll
6 know within the next week or two and you'll know within
7 the next week or two, at least on this.

8 So I think you're right, Mr. Hoffman. I
9 think this is probably as far as we can go today. But
10 let's plan on having a case budgeting conference
11 ex-parte in a month or so if-- if we're ready. We'll
12 kind of play that by ear.

13 Ms. Shaneyfelt, you can let me know when it
14 would make sense and not waste everybody's time so that
15 we can get some things accomplished. But at least for
16 now I'm going to approve how to handle the videos, so
17 that can proceed. If it takes 30 to 45 days, we want to
18 get going on that.

19 Okay. All right. Anything else?

20 MR. JACKSON: Your Honor, Mike Jackson on
21 behalf of Catherine Rowlette. I think this case meets
22 the criteria of appointing a coordinating discovery
23 attorney. And I think you may have just said that when
24 you said see if you can get the professionals involved.

25 THE COURT: That's not what I meant. I was

1 talking about like the company that's going to manage
2 the videos. So let me hear from your-- on your idea on
3 having a-- sort of a lead discovery attorney.

4 MR. JACKSON: I think it can be better done
5 through a motion. But they, of course, would organize
6 the receipt and distribution of all discovery. If we're
7 talking about a lot more defendants, it should-- we
8 should start immediately with organizing it.

9 This was used in the *Perez-Acala* case, which
10 was a 54-defendant case, and it cut a lot of attorney
11 time. So I'm sold on that kind of an approach. But
12 like I said, I think I can put that in a motion.

13 THE COURT: And again, that's something I
14 think we can talk about at our next-- at our case
15 budgeting conference for that matter. But if you want
16 to proceed by motion, that's good. That's fine.

17 MR. JACKSON: Thank you, Your Honor.

18 THE COURT: Okay. Are you volunteering for
19 that position, Mr. Jackson?

20 MR. JACKSON: Yes. I can't hardly turn you
21 down. Could I have two weeks?

22 THE COURT: No, I meant, are you
23 volunteering for the person that would serve as the
24 coordinator?

25 MR. JACKSON: Oh, no. You know, even what's

1 a docking station, I have to go to Google to figure that
2 out. If we have 50 devices, each one of those devices
3 are run by a specific software. So how would we even
4 approach looking at what was on those 50 devices? You
5 know, it could be in Mac or it could be in Microsoft
6 Word, or-- and a coordinating discovery attorney, one of
7 them that we used in *Perez-Alcala* was Berkowitz Oliver.
8 They do this all the time. They do it for huge civil
9 cases so that they could organize it and save an immense
10 amount of time.

11 THE COURT: You're talking about Mr. Naseem.
12 He's got some sort of national position that he serves
13 in this capacity, so we probably ought to talk to him.

14 MR. JACKSON: But I thought you were talking
15 about filing a motion, I'll do that.

16 THE COURT: Okay.

17 MR. JACKSON: All righty, thank you.

18 THE COURT: All right. Okay. Anyone else
19 while we're all here? I think this has been productive.
20 I'm glad we did this today rather than later. Mr.
21 Jenab?

22 MR. JENAB: Judge, I do have an issue, but
23 it pertains to Mr. Black only.

24 THE COURT: I-- I wanted to talk to you
25 about that as well. So we can recess with respect to

1 everyone else. What's the next date that we had on the
2 docket?

3 COURTROOM DEPUTY: The date that we have--

4 THE COURT: September?

5 COURTROOM DEPUTY: Yeah, September 19th at
6 9:00.

7 THE COURT: Okay. So I-- we're going to
8 have another status conference on September 19th with
9 everybody, government included. But we'll figure out
10 later when we need to have a case budgeting meeting.
11 Okay?

12 All right. So I'll excuse everyone except
13 Mr. Jenab and his client.

14 (Defense counsel and defendants were excused
15 from the courtroom).

16 THE COURT: Mr. Jenab.

17 MR. JENAB: Thanks, Judge. Your Honor, Mr.
18 Black was recently transferred to-- he was taken out of
19 CCA and he was sent to the Leavenworth County jail. I
20 know he wrote the Court a letter, and I think in that
21 he-- he thought I had something to do with it. He and I
22 have talked since then and he understands that-- that
23 that move was not related to me.

