

1 APPEARANCES:

2 For the Defendant Anthon Aiono:

3 Mr. Jason P. Hoffman
4 Hoffman & Hoffman
5 CoreFirst Bank & Trust Building
6 100 East Ninth Street
7 Third Floor East
8 Topeka, Kansas 66612

9 For the Defendant Alicia Tackett:

10 Ms. Kathleen A. Ambrosio
11 Ambrosio & Ambrosio, Chartered
12 800 Southwest Jackson
13 Suite 817
14 Topeka, Kansas 66612

15 For the Defendant Catherine Rowlette:

16 Mr. Michael M. Jackson
17 Attorney at Law
18 727 South Kansas Avenue
19 Suite 2
20 Topeka, Kansas 66603

21 For the Defendant David Bishop:

22 Ms. Cynthia Dodge
23 Cynthia M. Dodge, LLC
24 233 Southwest Greenwich Drive
25 Suite 10
Lee's Summit, Missouri 64082

For the Movant Federal Public Defender:

Ms. Melody Brannon
Mr. Kirk C. Redmond
117 Southwest Sixth Street
Suite 200
Topeka, Kansas 66603

For the Interested Party David Lougee:

Mr. Jonathan L. Laurans
Attorney at Law
1609 West 92nd Street
Kansas City, Missouri 64114

Court Reporter:

Kelli Stewart, RPR, CRR, RMR
Official Court Reporter
259 U.S. Courthouse
500 State Avenue
Kansas City, Kansas 66101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

E X H I B I T S

<u>Court Exhibits</u>	<u>Offered</u>	<u>Received</u>
1	10	10
<u>Defendant's Exhibits</u>	<u>Offered</u>	<u>Received</u>
449	14	14

1 (1:38 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., 16-20032. Your appearances, please.

5 MS. BARNETT: Debra Barnett, Assistant
6 United States Attorney, appearing on behalf of the
7 United States of America.

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

10 MR. GAUSTELLO: Karl Carter in person and in
11 custody with counsel, David Guastello.

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

14 MR. JACKSON: Catherine Rowlette appears in
15 person and by counsel, Mike Jackson.

16 MS. DODGE: Cynthia Dodge on behalf of David
17 Bishop, who appears in person.

18 MS. AMBROSIO: Your Honor, Ms. Tackett does
19 not appear but appears by counsel, Kathleen Ambrosio.

20 MS. BRANNON: Your Honor, the Federal Public
21 Defender appears by Melody Brannon and Kirk Redmond.

22 THE COURT: All right.

23 MR. LAURANS: Judge?

24 THE COURT: Yes.

25 MR. LAURANS: Interested party David Lougee

1 appears by Jonathan Laurans, but he's not present. He's
2 detained, but not present.

3 THE COURT: Lougee?

4 MR. LAURANS: Lougee, L-O-U-G-E-E.

5 THE COURT: All right. All right. Of
6 course, we were here last week on August 9th to hear on
7 an emergency basis the Rule 41(g) motion filed by the
8 Federal Public Defender's Office as intervenor and there
9 were a number of-- of you that joined in that motion.

10 I'd like to start just by making a record of
11 the motions to join and, just to clear up our docket, to
12 grant those motions. So I think they are Motion 92
13 filed by Richard Dertinger, Motion 94 filed by David
14 Lougee, Motion 96 filed by Lorenzo Black, Motion 97
15 filed by Karl Carter, Motion 108 filed Alicia Tackett,
16 Motion 109 filed by Anthon Aiono, Motion 89 filed by
17 Catherine Rowlette, Motion 96 and 99-- no, I'm sorry,
18 Motion 96 filed by Lorenzo Black, Motion 99 filed by
19 David Bishop.

20 I think that's all of them. Those motions
21 will be granted. They're simply motions to join or
22 motions to preserve objection or related to the motion
23 that was filed by-- and the amended motion filed by the
24 Federal Public Defender.

25 So a number of things to take up today. I

1 have not obviously fully ruled on the amended motion for
2 Rule 41(g) relief filed by the Federal Public Defender.
3 That's Document 85. Nor have I ruled-- it's actually a
4 newly-filed motion that's Document 105 filed by the FPD
5 as a motion for Court to impound additional government
6 evidence. That was just filed yesterday I believe, so
7 the government hasn't had an opportunity to respond to
8 that one.

9 Also, in Document 105, the FPD and defense
10 asked for appointment of a special master. That is a
11 request that was made before that I do think the
12 government has responded to in its-- in its response,
13 which I'm trying to find, because the government filed
14 an omnibus response, although I don't think it was a
15 complete response to everything yet. Yes, it's
16 Document 110, United States' first response to motion
17 and amended motion for Rule 41(g) return of information
18 and numerous motions to join.

19 And I have granted those motions to join,
20 but I-- I understand the government's position at least
21 on some individuals in terms of, you know, raising
22 standing arguments, including the arguments with respect
23 to the public defender as well. Nonetheless, without
24 deciding that issue, I think this issue is properly
25 before me in terms of the defendants in the Lorenzo

1 Black case, so I intend to proceed with the motions and
2 the relief sought, at least with respect to those
3 defendants and perhaps with respect to everyone
4 ultimately.

5 All right. So I provided to you all an
6 e-mail that I received and an attached letter that I
7 received from United States Marshal Ron Miller. I had
8 requested that he be in contact with CCA and the county
9 jails that house pretrial detainees in the District of
10 Kansas. And Marshal Miller, through considerable effort
11 and with a sense of urgency, has been in communication
12 repeatedly with those facilitates, as well as with his
13 national office and CCA and others. And in a letter
14 authored today sets forth the current status of the
15 detention centers that the marshals use in this state.

16 And essentially, they are in compliance with
17 the Court's order in the sense that they are no longer
18 video-recording attorney-client conference rooms, they
19 are not recording, audio-recording attorney-client
20 communications either through phone, face-to-face, or
21 video-conferencing. They have confirmed with Marshal
22 Miller that they are not going to do this, that they
23 understand the problems with this, they intend to comply
24 with the Court's order.

25 There was one facility that indicated some

1 reluctance to follow the Court's order and the Marshals
2 Service has removed the five persons that were housed
3 there from that county jail and is not going to put
4 anyone else in that county jail.

5 I don't have copies, but Marshal Miller has
6 written compliance verification from all Kansas county
7 detention facilities that they are in compliance and/or
8 have amended practices to ensure compliance. CCA has
9 taken out all of the cameras in the six recording
10 rooms-- or the six conference rooms that they have them
11 in. They've taken the video cameras out altogether.

12 Other jails that had-- of the eight jails in
13 Kansas that house our detainees, six of them weren't
14 recording at all. But those that had cameras in the
15 rooms are shrouding the cameras, their plan is to shroud
16 the cameras with some sort of cloth cover so that while
17 there are attorney-client visits, those non-verbal
18 communications cannot be seen because they won't show up
19 on the camera. And they're going to keep track of the
20 time and when they take it on and off and pursuant to
21 which visitations.

22 They've all assured that they will not allow
23 unmonitored attorney-client phone calls-- they will not
24 allow recording of attorney-client phone calls. Most of
25 them have a system that allows the attorney, and I'm

1 sure you all are aware of this, to provide their number
2 or numbers that either their client will be calling them
3 at or that the attorney will initiate a call from. And
4 the system allows those numbers to actually be input and
5 blocked in the system so that when calls are made to or
6 from those numbers, the systematically shuts off the
7 camera.

8 CCA is different in the sense that when an--
9 a detainee places an outgoing call to their lawyer, that
10 call will be recorded unless the detainee tells CCA that
11 that's who they're calling, that they're calling an
12 attorney. And if they tell them that, CCA turns off the
13 recording with respect to that particular phone for the
14 duration of that call.

15 So I've tried to summarize, you all have
16 what I've said and more in the letter from Marshal
17 Miller, and I wanted to make a record of that to start,
18 including-- Bonnie, if you will mark this as Court
19 Exhibit 1. It's the original Marshal Miller's letter to
20 the Court that I provided to all of the counsel in the
21 Lorenzo Black case. And I've also provided it to all of
22 the district and magistrate judges in the District of
23 Kansas so they're aware, because I know that some of
24 them have already had motions pertaining to these issues
25 filed in their-- in their cases. So I'll admit Court

1 Exhibit 1 into the record.

2 And so there's a number of things that I'd
3 like to talk to you all today about, including the
4 appointment of a special master. Before that, though,
5 I'd just be interested in hearing from you procedurally
6 about anything else that you think needs to be heard
7 today, other than the appointment of special master and
8 what the parameters of that might be. Ms. Barnett.

9 MS. BARNETT: Your Honor, I was hoping we'd
10 just take up the issue of the appointment of a special
11 master today. With regard to the motions that have been
12 filed to impound evidence, and I-- I can't recall now,
13 but I think there was one other maybe yesterday, I would
14 ask for time to respond to those in writing. And then
15 if we need to have another hearing, setting that on down
16 the road. But otherwise, I'm prepared to talk about the
17 special master in terms of what we can agree to today,
18 but that would be about all I would want to address
19 today.

20 THE COURT: All right.

21 MS. BARNETT: Thank you.

22 THE COURT: Ms. Brannon.

23 MS. BRANNON: Your Honor, there were two
24 other things that we would like to bring to the Court's
25 attention outside of the special master, which I-- I

1 think the Court can fashion a procedure that would allow
2 the government to-- to respond in some way.

