

16CR20032i-ord(AudioCallAnalysis2).wpd

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,	:	CASE NO. 16-CR-20032
Plaintiff	:	
	:	
v.	:	SPECIAL MASTER DAVID R. COHEN
	:	
LORENZO BLACK, et al.,	:	<u>SECOND REPORT REGARDING</u>
Defendants	:	<u>TELEPHONE-CALL</u>
	:	<u>AUDIO RECORDINGS</u>

In its Order appointing the undersigned, the Court directed me to “[i]dentify, excise, and retain privileged or confidential information from the audio recordings made at CCA that have been submitted to the Court;” and to “[p]rovide copies of audio recordings with the privileged or confidential information removed to the Government and Coordinating Discovery Counsel.” *Appointment Order* at 5 (docket no. 146). Two weeks ago, I filed a *First Report Regarding Telephone-Call Audio Recordings* (docket no. 183), explaining interim efforts undertaken to fulfill those directives. This *Second Report* sets out my final findings.

Earlier, the Court ordered the Government to produce all copies of all telephone-call audio recordings the Government had obtained from CCA (which, in turn, had obtained the recordings from Securus). The responsive materials submitted by the Government included: (1) 153 separate CDs containing audio files, and (2) five thumb-drives containing audio files. The Special Master aggregated all of the audio files on the CDs and the thumb-drives, and then de-duplicated. This

process yielded a universe of 48,802 individual, recorded telephone-call audio files. These telephone calls were made to a total of 1,433 different telephone numbers, by a total of 58 different inmates.

Given the large number of different telephone numbers called, the Special Master suggested to the Government as follows:

- it would take substantial time and expense to identify and cull, from the entire universe of audio files, all recordings of calls to attorneys. Even after identifying known attorney telephone numbers, calls to all of the other telephone numbers would still have to be checked to see if the call recipient was an attorney.
- instead, it would be easier and less expensive to identify recordings to specific telephone numbers in which the Government was interested, and which were known *not* to be an attorney telephone number.

The Government agreed that the latter approach was appropriate and sufficient. Accordingly, the Government provided the undersigned with a list of 13 “critical telephone numbers,” which are owned by eight alleged co-conspirators.

The Special Master identified 5,612 audio files of calls made by 22 different inmates to these 13 critical telephone numbers. Within the next few days, the Special Master will provide these audio files to the Government (Chris Oakley) and Coordinating Discovery Counsel (Shazzie Naseem), along with associated metadata (such as caller-identity, call-date and -time, and call-duration).

The Special Master also undertook efforts to identify the recorded calls by CCA inmates that were made to an attorney. Specifically, the Special Master created a database of known attorney telephone numbers by obtaining lists from the following sources: (1) the Federal Public Defender’s offices for the District of Kansas, the Western District of Missouri, and the District of Nebraska; (2) the Criminal Justice Act Panels for the District of Kansas, the District of Nebraska (partial list),

and the Western District of Missouri (partial list); (3) all attorneys who are admitted to practice in federal court in the District of Kansas (including admission pro hac vice and by reciprocity from the Western District of Missouri); and (4) attorneys who submitted their telephone numbers to the Special Master pursuant to an invitation issued in the *First Report*. See *First Report* at 4. After de-duplication, these sources combined to produce an inventory of 18,494 known attorney telephone numbers.¹

Analysis reveals that, of the 48,802 individual telephone audio files produced by the Government, 229 of those recorded calls were made to one of the known attorney telephone numbers in the inventory. A chart of these known attorney telephone numbers associated with the recorded inmate telephone calls produced by the Government is attached.² As directed, the Special Master will ensure the audio recordings of these telephone calls to known attorney telephone numbers are retained and not produced to the Government or Coordinating Discovery Counsel.

If an attorney listed in the chart below wishes to obtain access to the recordings of the calls to his or her own telephone number(s), then the attorney should send an email to Ken Smiley (ksmiley@americandiscovery.com), with a copy to the undersigned (david@specialmaster.law), that makes this request and also supplies full contact information. Each such attorney will receive

¹ Of course, CCA inmates may have called attorneys at telephone numbers not included in any of these lists. For example, many attorneys provided the Court with their law firm's main telephone number only, and not their direct-dial number or cell-phone number. Thus, the Special Master's analysis would not identify an inmate's call to these latter telephone numbers as a call to a "known attorney telephone number" ("KATN"). Accordingly, the "recorded calls to KATNs" statistic cited here is almost certainly underinclusive.

² The Special Master is aware that the total number of calls listed in the chart for attorney Jacquelyn E. Rokusek (11) does not jibe with the total number of calls listed in the chart submitted by attorney Michael Jackson (12), see docket no. 112 at 5 (exhibit 449)). Efforts to reconcile this difference are ongoing.

directions on how to obtain internet password-access to only those inmate calls made to that attorney. (Access will not be available for a few more days.) Where the chart lists a law firm and not an individual, directions will be provided to a single attorney, who may share access as appropriate.

RESPECTFULLY SUBMITTED,

/s/ David R. Cohen
David R. Cohen
Special Master

DATED: December 21, 2016

Known Attorney Telephone Number ("KATN")	Name Associated with KATN	Number of Recorded Calls to KATN
8162833535	Angela Hasty	15
3162655511	Ariagno, Kerns, Mank and White, LLC	2
9136529800	Bath & Edmonds	3
8162927076	Brian Palmer	1
8162927000	Brown & Ruprecht PC	31
9139486680	Christian Webb	2
8162130384	Christine Blegen	1
8165240404	Dana Altieri	30
8162560835	David J Guastello	3
8165317100	David Johnson	1
3143595690	Edward Fehlig	1
9139489490	Erickson Scherff Attorney LLC	1
7853310300	Fagan, Emert & Davis LLC	1
8162218989	Gaddy Weis LLC	11
9139486682	Garretson & Toth, LLC	5
8167394538	J. Johnston	5
9132381281	Jacquelyn E Rokusek	3
9139489311	Jacquelyn E Rokusek	8
9134887100	James Spies	1
8165258200	John Osgood	4
7852343272	Joseph Hollander & Craft, LLC	43
9135516943	Kansas Federal Public Defender Office	1
8165475625	Lisa Nouri	1
8162298686	Mark A Thomason	5
8162298787	Mark Thomason	13
9139629800	R. Bruce Kips	4
8163632795	Rebecca Woodman	1
7858458500	Richard Benson	1
8165218249	Rick Johnson	11
7852351650	Rork Law Office	1
8163095147	William T Session	1
8162216400	Yonke Law	18