24 I had asked that he be taken out of
25 segregation at CCA and allowed to go into the general

1 population. The government made the decision, in
2 conjunction I believe with the marshals service, to
3 instead move him to Leavenworth County jail. And the
4 difficulty with that facility is that it has literally
5 no federal materials there at all. There's no ability
6 for Mr. Black to assist in his defense by reviewing, you
7 know, federal-- specifically federal legal materials the
8 way that an inmate at CCA, for example, can do.

9 And I-- I wanted to sort of again bring that
10 to the Court's attention, that Mr. Black feels that he
11 should be allowed to be at a facility where he can be of
12 more help to his own defense.

13 And, Judge, I would also just say right now
14 that this case is turning into such a hugely protracted
15 affair, I think he needs to be put on bond. And I-- I
16 intend to file a motion. I don't think it's fair in any
17 way that Mr. Black should have to sit in custody for
18 what looks like it may be three years or more before we
19 can-- we can realistically get to a trial of this
20 matter.

21 But in the meantime, while he is in custody,
22 and we wanted to ask the Court to-- to consider ordering
23 that he be sent back to CCA, even if-- even if that
24 means he has to be in segregation, he would much rather
25 put up with that if it means that he has the opportunity

1 to have a-- a meaningful law library at his disposal, or
2 moved to a-- a different facility where he would be able
3 to conduct legal research.

4 THE COURT: I don't know if the government
5 has any response.

6 MS. TOMASIC: Your Honor, I would oppose the
7 request that he be moved back to CCA. The government,
8 in coordination with the marshals service, looked at the
9 hierarchical positions of the individuals involved in
10 this alleged conspiracy and also looked at the conduct
11 that we have learned these individuals have engaged in
12 since being put in the facility. And based on those
13 factors, decided who needed to be moved out of CCA, what
14 types of separatees needed to be placed on particular
15 inmates.

16 With respect to Defendant Black, the
17 government has obtained information through cooperator
18 statements suggesting that Mr. Black has been
19 instructing his co-defendants and other individuals at
20 CCA not to proffer about methamphetamine, to proffer
21 specifically about synthetic cannabis and tobacco,
22 because his understanding of the guidelines, accurately,
23 is that methamphetamine carries a much heavier weight.

24 I-- as I discussed with Mr. Jenab before
25 this hearing, there's a fine line between instructing

1 and intimidating. In the government's view, Mr. Black,
2 because of his position in the conspiracy and also
3 because of the nature of the statements he's making, I
4 view those as intimidating statements. I view them as
5 obstructive statements.

6 And I have coordinated long-- I've
7 coordinated at length with the marshals service, like
8 playing a game of chess, to put cooperators in certain
9 pods, cooperators at certain facilities, perpetrators
10 who I see as intimidating perpetrators in other
11 locations. I believe every contracting facility with
12 the United States marshals service in Kansas and
13 Missouri, in addition to CCA, has multiple defendants
14 and targets and cooperators housed in different
15 positions. There's simply nowhere left for Mr. Black to
16 go because of the conduct that he has chosen to
17 undertake, both as part of his underlying case and since
18 he's been charged.

19 In addition, I would also note that just
20 recently, in fact today, I received reports suggesting
21 that Mr. Black was found in possession of tobacco and he
22 has been reprimanded at Leavenworth. The exact same
23 conduct that he was helping to facilitate as part of his
24 underlying case.

25 So for all of those reasons, he-- I believe

1 that he lives by the conduct that he has chosen to
2 undertake, which is intimidating witnesses, obstructing
3 witnesses in his case, and also continuing to engage in
4 criminal activity.

5 THE COURT: All right. Mr. Jenab, I will
6 invite you to move in writing for the relief that you
7 seek. And it sounds like you were planning to move in
8 writing for release on bond, I guess an appeal from the
9 detention order. There's a detention order in this
10 case, is there not?

11 MR. JENAB: There is, Judge.

12 THE COURT: In the meantime, Mr. Black's
13 letters, or at least his grievance forms that I've been
14 provided, do ask for some specific things that I think
15 could surely be provided to him in paper form, assuming
16 that's something you could take to him at Leavenworth
17 and leave with him.

18 MR. JENAB: Judge, I'm certainly in the
19 interim going to do what I can in terms of providing him
20 with what I think are the most relevant portions of the
21 federal sentencing guidelines, some basic case law
22 regarding, you know, drug conspiracy. Obviously I can't
23 act as a substitute for a law library, but to the extent
24 that I can-- can help him with some of the more basic
25 resources, I certainly will do that.