3 The first is we would like to add to the
4 record regarding the phone calls. What has developed in
5 the last week is it is very clear that, in the past at
6 least, CCA recorded phone calls between attorneys and
7 clients. And those recordings were provided to the
8 United States Attorney in this case. We don't know how,
9 whether it was by a grand jury subpoena or other means,
10 we just know that they were turned over. And that, in
11 turn, those phone calls have already been disseminated
12 to co-defendant counsel.

13 THE COURT: In the Lorenzo Black case?

14 MS. BRANNON: In the Lorenzo Black case.
15 I'm not sure about the other three that are interested
16 and have sentencing issues, I don't think that they've
17 got those, but I-- I think Mr. Redmond and Mr. Jackson
18 can address that more fully.

19 We provided the Court with a demonstrative
20 exhibit basically that sort of is a chart that lays out
21 some of-- some of this information. So we'd at least
22 like to make a record on that today and understand that
23 the government may need time to respond.

24 The other matter is something that also came
25 to light in the last couple of days regarding Ms.

1 Rokusek that relates very much to the statement that she
2 made last week to the Court. Because of the sensitive
3 nature of that information, it's not something that we
4 are prepared to present in open court. I think Ms.
5 Rokusek would probably ask the Court, too, to hear this
6 in camera and ex parte. But I will represent to the
7 Court I think it bears very much on the Court's
8 consideration of the special master and the scope of the
9 special master.

10 But beyond that, what we have is essentially
11 we are ready to discuss the special master and-- and
12 those issues before the Court.

13 THE COURT: So essentially you want to make
14 a record on the phone calls, and allowing obviously the
15 government time to respond. But in that interim-- and
16 have you given Ms. Barnett a copy of this demonstrative
17 exhibit?

18 MS. BRANNON: (Nods head up and down).

19 THE COURT: I would like you or Mr. Redmond
20 to walk me through that. But I assume what you're
21 asking for is a clawback order to get this material,
22 whatever it is, that's in the hands of the defense or
23 otherwise, back into someone's hands, whether it's the
24 government or into the Court's vault?

25 MS. BRANNON: Exactly, Your Honor. What

1 we're asking is for the government to identify what
2 copies they have, whether CCA still has originals of
3 those phone calls, and to whom it has been disseminated.
4 And to have those returned hopefully to the Court or
5 some other entity outside the U.S. Attorney's Office.

6 We would point out for the Court, and I know
7 Mr. Redmond can address this in more detail, that by
8 disseminating these attorney-client phone calls to other
9 defendant attorneys, that creates an ethical conundrum
10 for them because they have received what they believed
11 to be and what is, in fact, privileged, confidential
12 information between another attorney and their client.
13 They have that in their possession.

14 And how to proceed from this point, I think
15 we'll certainly be asking for guidance from the Court.
16 But by returning that-- being able to return that
17 information and take it out of their custody, I-- I
18 think that that would answer or remedy some of the
19 problem. And Mr. Redmond could certainly address the
20 phone calls at this time if the Court wants to take that
21 up.

22 THE COURT: All right. Thank you. Mr.
23 Redmond.

24 MR. REDMOND: Thank you, Your Honor. I
25 think maybe the easiest way to start is we would ask

1 permission to mark this exhibit as Exhibit 449, just for
2 record purposes.

3 THE COURT: It's a demonstrative exhibit
4 that's a table pertaining to attorney-client phone
5 calls?

6 MR. REDMOND: Yes, Your Honor.

7 THE COURT: All right. Exhibit 449 admitted
8 for demonstrative purposes.

9 MR. REDMOND: Your Honor, what this chart
10 depicts is not something of which I have personal
11 knowledge, because we obviously do not have the
12 discovery in the Black case. What it is is some of the
13 attorneys who do have the discovery, they have 198
14 gigabytes of inmate phone calls.

15 THE COURT: All right. So these are
16 attorneys that aren't counsel of record in the Black
17 case?

18 MR. REDMOND: That's correct, Your Honor. A
19 number of them are here, but-- and I can't speak to why
20 those phone calls were provided in discovery. But what
21 I can tell the Court is some of the defense counsel when
22 they opened the folder that's marked "CCA Phone Calls,"
23 what they're able to do is search those phone calls by
24 the attorney's telephone number. I think people tried
25 to take care not to actually violate the privilege

1 themselves. And so I-- you know, we don't know what is
2 discussed on these phone calls, we just know that there
3 is a phone call between a client at CCA and an attorney
4 who is listed in this chart that has been recorded and
5 provided to the Lorenzo Black defendants in discovery.

6 THE COURT: Okay. I-- again, I just need--
7 want to be clear on this. So 449 lists a number of
8 attorneys and defendants who are defendants in other
9 cases?

10 MR. REDMOND: Yes, Your Honor.

11 THE COURT: And the attorneys on-- and these
12 conversations you say have been audio-recorded at CCA,
13 only CCA, not other jails, just CCA?

14 MR. REDMOND: I have no information about
15 other jails, yes, Your Honor.

16 THE COURT: Okay. All right. But in any
17 event, they've been recorded. And these particular
18 calls have been provided as part of the discovery in the
19 Black case?

20 MR. REDMOND: That is what I'm told, yes.
21 Maybe just an example of one of the defendants. The
22 client's name is Lamar Steele, Mr. Steele's attorney is
23 Chris Joseph. We provided the case number for the Court
24 in the third column. The fourth column lists the dates
25 between the first and the last recorded phone call, here

1 10-24 of 2014 to January 21st of 2015. The fifth column
2 is the file location on the-- the disks that were
3 provided to the counsel in the-- in the Black
4 prosecution. And the last column is the number of calls
5 that were recorded between that inmate's PIN number at
6 CCA and the attorney's telephone number, which in this
7 case is 43 calls.

8 THE COURT: All right. Anything more?

9 MR. REDMOND: No, Your Honor. Thank you.

10 THE COURT: All right. Ms. Barnett, can you
11 speak to this? Are you prepared to speak to this?

12 MS. BARNETT: No, Your Honor, I'm not.

13 THE COURT: Well, Mr. Redmond, I don't know
14 if you can tell me more. So the defendants in the
15 Lorenzo Black case have discovered a number of
16 audio-recordings on it looks like several disks, maybe
17 more than the ones listed on here. And those
18 audio-recordings purported to be-- I mean, what they
19 thought they were discovering was conversations they
20 were having with their own clients? I'm not
21 understanding what it is they thought they were
22 discovering.

23 MR. REDMOND: Which is exactly what Ms.
24 Brannon just asked that I sort of supplement the record
25 on. They did not-- I mean, like, for example, Mr.

1 Joseph did not receive these recordings. The Lorenzo
2 Black counsel did. He's only aware of them because the
3 counsel in Lorenzo Black notified him that we have
4 attorney-client phone calls-- presumably attorney-client
5 phone calls between CCA and your office and we're just
6 not going to listen to them.

7 And which is why-- I mean, this is our
8 concern in the litigation is that our phone calls, just
9 like our video-- video of our visitation is out there as
10 well, which is why we intervened under Rule 41(g). I--
11 I wish I could be more helpful. I'm certainly not in a
12 position to expand on the contents of the phone calls or
13 anything more about the mechanism by which they were--
14 or the reasons that they were provided in discovery. I
15 just don't know. I just know that counsel in this case
16 are receiving discovery that certainly appears to be
17 subject to the privilege.

18 THE COURT: Well, counsel in this case that
19 are receiving this, are they receiving this mixed in
20 with other discovery that they think is appropriately
21 received by them?

22 MR. REDMOND: I think so, Your Honor, the--
23 but I'm not certain. Traditionally, just from--
24 speaking from my experience, I will get dumps of phone
25 calls from clients. And typically what I think the

1 government is looking for is inculpatory statements made
2 in a non-privileged fashion to attempt to use against my
3 client. But here, apparently those weren't filtered
4 out. It looks-- presumably, it looks like that's the
5 case. And so I think that there's a number of
6 non-privileged phone calls just based on my experience,
7 not based on my knowledge of the discovery, and those--
8 those were not segregated out from the privileged phone
9 calls.

10 THE COURT: All right. Are there-- is there
11 anyone on behalf of one of the defendants in the Lorenzo
12 Black case that wants to provide any further explanation
13 of what you received and how you discovered this?

14 MR. JACKSON: Yes, Your Honor. Mike Jackson
15 on behalf of Cathy Rowlette. Let's see, the easiest way
16 to explain this is there was a directory or a folder
17 contained in the hard drive that we received from the
18 government. And the name of that directory was "CCA
19 Calls." The subdirectories within that consisted of 39
20 inmates at CCA.

21 And then so you would pick an inmate, such
22 as Richard Dertinger, which is the top one. And you
23 would then have access to MP3 files. And there was an
24 index below them that would take you right to Securus
25 through the Internet. And that would list all of the

1 phone calls that Mr. Dertinger had made in-- while he
2 was incarcerated at CCA.

3 Okay. Now, I knew that he was represented
4 by Jackie Rokusek. So I used her-- the last four digits
5 of her phone number and did a search within that index
6 limited to Dertinger. And sure enough, I came up with
7 her phone number. And it was an audio file and I
8 started it and immediately figured out that it was
9 covered by the attorney-client privilege.

10 I did the same thing with a Mr. Webb, Virok
11 Webb, who had real serious charges against him in this
12 court, and I believe you were the judge. And I was able
13 to find Mr. Virok calling Rokusek 11 times. And they
14 were all privileged communications owned only by the
15 client.

16 And so in the time I worked on it, I found
17 nine, nine inmates who had called their attorney who
18 that recording turned up in the hard drive disk - which
19 I have in my office right now, and the other five
20 defendants have at their office - in discovery in Black.

21 And as Kirk said, there's 198 gigs in that
22 CCA file. And so that I'm sure there's many more
23 instances of this than the 74 I was able to find in a
24 few hours.

25 But that "CCA Calls" is part of that hard

1 drive. So there's a lot of other information on there.
2 And I'm particularly concerned that this is now-- this
3 is in the custody of Securus, who keeps that
4 information. When you get it, you access Securus by the
5 Internet. And so this disclosure or publication by the
6 government has now expanded internationally.

7 THE COURT: I'm not understanding that
8 argument.

9 Mr. JACKSON: All right. Securus is the
10 company that handles all phone calls from CCA. Securus
11 bills the inmate for these calls. I received MPG files
12 which are audio files, like music, but below that there
13 was an index. And if you hit the index, you then point
14 your database at the Securus database that's in the
15 Cloud. It's off-- offsite. And that will then give you
16 a lot more information about the date and the identity
17 and the number.

18 So when I say, well, it went international,
19 that's because it's on Securus' database organized
20 according to each defendant's PIN number. And, you
21 know, it would be subject to-- somebody could get at
22 what attorney-client privilege is meant to protect. Did
23 that come-- did you understand where I was going?

24 THE COURT: Yeah, I understand what you're
25 saying. I guess it depends on how Securus-- well, I

1 don't know. I mean, it depends on how they preserve it
2 and-- and how it is that you were able to access it.
3 You didn't have-- it wasn't encrypted, it wasn't-- you
4 didn't have to use a password, that you clicked on a
5 link provided to you by an index that was provided by
6 the U.S. Attorney's Office and were able to access your
7 own client's calls, but also able to access other
8 attorney-client calls.

9 MR. JACKSON: 39 of them. Now, I couldn't
10 get my client's calls because she has not been in CCA.
11 And when you hit the index, it just took you to that
12 particular inmate's file, but the file--

13 THE COURT: So in 39 inmates that are listed
14 in the subdirectory, those 39 inmates include-- do they
15 include the-- the defendants in this case, in the
16 Lorenzo Black case that are in custody, plus others?

17 MR. JACKSON: That's correct. They include
18 Steve Rowlette, who initially was a part of this case
19 and been removed, and then they also include Mr. Karl
20 Carter.

21 THE COURT: All right. So did anyone-- did
22 the prosecutors represent to you why they were providing
23 you with calls for other inmates as part of the
24 discovery?

25 MR. JACKSON: No. No, they didn't consult

1 us as far as I know, but--

2 THE COURT: I mean, did you ask? Did any of
3 you ask, "Why am I getting calls from 39 inmates? Why
4 am I not just getting my own client's calls?"

5 MR. JACKSON: No. I didn't ask.

6 THE COURT: But some of these calls are not
7 privileged in the sense that they're a detainee that's
8 calling somebody else.

9 MR. JACKSON: Oh, a majority. Like in--
10 there would be 1,000 calls, and four of them would be to
11 the attorney. The rest would be, you know, to family
12 members or whatever. And that was all in one-- well,
13 let's just call it all in one file.

14 THE COURT: All right. So presumably, and
15 I-- I don't know if Ms. Barnett can answer this, but you
16 thought what you were discovering were non-privileged
17 phone calls of your-- of the defendants in this case and
18 perhaps others that may or may not be unindicted
19 co-conspirators, something like that?

20 MR. JACKSON: Exactly. I was looking for
21 what exculpable evidence I could find. And then all of
22 a sudden it became apparent that there was privileged
23 communications being published.

24 THE COURT: All right. I understand.

25 MR. JACKSON: And I created this

1 spreadsheet, and so I stand by what's in it, Judge.

2 THE COURT: Okay. Thank you.

3 MR. JACKSON: Thank you.

4 THE COURT: All right. And again, Ms.
5 Barnett, do you have any knowledge about the audio
6 calls?

7 MS. BARNETT: With regard to the specific
8 ones that we're talking about in the demonstrative
9 spreadsheet, no, Your Honor, I don't. I do know from
10 talking to the people at CCA and their attorney earlier,
11 that in the intake process when an inmate goes into CCA,
12 that they actually will give them the opportunity to
13 tell them - if they have an attorney - the attorney's
14 phone number, so that that can be put into their system.
15 And somehow, and I'm not electronically bright, but
16 somehow then that allows that phone call to be exempted
17 from the recording system. I think that's even kind of
18 mentioned in Marshal Miller's letter to the Court that
19 you previously discussed.

20 So I don't know whether these particular
21 inmates designated these attorneys, before or during or
22 after these calls were made, as their attorneys so they
23 wanted their calls exempted from recording or not. That
24 would be something that I could certainly look into, if
25 the Court would give me time.

1 But I would just suggest to the Court that
2 there are circumstances under which calls between
3 inmates and their attorneys are not confidential,
4 attorney-client privileged phone calls. And I don't
5 know whether that applies to this situation, but
6 certainly in situations where at the beginning of the
7 call people are forewarned, "Your call is being
8 monitored, it's being recorded," and they go ahead and
9 talk, there is the argument, and I would advance that
10 argument, that they've waived any privilege that they
11 have if they then continue to speak with their attorney
12 and talk about otherwise confidential matters.

13 So that's why I would like additional time
14 to not only brief-- file a brief with the Court and
15 respond to the defendant's motion that was filed
16 yesterday, but I can, if the Court would like, go ahead
17 and look at these specific instances. I don't want to
18 listen to the calls, but find out the circumstances
19 surrounding each of these clients' phone calls, when
20 they were made, and what they conveyed to CCA as far as
21 whether they had representation and they wanted their
22 calls exempted.

23 THE COURT: All right. Are you-- similar to
24 agreeing to surrender the video-recordings until we can
25 sort all this out, do you oppose a clawback order to

1 gather all these audio-recordings? Because it sounds
2 like if there's a mix of non-privileged and privileged
3 calls, and it could be that you take the position that a
4 call is not privileged, even though it's between an
5 attorney and client for some reason, I mean, that's
6 something that would have to be handled through a
7 privilege log and litigation and perhaps a special
8 master figuring that out. But in the meantime, it makes
9 sense to me that, similar to the video-recordings, we
10 need to claw back everything from everywhere until we
11 can figure it out. Would you agree?

12 MS. BARNETT: Yes.

13 THE COURT: All right. So in terms-- and,
14 well, I was going to start asking this about the video
15 as well, but we'll need to know where it is, who has it,
16 and-- and then, you know, how to go about getting it all
17 back and into the Court's custody pending further order.

18 MS. BARNETT: All right.

19 THE COURT: Okay.

20 MS. BARNETT: Thank you.

21 THE COURT: All right. Ms.-- yes.

22 MS. BARNETT: May I have just a moment,
23 please, Your Honor?

24 THE COURT: Sure.

25 (Counsel confer).

1 THE COURT: And we can take a break if you
2 want-- if you all want to confer, that's fine. Would it
3 be helpful to take a break?

4 MS. BRANNON: Your Honor, I think we have
5 resolved it. There were some outstanding videos at CCA,
6 I think those are being taken care of. Well--

7 MS. BARNETT: When I had met with the warden
8 last week and spoke to her, she had indicated that they
9 had DVRs that were continuing to collect video feed
10 recordings from the various cameras out there. She
11 asked about whether or not they needed to hang on to
12 those for us.

13 In checking further into that, what I
14 learned from speaking to their attorney, who understands
15 the issue and the Court's order and everything, she told
16 me that when the original DVRs that the Court has were
17 pulled from their system, six other DVRs were put into
18 CCA's system back in May. And they have continued to
19 run and record on everything out there except the
20 attorney rooms until last week when they stopped
21 recording the attorney rooms.

22 These DVRs will record, and I'm just going
23 to give a guesstimate, for about 90 days and then they
24 overwrite or record over the old stuff. And they-- they
25 just are kind of circular in that way in the way they

1 record.

2 So what the attorney has told me is, is that
3 these-- the second set of DVRs that went in in May,
4 that's all there is. Those DVRs. No copies of those
5 have been produced for us since May. We haven't been
6 given access to those DVRs to make copies. Nobody has
7 made copies for us. And I told her that we're not
8 asking you to make copies for us.

9 So there are no extra copies out there
10 floating around. It's just the DVRs that are out there
11 right now in their system that are recording their
12 camera feeds on everything except the attorney rooms.
13 Does that make sense?

14 THE COURT: All right. So this is
15 post-subpoena--

16 MS. BARNETT: Yes.

17 THE COURT: -- DVRs, it includes both
18 attorney rooms and everything else in the facility?

19 MS. BARNETT: Up until last week when the
20 Court ordered them to stop recording in the attorney
21 rooms.

22 THE COURT: Attorney rooms, okay. So can
23 they segregate the attorney room camera recordings? I
24 mean, because obviously my order didn't go to the
25 facility-wide recordings, only the attorney rooms.

1 MS. BARNETT: I don't know if they can or
2 not. I'm not sure, again, how these DVRs actually work.
3 But I know that they're-- I know they're not making
4 recordings of those-- that video for anybody, it's just
5 now-- it will be rewriting over that if that-- I'm not
6 sure I'm explaining that very well, but--

7 THE COURT: And I'm not-- I don't-- well, I
8 think it's beyond the purview of the order to ask that
9 they turn over-- I know right now you-- you all
10 subpoenaed or the grand jury subpoenaed, or whoever, the
11 universe of recordings for obvious reasons. I mean,
12 they have perhaps evidentiary value in the CCA case.
13 But there's no reason-- well, you didn't subpoena the
14 universe of recordings after that particular grand jury
15 subpoena that issued in April, so you're not entitled to
16 it.