1 THE COURT: All right.

2 MS. TOMASIC: And, Your Honor, not specific
3 to Mr. Black, I do want to put one additional factor on
4 the record. I know as prosecutors we sometimes think--
5 say the sky is falling every time. I don't think that
6 that's my character, but I do just want to add to the
7 record and let you know that the warden of CCA actually
8 called me yesterday and explained that she had certain--
9 a certain inmate and more who were completely out of
10 control that were intimidating other witnesses in this
11 case. That she had moved him to segregation. And in
12 response to moving this particular inmate to
13 segregation, another inmate who had voluntarily gone to
14 segregation after faking an illness multiple times,
15 asked to be moved out of the facility.

16 I have had no less than half a dozen inmates
17 write me letters, call me, saying, "Please get me out of
18 here. I'm going to get killed because of this case."
19 So I-- I'm not exaggerating when I say that there are
20 significant danger issues in this case, intimidation of
21 witnesses. And a lot of individuals are being impacted
22 by this case.

23 I know that you haven't accused me of
24 exaggerating. I just want to let you know that the
25 government's position in this case is very sincere. We

1 are looking out for the safety of the individuals
2 involved, and we're trying to move this case along as
3 quickly as we can, so that we can get these folks off to
4 BOP so that they're apart from each other.

5 THE COURT: All right. I understand. It
6 sounds like this was a very difficult situation. And
7 I'm not in a position to-- I mean, I'm just-- you're
8 providing me with information to give me some indication
9 of some of the challenges that are had in terms of
10 housing defendants.

11 And it's always difficult when they're--
12 it's a multiple-defendant case, and particularly when
13 there are witnesses that are incarcerated, defendants
14 incarcerated. And perhaps, as you've indicated today,
15 additional potential defendants and probably potential
16 witnesses incarcerated all together. And there's only
17 so many contract facilities available in the marshals'
18 contract that-- that would allow for them to be
19 separated.

20 So I-- if you want to take this up in
21 written motion, we can certainly do that. And in the
22 meantime, I think it's advisable that you provide Mr.
23 Black with the specific things he asks for, as-- as well
24 as the statutes that he's charged under and the, you
25 know, sentencing guidelines that I think-- that you

1 think might be relevant.

2 And frankly, Mr. Black probably needs to
3 read the guidelines on obstruction and how that might
4 enhance one's sentence, because there are at least
5 allegations that he's doing that. And, of course,
6 there's potential additional charges that may come from
7 that.

8 And I just caution you, Mr. Black, you need
9 to be very careful. Because in my experience, what
10 happens is if someone-- if there's evidence developed
11 that someone is obstructing, intimidating, trying to
12 affect witness testimony, typically the grand jury will
13 supercede with a new indictment, add those charges in
14 with the-- the underlying charges. And all of that is
15 tried together because it's related.

16 And it does not play well with juries. I
17 mean, you know, a jury that might otherwise be inclined
18 to think that, you know, there's a reasonable doubt on
19 the underlying conduct is surely going to be influenced
20 by other evidence that shows that, you know, you're
21 trying to affect witness testimony on that.

22 That's something that I think reasonable
23 people might believe is the actions of a guilty person,
24 not an innocent person. So you have to-- I'm just
25 cautioning you. I hope you're not doing that. There's

1 certainly allegations that you are, and there are
2 consequences if it's proven that you're doing that,
3 either by virtue of new charges being brought or just,
4 you know, a higher sentence in this case if it's proved
5 that you obstructed-- if you're convicted in this case
6 and it's proved that-- at sentencing that you
7 obstructed.

8 So all right. We'll take up any motions you
9 file, Mr. Jenab, should you choose to file them. And
10 otherwise, we'll see you back I think it's
11 September 19th for the next status conference.

12 All right. We'll be in recess.

13 (4:29 p.m., proceedings recessed).

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C E R T I F I C A T E

I, Kelli Stewart, a Certified Shorthand Reporter and the regularly appointed, qualified and acting official reporter of the United States District Court for the District of Kansas, do hereby certify that as such official reporter, I was present at and reported in machine shorthand the above and foregoing proceedings.

I further certify that the foregoing transcript, consisting of 44 pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED July 25, 2016.

/s/ Kelli Stewart

Kelli Stewart, CSR, RPR, CCR, RMR