17 MS. BARNETT: Correct.

18 THE COURT: But there's-- then but with
19 respect to the subset of attorney-client, we've got an
20 issue similar to what we had with those you took
21 possession of, because at least for now they exist.
22 They may ultimately be recorded over, but for now they
23 exist on some DVR server or whatever. Correct?

24 MS. BARNETT: Correct.

25 THE COURT: Okay. What-- so what have you

1 all discussed about this?

2 MS. BRANNON: Well, Your Honor, part of it
3 is we were just trying to sort out what is actually
4 there. It's our position that-- that I believe that CCA
5 could do the same thing. They could pull those DVRs,
6 provide those to the Court in order to preserve it. And
7 certainly-- you know, for this limited purpose, I think
8 they could pull that sixth DVR that has the
9 attorney-client visitation and give it to the Court.

10 Another alternative is that if the Court
11 would order CCA not to produce those to a third party
12 and order the U.S. Attorney's Office in Kansas not to
13 subpoena or request those recordings in any way. So
14 there-- there are a couple of ways I think to protect it
15 if it's being recorded over. But the cleanest way would
16 just have-- be to have CCA pull those and provide them
17 to the Court.

18 THE COURT: All right. Ms. Barnett, do you
19 have a position on which alternative?

20 MS. BARNETT: Well, with regard to the order
21 that we not be allowed to issue a subpoena for or
22 request copies of what's on their DVRs, if the Court is
23 inclined to do that, I don't object to the Court saying
24 that with regard to the footage from the attorney rooms.
25 But I do think that we have the right to subpoena or

1 obtain a court order to get video footage and recordings
2 from the other locations that cameras are at out at CCA,
3 as long as they are not in the attorney rooms. And
4 we're asking-- we would not ask for that type of a
5 visitation recording.

6 THE COURT: All right. So I think probably
7 the cleanest way to do this is for me to issue an order
8 that orders CCA to provide recordings only from the
9 attorney-client rooms that span the time period from
10 when they responded to the last subpoena until the day
11 they cut off the cameras, which was yesterday or last
12 week or something. So I'll issue an order to CCA to
13 that effect. Hopefully, again, they're just segregated
14 on one or two drives.

15 Okay. All right. Anything else before we
16 talk about special master?

17 MS. BARNETT: No, Your Honor.

18 THE COURT: Okay. So-- and as I understand
19 it, you want the record to include an in camera-- my in
20 camera hearing of additional information from Ms.
21 Rokusek; is that correct?

22 MS. BRANNON: That's correct. It would sort
23 of be a continuation of her statement from the last
24 hearing with new information.

25 THE COURT: All right. I think what we'll

1 do is we'll go through everything we're going to do.
2 We'll do that last, and I'll ask you all to stick around
3 outside of the courtroom in the event I determine that
4 something that she's telling me in camera is better
5 taken up with-- with you all in your hearing. I'll
6 discuss that with Ms. Rokusek, make a record of it, and
7 then bring you back at the end of the hearing for that.
8 But we'll-- we'll do that at the end of this hearing, at
9 least hearing from Ms. Rokusek.

10 So let's talk about the special master. So
11 a lot of issues here, but from what I gather from what
12 you all have filed, you don't agree on the scope and the
13 duties of the special master, except that it sounds like
14 you do agree that the special master should go through I
15 would guess the two drives for sure, maybe sample the
16 other drives, and ascertain-- first of all, ascertain
17 that there's-- whether or not there's privileged
18 material on them, and secondly, ascertain how to go
19 about segregating out non-discoverable, privileged
20 information from privileged information, if-- if there's
21 any divide to be made.

22 So, for example, on the one drive, as I
23 understood it from the last hearing, that was only
24 attorney-client rooms. So presumably, everything on
25 those recordings on that particular drive, the sixth

1 drive I think, would be privileged and maybe there's no
2 slicing and dicing to do. But there was another one
3 that was sort of a mix, at least that's the way the
4 index looked, something that a special master would need
5 to figure out. Would you agree?

6 MS. BARNETT: Actually, I-- sorry, Your
7 Honor. Actually, I think on the index on DVR 6, there
8 were a number of other camera angles that were reflected
9 on the index that might not be privileged. And quite
10 frankly, we're not necessarily agreeing that every
11 contact in one of those rooms, however it's recorded,
12 wouldn't be an attorney-client privileged conversation
13 or a meeting I guess that we're just looking at the
14 video on.

15 I think there's a possibility, and I haven't
16 looked at the video so I don't know how good it is, but
17 depending on the quality, where the camera is at, the
18 angle, whether or not you can zoom it or not zoom it, I
19 think there is a possibility that some of those
20 recordings may not be of a confidential communication or
21 confidential in nature. And so we feel like with regard
22 to those, a special master needs to look at them
23 specifically, each session or each meeting, and make
24 that determination.

25 There may be also some interviews taking

1 place of inmates by people who are not their attorneys.
2 And so we would think that the special master might need
3 to know that and determine that as well. But I don't
4 think that all of the camera angles captured on DVR 6
5 are of the attorney-client rooms. I think there's other
6 images captured there that would not be privileged or
7 confidential.

8 THE COURT: Well, I don't know if I said the
9 wrong exhibit number, but I thought there was one drive
10 where there was some sense that there was a mix and then
11 there was another drive that was only attorney-client
12 rooms.

13 MS. BARNETT: DVR 5 has the one reference to
14 I think it's a "low attorney room," and I don't think
15 that that actually turns out to be a room where there
16 were confidential communications taking place, but I do
17 think the special master should look at that and make
18 that determination. And it does list a lot of other
19 camera angles.

20 DVR 6 had quite a few different camera
21 angles that were listed on it. And towards the middle
22 and the end, then it talked about a number of attorney
23 rooms that it had recordings from.

24 THE COURT: So when you say the camera
25 angles, do you mean outside of the attorney-client

1 conference room?

2 MS. BARNETT: Yes.

3 THE COURT: So what you're telling me is you
4 think for DVR 5 and 6, a special master is going to need
5 to go through each of those?

6 MS. BARNETT: Yes.

7 THE COURT: And then what about the other 1
8 through 4?

9 MS. BARNETT: I didn't-- and I don't think
10 Ms. Brannon had actually asked the Court to take those
11 into custody last week, but I believe Ms. Rokusek had
12 asked for those to be taken into custody. I don't have
13 any reason to believe there's privileged material or
14 even arguably privileged material on those DVRs. But I
15 think to put everyone's mind at rest, it would probably
16 be helpful if a special master could spot-check them
17 and-- and could probably do that fairly quickly. And
18 then if there's a determination that there isn't
19 anything privileged on them, push those out so that they
20 can be then copied and provided to defense counsel.

21 THE COURT: All right. And beyond that,
22 what you've just described, the special master's review
23 of these spot-check of DVRs 1 through 4 and complete
24 check and sorting and I guess creation of a privileged
25 log on 5 and 6, is that the extent of what you want the

1 special master to be ordered to do at this point?

2 MS. BARNETT: Yes.

3 THE COURT: All right.

4 MS. BARNETT: Thank you.

5 THE COURT: All right. Ms. Brannon, I know
6 that you want that plus, so let's talk about the plus.

7 MS. BRANNON: Well, a couple of things we
8 would point out from Exhibit 439, which is a listing of
9 all the camera recordings - although this isn't really
10 in the purview of our-- our challenge to the
11 attorney-client privilege - these videos include the
12 medical back hallway, medical female holding, the
13 nurse's station, a lot of things that might be protected
14 in other ways. I would also point out it takes videos
15 of a number of hallways and tiers. There are areas that
16 may be included in here that I-- that could well include
17 video of strip searches of our clients, which I think
18 they have a privacy interest in.

19 We would remind you that these are-- people
20 are pretrial detainees still entitled to the presumption
21 of innocence. And they have not forfeited all of their
22 privacy rights, they're not convicted of anything. And
23 to-- to look through these and see if there are things
24 like strip searches, if you can tell what medications
25 they are getting, if you know that they've gone to

1 medical and having certain procedures, I-- I think those
2 are concerns that perhaps a special master should look
3 into as well.

4 As far as the attorney rooms, the idea of a
5 special master going through all of those videos, first
6 of all, and trying to match the video up with the
7 attorney or the inmate, I mean, that's sort of clerical
8 work. And I'm not sure that it can actually be done. I
9 don't know that CCA actually records which attorney is
10 in which rooms. You know, I know when I get there, they
11 have my name on the list, my name is on a chart. But as
12 I'm going back, there's just a radio communication, you
13 know, "We put him in Room 6." We don't know if that's
14 recorded. I think there are a number of problems for a
15 special master in doing that. There are a number of
16 problems, too, with a special master looking at this and
17 saying, yes, there is privileged information on this, or
18 no, there is not privileged information on this.

19 There are so many details about these cases
20 and so many nuances, a special master might not be able
21 to-- to identify that. You know, a lawyer walking in
22 with a pile of trial notebooks to go through with a
23 client is different than a lawyer walking in with a plea
24 agreement, for example. And that has significance, it
25 could have significance to a prosecutor, about whether

1 to go get a deal with a co-defendant because they're
2 going to trial, as opposed to this case is going to work
3 out.

4 I-- I-- the fact that the government is not
5 agreeing simply to abandon all of the videos of the
6 attorney-client rooms I don't understand. Why would
7 they not at least make that remedial offer to the Court,
8 saying if it is a videotape of that room, we're not
9 going to bother with it at all. Because if there is
10 nothing in that room that is privileged, if there's
11 nothing going on there, what possible value could it
12 have to them? If it's a video of a defendant sitting
13 there alone because a lawyer didn't show up, what
14 possible value could it have to the government? And why
15 would we have a special master spend time doing that
16 instead of just telling the government, "Give this up"?

17 To not even offer that and to want to go
18 through and-- and sort of parse out and try to identify
19 which defendant this is and whether anything happened in
20 that room, perhaps the Court wants-- wants the special
21 master to do that, and I'm-- you know, that might be a
22 minor point. I just don't know that it's productive. I
23 think--

24 THE COURT: Well, to-- to the extent there's
25 a mix of privileged and non-privileged things on a

1 particular recording, you do think it is the role of a
2 special master, or perhaps somebody they hire at a lower
3 rate, to go through and say if-- and I-- frankly, I
4 don't even know if the system would allow for sort of a
5 slice and dice of the tape because it's driven by a
6 camera, it's not necessarily driven by time slots. I
7 mean, that's going to have to be figured out.

8 But assuming there's a mix, you don't have a
9 problem with somebody going through and, if they can,
10 saying here's-- here's what is not privileged that the
11 government can have, and then disseminate, versus here's
12 what is privileged-- or at least here are the
13 attorney-client contacts. You can tell it's an attorney
14 and a client or a psychologist and a client or a
15 polygrapher and a client, et cetera, and-- and those
16 need to be withheld. You don't have a problem with that
17 sort of culling out and sorting process?

18 MS. BRANNON: I don't, with the exception
19 that I think the attorney should be able to look at
20 those before there is a call made that this simply has
21 no attorney-client communication value.

22 THE COURT: What attorney?

23 MS. BRANNON: Whoever is identified on these
24 tapes. If I have a meeting with a client on there that
25 is identified by the special master and the special

1 master has said, "I deem that there's no value to this,
2 an attorney-client privilege," I don't know that I'm
3 willing just to say we'll rely on that without knowing
4 exactly what is on that tape. And perhaps if there
5 needs to be another level of-- of review, I don't know.

6 THE COURT: But why would it matter? I
7 mean, if the special master's recommendation is this was
8 a meeting between you and your client, the government
9 can't discover it, no one else can discover it, why does
10 it matter that you don't see it? I mean, it's not-- it
11 doesn't have evidentiary value. Even if it did, it was
12 privileged, no one is going to discover it. So why
13 would we need another level of review for your benefit
14 at that point?

15 MS. BRANNON: You know, if that's the line
16 that is given to the special master, that if an attorney
17 and client are in that room, it's deemed privileged, or
18 an attorney-- or a client and a psychologist are in that
19 room communicating with each other, I-- I think the rest
20 of it may not matter.

21 THE COURT: Is there any-- is there any time
22 when in these attorney-client conference rooms a client
23 is going to be in there with another individual when it
24 wouldn't be privileged? I mean, are they ever in there
25 where they're talking to the prosecutor or FBI agent or

1 someone other than a member of the defense team?

2 MS. BRANNON: I remember one occasion where
3 I think there was a debriefing taking place at CCA. I
4 don't think that happens. And I don't know that it
5 happens in those rooms necessarily. Clearly, doing that
6 creates a great danger to the client who's being
7 debriefed because it becomes so readily accessible.
8 That's the only thing I can think of. I don't know that
9 that happens. Surely if the government knows about the
10 debrief, they could pinpoint that for the special
11 master. But it would be such a rare thing, I don't know
12 what in the world it would be.

13 The only other scenario would be a client
14 who is sitting in the room alone either waiting to be
15 picked up or a lawyer had to cancel and they had already
16 been brought down, so there may be that footage. But I
17 can't imagine that there's any value in that to the
18 government, which-- I mean, it gets me back to the point
19 that it's either attorney-client privileged
20 communication or it's a client sitting in there by
21 himself or talking to a guard or whatever, that I can't
22 imagine has any value to the government.

23 And so again, the fact that they're not just
24 saying, "Take this, we don't want it, we acknowledge
25 that there-- that this video is problematic and

1 privileged and confidential," that seems a lot easier
2 way to go. But, no, we-- we would not have any
3 objection to a special master sorting through that I
4 suppose.

5 THE COURT: Do you have any idea how many
6 hours of video the DVR holds? I know I've heard this
7 sort of-- it loops over, depending on how much is
8 recorded. But I mean, what is the-- I guess the
9 magnitude of its memory or what's the potential?

10 I mean, when we start talking about hiring a
11 special master, I have to give them some idea of the
12 scope of review, if they have to go through DVR 5 and
13 sort and cull. I mean, how many hours? I mean
14 terabytes and gigabytes mean nothing. How many hours
15 are we talking about? Has anybody shared that with you?

16 MS. BRANNON: No, Your Honor. I'd probably
17 defer to Mr. Naseem and whether he could even look at
18 the information and-- and guess. What I can tell the
19 judge, is based on the government's pleadings, they have
20 recordings from January through May. I-- you know, we
21 probably see 15 clients at CCA a week. Our office does.
22 So when you add in CJA and retained counsel and beyond
23 that, if we see them for, you know, 15 or 20 hours just
24 ours per week, multiplied by that time, and then you add
25 in the CJA counsel and retained counsel.

1 THE COURT: Well, if we came at it a
2 different direction, and this would definitely
3 overstate, but if we assumed that, you know, in this
4 five-month time period there are however many hours a
5 week in which an attorney can use a room-- and I don't
6 know what CCA's hours are. I mean, when you-- when you
7 go visit, what-- what are the hours you're limited to?
8 I know-- is it Monday through Friday or can you go up on
9 Saturdays and Sundays?

10 MS. BRANNON: Generally it's Monday through
11 Friday, 8:00 to 4:00. But we-- you know, if you call
12 ahead, we do routinely see clients on the weekends.

13 THE COURT: And does CCA-- I assume they
14 keep a log of that?

15 MS. BRANNON: Yes.

16 THE COURT: Is that something that has been
17 part of the discovery, to your knowledge, in this case?

18 MS. BRANNON: Yes. I-- I also know that,
19 for example, when a client is in trial, CCA will make
20 accommodations for the attorney to visit in the evening
21 to accomplish trial preparation. That, too, would be on
22 a-- a log.

23 THE COURT: Okay. And I'm unclear, I don't
24 remember, where are those logs? Was that part of the
25 discovery?

1 MS. BRANNON: I haven't seen the discovery.
2 It's my understanding that it is part of the discovery.
3 When we make an appointment with CCA, they have a
4 calendar up front where it's written out. And then in
5 addition to that, there is a calendar that the officer
6 who's checking us in has that basically says this
7 attorney is here for this period of time to see this
8 client. It does not, to my knowledge, correspond to a
9 particular room.

10 But there should be at least two, if not
11 three, records documenting who-- which lawyer is there
12 to see which client. I don't know that it's always
13 accurate because, you know, our schedules change a lot.
14 And sometimes we get there and the client has been taken
15 to medical or something like that, but it would be--
16 certainly be a starting place.

17 THE COURT: Okay. To your knowledge, can
18 someone if-- assuming the logs are discovered, can
19 someone use those logs to - I mean, I think I heard Ms.
20 Rokusek speak to this last time - but identify a-- a
21 date and time that they visited a client or that someone
22 visited a client and then match that up with the video
23 by inputting the date and time?

24 MS. BRANNON: Generally, I would think so.
25 The-- the issue would be, they would probably have to

1 look at all seven rooms and identify which room that
2 that attorney and client were in.

3 THE COURT: And you say when you check in or
4 when you fill out a log or whatever, whoever they fill--
5 they fill the log out for you, it's not identified to a
6 specific attorney room, it's perhaps whatever room they
7 have available?

8 MS. BRANNON: Right. And sometimes we get
9 back there and they switch them around. It's-- you
10 know, they work with what they have available and-- and
11 who needs to go in what room. So it's rather fluid once
12 we get back there. And I don't know that they saw a
13 reason to record which attorney was in which room, other
14 than knowing it at that time.

15 THE COURT: Okay. All right. Anything
16 else? We've talked about the video. The audio,
17 obviously Ms. Barnett needs a chance to respond to, but
18 was there anything else you want to tell me about that
19 at this point?

20 MS. BRANNON: Well, I don't know if the
21 Court wants us to go here now, but certainly our request
22 for the special master goes beyond just--

23 THE COURT: Oh, that's right. Go ahead, we
24 haven't finished.

25 MS. BRANNON: Okay. First of all, I want to

1 say that the Court's order last week solves many of the
2 prospective, if not all of the prospective, problems
3 regarding recording. CCA was very quick to respond.
4 The cameras are down, there's new signage up. Back in
5 the pods, there are different instructions on the
6 phones. We've provided a list of our phone numbers that
7 can be blocked to the chief of security. That
8 information and a way to do that has also been
9 communicated to CCA counsel. So there have been great
10 strides in solving that problem.

11 What we're left with, though, is what do we
12 do with what's happened to date? And we think there--
13 the Court needs to appoint a special master which, you
14 know, I think the Court is already talking about, but it
15 needs to be a much broader scope than what the
16 government has proposed. And we've outlined that in our
17 proposed order to the Court.

18 THE COURT: One thing I'm going to ask both
19 you and the government to do is to provide me with your
20 own description of the scope of duties. I know that you
21 all agree to a scope that we've already talked about,
22 but particularly it would be helpful to have in writing
23 from you what the additional scope is. And I know it's
24 in your order, but I think it would be easier if you
25 identified it specifically that way. And Ms. Barnett

1 can do the same. But I'll hear from you now on just
2 whatever other ideas you have.

3 MS. BRANNON: We think there are three
4 reasons that the Court ought to appoint a special master
5 with broader powers that we've described in the-- in the
6 order. The first is based on the government's response
7 to date. The second has to do with the defense's
8 ability to investigate and the defense's perception of
9 what's happened. And the third is that it would be of
10 great benefit to the Court, we believe, to have this
11 information and to have it in an efficient,
12 authoritative, and orderly manner.

13 Since we started on this, since we first
14 discovered this, the scope of this continues, it's been
15 expanding. It expanded to the phone calls, it expanded
16 to some things that the Court is going to hear from Ms.
17 Rokusek. The defense simply cannot keep up with it.
18 And the defense doesn't have the tools and resources to
19 be able to access the information that a special master
20 could.

21 In this case we got wrong information
22 repeatedly from CCA. We got wrong information from
23 other resources. It took a lot of work to dig down, and
24 we still think we don't know the answers to so many
25 questions, despite our best efforts. Communication

1 between the U.S. Attorney's Office and the defense on
2 this issue and on these issues has all but ceased. Our
3 efforts to-- to work something out have completely
4 broken down. And so-- and we certainly will undertake
5 what the Court has suggested, but we're making
6 absolutely no progress.

7 The government's response in this-- you
8 know, the Court has given the government an opportunity
9 to address these issues repeatedly and in other
10 circumstances, given the government an opportunity to
11 address these things. We had a hearing last week, all
12 of this was laid out. The Court gave seven days for the
13 government to respond.

14 Last night, last night we get a pleading
15 from the government that clouds the issues more than
16 clarifies. They know the questions that we had, they
17 know the questions before the Court. Has this happened
18 in other cases? Do they do this routinely? Have they
19 used it against other people? We want to know those
20 things. And in their response, or a lack of response
21 rather, they are silent on these issues. And what we
22 read from that is, at the very least, the government
23 does not seem to understand the gravity and the
24 magnitude of what's before it. Because otherwise, they
25 would have to have had a different response than they've

1 had.

2 When we look at this case and what's
3 happened that we know about so far, the government's
4 invasion into our attorney-client relationship is
5 unprecedented. We couldn't find anything even
6 comparable to the degree of invasion and misconduct by
7 the government that is before the Court. This Court
8 heard from both sides of the bar, we presented that
9 evidence. Heard from an expert, heard from our
10 investigator, heard from Ms. Rokusek. And the Court
11 shut down the recording so that there would be no
12 further Sixth Amendment violation. And in response to
13 that, the government still has not taken any remedial
14 action, has done nothing to answer the Court's
15 questions.

16 What we know is that this is not a case
17 where there-- this is not one case, this is not one
18 defendant, this is not one recording. This is a
19 systemic en masse breach of the attorney-client
20 relationship that we don't even know the magnitude of.
21 We don't know what clients are involved, we don't know
22 what attorneys are involved. And not only did CCA do
23 that, but in turning that over to the United States
24 Attorney, they exploited that information and used it
25 against defense counsel, and in a way that the Court is

1 going to hear more of today, and used it against our
2 clients.

3 And what's striking is that they were so
4 bold about it. This is not some-- you know, this isn't
5 one rogue line attorney or this isn't some inexperienced
6 misjudgment. The head of the Kansas City, Kansas
7 office, Kim Flannigan, the head of it, endorsed this,
8 used it, published it.

9 MS. BARNETT: I'm going to object to this,
10 Your Honor. This is just going far afield of what the
11 hearing should be about today. I am only here to
12 address the issue of a special master and what we can
13 consent to. But quite frankly, making these statements,
14 making allegations against my office and my colleagues
15 in my office when there's no show of proof of that in
16 any form whatsoever, except maybe some ex parte
17 discussion with the Court back in chambers or out here
18 without anybody else in the courtroom--

19 THE COURT: There's been no ex parte
20 communications--

21 MS. BARNETT: No.

22 THE COURT: -- with this Court.

23 MS. BARNETT: No, I know that, Your Honor.
24 But what I'm talking about is their request that the
25 Court take Ms. Rokusek's testimony in camera on

1 something. I can only infer from what Ms. Brannon has
2 said here to the Court that these are going to be
3 accusations against my colleagues.

4 THE COURT: I have no idea. But what I will
5 tell you, if I determine that it's not proper ex parte,
6 I will stop and bring you all back in and have her say
7 it in front of you.

8 MS. BARNETT: Thank you, Your Honor.

9 MS. BRANNON: If I-- if I may, Judge. The
10 point of this is that the government had a chance to
11 respond to this and they have not. The-- the Court
12 heard evidence from Ms. Rokusek about how it was being
13 used and that it was Ms. Flannigan and Ms. Tomasic that
14 were using it. And the fact that they were so bold in
15 doing it gives us reason to believe that it's happened
16 in other circumstances. That it's happened in other
17 cases. That's why a special master needs to be brought
18 in to investigate that.

19 And it's very telling that in the
20 government's response, they do not deny that this has
21 happened on other occasions. They do not deny that this
22 has been their practice and policy. They had the
23 opportunity to inform the Court of this. They had the
24 opportunity to come and help the Court sort this out.
25 And they didn't. And what is not in their response also

1 says that we need a special master. They never deny
2 that their agents or staff viewed it. They were very
3 careful to say government counsel has not reviewed this,
4 but not that the agents and staff have not. And
5 certainly their knowledge imputes to the counsel.
6 That's a critical issue.

7 They do not claim inadvertent possession.
8 They never claimed that this was the first time that it
9 happened. They never claimed that it's the only time
10 that it's happened. These are all questions that the
11 government could have been open about, could've brought
12 to the Court, but they chose not to. Instead, they were
13 defiant and they did not give information.

14 And, Judge, we-- we are stunned by the
15 cavalier response of the government. They shrug off the
16 constitutional issues here. That response that they
17 provided to the Court, what they talk about is standing.
18 What they talk about is, "We don't have to tell you. Go
19 litigate it widespread, let's just disperse this all
20 over the district."

21 We have this before this Court. We have
22 these issues before this Court. We've tried to do this
23 in an organized manner. We've tried to do it in a
24 uniform manner so that this Court can look at this and
25 make some decisions about what has happened here.

1 What's happened, though, is the government,
2 in addition to not giving the Court information and in
3 addition to not taking any remedial action and not
4 abandoning this material and saying, "No, we weren't
5 entitled to it," they've done nothing. Well, I take
6 that back, they've done something. The attorneys who
7 were responsible for these violations are still in place
8 and still on this case. And what they've done in the
9 time that has passed since the last hearing and this
10 hearing is they've become increasingly aggressive
11 against Ms. Rokusek to get her off that case. That has
12 been their response in answer to our concerns about
13 these violations.

14 That is why a special master is needed;
15 because of the scope of this, because the government has
16 not responded, and because of the government's
17 continuing conduct in this.

18 The phone issues, this-- you know, our
19 filing yesterday is not the first time the phone issues
20 came up. It came up in the evidentiary hearing. This
21 Court ordered the phones to be shut down. They knew
22 about this, and our inquiries about that have remained
23 unanswered. So it's not that they just-- that they just
24 learned of it. That's the first reason the Court ought
25 to appoint a special master.

1 The second reason is because of the defense.
2 We have come to this Court together. We intervened in
3 the case. The lawyers here who have been in this
4 courtroom last time and this time, they're not here
5 because they're interested in this, Judge. They're here
6 because they're outraged. Our-- our relationship with
7 our clients is sacrosanct. And beyond the Constitution
8 and everything else, it deserves a very basic respect.
9 And they've just been derisive and dismissive of that
10 and say, "We don't care."

11 They're here to win. They're not here to
12 help the Court find the truth. And because of that, the
13 Court needs to appoint a special master.

14 You know, we're public defense lawyers. And
15 the attacks on us and diminution of our obligations and
16 responsibilities, we just don't understand it. I mean,
17 it's really been hard to get our heads around this, that
18 there would be a violation of this magnitude, this
19 brazen, that they would be willing to use and exploit in
20 this way. It's been hard for us to understand that.

21 We don't know the scope. We don't get it
22 yet. We don't know how far this goes back. We know
23 that CCA has recorded since 2008. We have a lot of
24 suspicions, but we need a special master who has the
25 authority and the power of the Court to come in and

1 delve into these things and sort it out so the defense
2 can at least have some confidence in the integrity of
3 the system, which we don't have now. And we will not
4 have if this is left to the U.S. Attorney's Office to
5 sort out, simply because of their behavior in this case.

6 They told us that CCA did not record. They
7 knew that CCA did record. They stated on the record to
8 this Court and to counsel, "We have these recordings.
9 We have these recordings of these meeting between
10 attorneys and clients." They called Jackie Rokusek up
11 to watch them. They were brazen about this. "We have
12 these recordings." They knew it.

13 And at the very time that Ms. Rokusek is up
14 viewing those audiotapes, Ms. Tomasic is sending an
15 e-mail to the Court saying, "Oh, I don't know if they
16 actually exist. I don't know if they actually exist."
17 After they had the index, after they had worked with CCA
18 and the marshals to have a chart, after they had
19 threatened Ms. Rokusek, and after she's in that room
20 watching them, they have the temerity to tell this
21 Court, "We don't know if they exist. Our information
22 was incorrect. The marshals say they don't exist. We
23 were probably wrong about it."

24 We're not going to rely on that office to
25 tell us anything. We're not going to rely on that

1 office to come in and say, "We're innocent, we didn't
2 view it, it's okay," because we don't believe it. And
3 we have strong reason not to believe it. And that
4 evidence is before the Court.

5 This is not just us up here talking and
6 making accusations. This is in evidence before the
7 Court. Their response to-- still to this, "Just trust
8 us. We're officers of the court. We're telling you
9 this, just trust us." They've done nothing in this case
10 to earn that trust. They've done everything to destroy
11 it.

12 Just to restore the integrity and the
13 confidence of the bar, of our clients, and of the
14 public, a special master needs to come in and explore
15 these issues because it is not just about what's on this
16 index sheet, it goes a lot further than that. What
17 they've done is they've-- they've put this one pleading
18 in front of the Court. And it's a pleading that is very
19 selective in the facts and it's wrong in the law. The
20 Court cannot rely on the U.S. Attorney's Office either
21 to present what is actually going on in this case. They
22 don't even acknowledge the statement of Ms. Rokusek and
23 what went on there. It's not even given any credence at
24 all.

25 When Ms. Tomasic is in the position of

1 telling the Court that this evidence exists, telling Ms.
2 Rokusek it exists, using it to try to get her off the
3 case, and then turning around and saying, "It doesn't
4 exist," when she knew it did, that doesn't float. And
5 what's happened now is instead of the government coming
6 in and trying to reconcile it or trying to explain it,
7 they simply embraced it and they've gone with that
8 story. That does nothing to help the Court sort this
9 out. Absolutely nothing to help the Court get to the
10 truth in this.

11 I want to talk just-- just for a minute
12 about their written response, because we got it at 9:00
13 last night. But in pointing out that the Court can't
14 rely on what they present, I want to-- the *Calandra*
15 case, it's a case that-- well, it's inapt here because
16 it talks about a different section of the rule, and
17 Footnote 6 explains that. *In Re: Grand Jury Subpoenas*
18 talks about a challenge to the grand jury subpoena.
19 We're not challenging that, we're challenging what
20 happens with the materials.

21 And by the way, we did not know that this
22 material was obtained by a grand jury subpoena until the
23 government provided it to us an hour before the hearing
24 last week. We tried to find out how they got it, but we
25 couldn't.

1 THE COURT: As an aside, I'm not clear on
2 how the audio-recordings-- do you know whether those
3 were grand jury or otherwise?

4 MS. BRANNON: We have no idea. I want to
5 point out that the--

6 THE COURT: Do you know, Ms. Barnett?

7 MS. BARNETT: I don't. I can ask, Your
8 Honor, and find out for the Court right now if you want
9 me to.

10 THE COURT: All right. Go ahead.

11 MS. BRANNON: You know, I would point out
12 that the evidence before the Court is that they want
13 some sort of subpoena to hand this out, except if it's
14 the marshal's office, because the marshal's office owns
15 this material. So if it was obtained through the
16 marshal's office, we wouldn't know about it. That's why
17 when we tried to track it down when we subpoenaed
18 records from CCA, because surely they would have some
19 record of it, they didn't. That's an example of the
20 limitations on the defense and why we can't go fully
21 litigate this on our own. We need a special master who
22 has the authority to find these things out.

23 THE COURT: All right. So tell me again,
24 when you tried to track down what from CCA you couldn't
25 get an answer?

1 MS. BRANNON: We wanted to know how these
2 recordings got into the United States Attorney's hands.

3 THE COURT: All right. If it was-- there
4 was a CCA custodian who talked about if we-- if CCA
5 receives a subpoena, they put it in the detainee's file.
6 But a "Grand Jury" subpoena is not going to have
7 somebody's name on it. I mean, this one didn't at
8 least. So it didn't go in anyone's file.

9 And so you did try to find the subpoena or
10 ask them and they didn't have it and it could've been
11 because they didn't think they could disclose it because
12 it had grand jury on it, or it could've been because
13 they couldn't find it. But in any event, you weren't
14 able to get it?

15 MS. BRANNON: Right. The 17(c) that the
16 Court signed off on was very clear. One thing she did
17 say is they don't have a central repository for these
18 things. So we don't even know if they have the record
19 capability to find it, but we couldn't. We didn't know
20 how they got it. We didn't know if it was just a
21 request through the U.S. Marshal's, and so that's why we
22 don't know how they get the phone calls. Maybe it's a
23 grand jury subpoena, we don't know.

24 But to come in and argue that we don't have
25 standing to object to a grand jury subpoena when we

1 didn't know anything about it when we wrote the motion
2 certainly diverts away from the real issues.

3 The government cites the *Floyd versus United*
4 *States*, as well, which is a Tenth Circuit case. If the
5 Court reads that, that fully supports our position,
6 because the government has attacked our standing under
7 Rule 41(g). In that case, it says that the government
8 had not filed charges against the person did not deprive
9 the Court of jurisdiction under Rule 41. Just because
10 we have not been charged in this case does not deprive
11 the Court of jurisdiction under Rule 41.

12 The other thing I will say to that is I did
13 file this motion in a separate case. I filed a similar
14 motion in United States versus Brenda Wood. I don't
15 have the case number in front of me. As part of that
16 motion, I asked the Court to grant me leave to
17 participate in the hearing here because the issues so
18 overlapped.

19 THE COURT: You asked that in the Brenda
20 Wood motion?

21 MS. BRANNON: Yes.

22 THE COURT: Frankly, I think there's been
23 over 30 Rule 41 motions filed--

24 MS. BRANNON: Yes.

25 THE COURT: -- in my-- in my caseload.

1 Judge Murguia has had them, other judges have had them.
2 And I can only speak for myself, I didn't really look at
3 those yet because I understood that it was probably-- at
4 least some of the relief that was sought would be
5 hopefully cured in this case, but-- so I wasn't aware
6 that you had asked for that in that particular motion.

7 MS. BRANNON: I certainly didn't mean that
8 as a criticism. The point of it is that that motion is
9 open and pending before the Court. The government has
10 not objected to it. And if the Court sustained that,
11 then that would-- their other objections to the standing
12 of the Federal Public Defender evaporate, not that those
13 were valid objections. But if the Court sustains that
14 in Brenda Wood, we have every right to be here and
15 participate in this hearing.

16 I also don't understand that they bring this
17 up a week after the hearing, after sitting through
18 that-- that evidence. I don't know if they're asking
19 the Court to-- to strike all the evidence, to not have
20 heard it, what they think should happen to it by raising
21 standing at this late date.

22 THE COURT: Well, the evidence is in the
23 record. And as I stated before, irrespective of that
24 standing issue, there are people here in this courtroom
25 that have standing in the Lorenzo Black case. I'm not

1 saying that you don't have standing, I just-- I think
2 it's an issue that doesn't really matter for purposes
3 of-- of resolving. There are a number of defendants
4 that have moved to join, so it's properly before me
5 either way.

6 MS. BRANNON: I would say, too, I think it's
7 our responsibility as the Federal Public Defender's
8 Office to take the lead on these things. We have the
9 resources available and we can-- we're not subject to
10 the same sorts of attacks on our livelihood that private
11 counsel are. I think it's our responsibility. And
12 that's one reason we did it. And it's very important to
13 us to take the front line when we can, and that's what
14 we have done or tried to do here.

15 The last thing that we would point out; a
16 special master has to be of benefit to the Court. There
17 are so many wide-ranging issues. This continues to
18 expand and compound. The government's response has not
19 been helpful. The scope that we've provided and
20 suggested to the Court, you know, it's not limitless.
21 We've identified the issues. This has to be beneficial
22 to the Court.

23 And as you noted, there have been a number
24 of other motions filed in other cases. Rather than
25 litigate those independently, as the government

1 suggests, a special master could go through the facts
2 and make recommendations that would allow some
3 consistency in the outcome of those cases. To-- to file
4 something in front of a court, a suppression issue or
5 something of those-- like that, to say we're going to
6 hold that until the special master is done with that
7 work, because that special master will have a report--
8 findings of fact and recommendations that will inform
9 hopefully every other motion that is based on this.
10 It's orderly. It's efficient. It's economical. It's
11 the best way to proceed.

12 The government's breach here was illegal.
13 Their response defies credibility. They denied
14 responsibility. There's no reason to think that they
15 are going to help sort this out. We have limitations
16 and we want the integrity of a special master to sort it
17 out. That's what we have to present to the Court.

18 THE COURT: All right. Thank you.

19 MS. BRANNON: We have a lot of other reasons
20 we think, but I think that's-- those three reasons are
21 enough for the Court to grant the scope of our request.

22 THE COURT: All right. Unless anyone has
23 anything else, I would like to have the ex parte part of
24 this hearing. But before you all leave, I will tell you
25 this much, I am going to appoint a special master. I'm

1 going to invite the government and the FPD to provide me
2 with a written description of duties that you would
3 like. I've heard your argument and I know it's imbedded
4 in your motion, Ms. Brannon, but I'd like a job
5 description, if you will, from both of you. Ultimately,
6 I'll make the decision about the scope of the
7 appointment.

8 I've given this a lot of thought. I'm going
9 to have to have some ex-parte conversations with the
10 defendants or at least with-- actually with the case
11 budget attorney, Cari Waters, because-- and with Ms.
12 Shaneyfelt perhaps, because this is going to be,
13 needless to say, a very expensive enterprise.

14 I've given this a lot of thought in terms of
15 how could-- I mean, what could we start with that
16 hopefully would not cost, you know, an extraordinary
17 amount of money. And that's why I was trying to hone in
18 on, you know, what is the scope of review of the
19 video-recordings, what is going to be the scope of
20 review of the audio-recordings. But the-- I guess the
21 threshold question is, what are we trying to accomplish
22 here with even having a special master review all of
23 this?

24 So, for example, if there is a drive that
25 has nothing but attorney-client contacts or perhaps

1 other things such as people walking into the
2 attorney-client room or a person just sitting there
3 waiting on their attorney or some other professional to
4 show up, I don't think it makes a whole lot of sense for
5 us to spend a half a million dollars having someone go
6 through that or a quarter million dollars having someone
7 go through that and segment out this belongs to this
8 lawyer and this belongs to that lawyer and their client
9 when-- I mean, there's no purpose for that.

10 I mean, where this all started was the
11 government or the grand jury subpoenaed
12 video-recordings, presumably because the government or
13 the grand jury, whoever, thought there would be
14 evidentiary value in seeing the-- the non-verbal
15 behavior of people that are targets of the
16 investigation. Who they were talking to, even if they
17 couldn't hear what they were saying, where they were,
18 maybe hand-to-hand transactions, whatever. That's what
19 I believe the government thought, at least in part, it
20 was getting through this subpoena.

21 What they got through the subpoena went
22 beyond that. It went into attorney-client rooms. And I
23 don't know if that was intentional or inadvertent. But
24 in any event, they received that information, which
25 raised all of the issues before us, including a very

1 serious Sixth Amendment violation. Well, actually
2 hundreds of Sixth Amendment violations. Every-- every
3 person has their own right.

4 So what are we trying to accomplish with
5 having somebody go through and cull a drive that let's
6 just say has nothing but things that are either-- that
7 don't show anything because the defendant is just
8 sitting in a room, or that show the defendant and their
9 non-verbal interaction with somebody from their defense
10 team? If that has no evidentiary value because it's
11 privileged, why have somebody go through it and slice
12 and dice it anyway? That was sort of my initial
13 impression, even last week, about this.

14 On the other hand, if there's a drive that
15 has mixed camera angles, such that there could be
16 evidentiary-- things of evidentiary value, for all of
17 the reasons that the government first subpoenaed this
18 stuff to begin with, then it makes sense perhaps to have
19 somebody go through and spend a lot of money and time
20 trying to sort that out. Again, that's based on the
21 assumptions that it gets us somewhere, that it has
22 evidentiary value to the government. And maybe it
23 doesn't.

24 One of the types of relief that this Court
25 could impose, either through a Rule 41 motion or some

1 other type of motion, would just to be to exclude the
2 evidence altogether. That might save us all a lot of
3 money and a lot of time and a lot of grief if we know
4 that none of those-- neither one of those drives, for
5 example, are going to be used. But perhaps Drives 1
6 through 4 would be used, assuming that everyone could be
7 assured that there weren't any privileged things going
8 on there because the special master had done a sampling.

9 So these are just some of the things I'm
10 sorting through in trying to determine how to go about
11 hiring a special master and what the scope would be and
12 how much money we might spend. And frankly, none of you
13 have to worry about that, but I do, because we have a
14 limited number of dollars available at a Circuit level
15 for cases, even huge cases and complex cases with unique
16 issues like this. And so I'm trying to be allegiant and
17 a good shepherd of-- or steward of taxpayer dollars in
18 that sense. So I've been trying to figure out how to
19 stage this.

20 I will tell you this; I'm going to-- I'm
21 going to retain a special master. I'm going to invite
22 your-- you know, your input on what the duties shall be.
23 But I will tell you that the appointment order, at least
24 what I'm thinking now, will give the special master
25 "Here's what you start with," but is not going to

1 foreclose the special master from going forward.
2 Frankly, I don't know, there may be a need to go into
3 different avenues. Today is the first day that I really
4 heard something that gave me concern and I saw
5 something, a demonstrative exhibit, that gave me concern
6 about audio-recordings. I mean, there was some
7 suggestion of that at the last hearing, but it's more
8 specific now. And that, as you know, poses all kinds of
9 issues.

10 So a special master appointment order, in my
11 view, will give them a starting place and will leave the
12 door open for the special master to go further if I
13 think that's appropriate. And obviously that would be
14 in consultation with you all.

15 To the extent the special master thinks that
16 they see things that are-- that-- that raise ethical
17 questions, I think the special master and I think most
18 special matters would agree they're obligated to pursue
19 that avenue. That's not something they can ignore.
20 They're officers of the court, they're lawyers
21 typically.

22 And so to the extent, you know, Ms. Brannon,
23 you've raised those kinds of issues and concerns, no
24 matter what the scope of the special master's
25 appointment is, they're not going to be foreclosed from

1 looking into that and making recommendations or asking
2 the Court if they can go further or whatever, because
3 they would have some obligation to pursue that if they
4 thought they saw something like that.

5 So I don't think I'm going to get an order
6 out until next month sometime. I'm going to have to be
7 in conference with the case budgeting attorney, the
8 Tenth Circuit executive. We're going to have to come up
9 with some idea of how much we can expend and include in
10 the case budget for this. And with that information,
11 then I can-- I'll have some idea about who we can hire.
12 I have some-- actually, I have some idea now, but I'm
13 not sure we can afford the person that I think might do
14 perhaps the best job. So don't look for an order from
15 me until next month.

16 In the meantime, all other motions will stay
17 under advisement. I will look for any further response
18 to the government from this latest filed motion to
19 impound audiotapes. And I will be issuing an order--
20 before I issue the special master appointment order, I
21 am going to issue a clawback order. And it may be a
22 very short order, because I think the key is to get all
23 of those into the Court's possession until further order
24 of the Court and also to claw back the additional
25 video-recordings.

1 In fact, I would invite-- Ms. Brannon, if
2 you will submit a proposed order on clawing back the
3 additional video-recordings that weren't-- that have
4 been recorded since the subpoena until they shut off the
5 cameras or took them out of the rooms in CCA. So an
6 order on that. And then if you want to submit a
7 proposed clawback order on the audio-recordings and the
8 appropriate time frame, I'll consider that one as well.
9 Run that one by Ms. Barnett. But I'd like to get both
10 of those orders filed fairly soon. And then we'll work
11 on getting the special master order done sometime early
12 to mid-September.

13 Is Mr. Naseem here, by the way, today?

14 MR. NASEEM: I am, Judge.

15 THE COURT: Oh, there you are. I don't have
16 anything to take up with you specifically except to say
17 that I do want to have another discovery conference with
18 the parties sometime in mid-September as well. So we'll
19 be trying to get that scheduled on the other types of
20 discovery. And to the extent we can deal with this,
21 too, we'll do that, but I doubt we can.

22 Is there anything else that you'd like to
23 say? Because you have been appointed as the lead
24 discovery attorney in this case.

25 MR. NASEEM: Nothing at this particular time

1 that hasn't already been said, only that we will
2 continue to try to push the case forward with the
3 discovery that we have, minus some of these things, so
4 that the attorneys in the case can start to work on the
5 case with their clients and-- and we'll work with the
6 government to get that done.

7 THE COURT: Okay. All right. Thank you.
8 All right. Unless there's anything more, we will recess
9 the open court hearing, we'll have an ex parte hearing
10 in which I'll hear from Ms. Rokusek. Let's take about a
11 10-minute break in that interim.

12 Okay. Let me make a record of something
13 else. Mr. Bishop is here and Ms. Rowlette is here. And
14 I understand that there's some transportation issues
15 with Mr. Bishop. He's not sure his car will make it
16 back to Sedalia; is that correct?

17 MS. DODGE: That's correct, Your Honor.

18 THE COURT: So Ms. Rowlette is willing to
19 travel in tandem with him?

20 MS. DODGE: Yes.

21 THE COURT: And they have pretrial
22 conditions of release that avoid-- order them not to
23 contact each other. But just in this limited instance,
24 I'm going to relax that condition so that Mr. Bishop is
25 not out on the highway with a failed car. And he can--

1 if something happens to his car, he can-- Ms. Rowlette
2 can stop and pick him up and take him the rest of the
3 way. But once she delivers him to Sedalia, the contact
4 order goes back into place.

5 I-- my staff has talked to Marlin Carlson
6 from Probation, and he is agreeable to that modification
7 for purposes of today. And I think Mr. Carlson is maybe
8 even in the courtroom. But in any event, there's been a
9 conversation about it. And so just so everybody
10 understands, I am modifying that condition just for
11 today to assure that Mr. Bishop can get home safely.

12 MS. DODGE: Thank you, Your Honor.

13 THE COURT: All right. So let's-- yes, Mr.
14 Redmond.

15 MR. REDMOND: Your Honor, I apologize. One
16 thing, I stole the exhibit. I would like to tender that
17 to the Court.

18 The Court had also given us an opportunity
19 at the last hearing to suggest possible names of special
20 masters. We don't have a whole lot of experience in
21 that particular question, but one name that did come to
22 mind was Judge Malone from Douglas County who just
23 retired and I think would have the time available to do
24 that. He's got a really good reputation in law
25 enforcement circles. We didn't really have too much to

1 add-- to add to that. We're just not familiar with the
2 area. May I approach, Your Honor?

3 THE COURT: Yes.

4 MS. BARNETT: And, Your Honor, if I might.
5 Another name I had thrown out, or two names, were the
6 retired magistrate judges, Karen Humphreys and Donald
7 Bostwick. I don't know if they would have time or an
8 interest, but I just was thinking that since they are
9 recently retired - or I guess Judge Bostwick a few years
10 ago - but both are very familiar with our system and
11 would be familiar with these kinds of issues.

12 THE COURT: All right. I appreciate all of
13 that input.

14 All right. All right. So let's be in
15 recess for about-- let's see, it's ten after, 3:25. And
16 then we'll come back, I'll take this up with Ms. Rokusek
17 ex parte.

18 (3:10 p.m., proceedings recessed.)

19 (The remaining proceedings are sealed and
20 require a Court order to be transcribed).

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 72 pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED August 22, 2016.

/s/ Kelli Stewart

Kelli Stewart, CSR, RPR, CCR, RMR