

16CR20032e-ord(AudioCallAnalysis).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, <i>et al.</i>,	:	<u>FIRST 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). This Report explains what I have done in pursuit of those directives to this point in time.

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 Special Master’s review of the responsive materials submitted by the Government revealed: (1) 76 separate CDs containing audio files, and (2) two thumb-drives containing audio files. The Government stated the thumb-drives actually contained all of the files on the CDs, plus additional files. Analysis revealed, however, that some of the files on the CDs were *not* on the thumb-drives. (Conversely, the Government was correct that the thumb-drives did

contain files that were not on the CDs.) Accordingly, 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 48,333 individual, recorded telephone-call audio files. These telephone calls were made to a total of 1,409 different telephone numbers, by a total of 50 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.

As of December 5, 2016, the Special Master identified 5,610 audio files of calls made by inmates to these 13 critical telephone numbers. The Special Master had planned to copy these audio files to a disk, along with associated metadata (such as caller-identity, call-date and -time, and call-duration), and provide the files to the Government and Coordinating Discovery Counsel within the next few days. As explained below, however, this event will not occur for a few more weeks.

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); and (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). After de-duplication, these sources combined to produce an inventory of 18,474 known attorney telephone numbers.¹

Analysis reveals that, of the 48,333 individual telephone audio files produced by the Government, 204 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. 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.

The statistics supplied above come from the Special Master's analysis completed on Monday, December 6, 2016. On the morning of Tuesday, December 7, 2016, however, the Government reported it had just found additional audio recordings, which it has since submitted to the Court. Initial review suggests at least some of these newly-submitted recordings are "new" audio files, and not merely duplicates of previously-submitted files. Accordingly, the Special Master will undertake a new analysis and produce another Report, after analyzing *all* of the audio files together (including those newly submitted). This second Report will supply updated statistics.

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.

Only after this new analysis is finished will the Special Master provide to the parties a disk containing all audio files of calls made to the 13 critical telephone numbers.

Finally, given that there will now be additional analysis of the audio calls, the Special Master issues the following invitation. Any attorney who may have received a telephone call from an inmate at CCA for the purpose of obtaining legal advice is invited to provide me with the telephone numbers those inmates may have called (including the attorney's direct-dial, home, and cell numbers, if applicable). The Special Master will add these numbers to the inventory of "known attorney telephone numbers" described above. Attorneys wishing to supply these telephone numbers should send them via email to KATN@specialmaster.law, with the subject line "KATN." The body of the email should include only the attorney's telephone numbers, and the attorney's name.

By submitting such an email, the sender is representing that he or she: (1) is an attorney, and (2) may have received telephone calls from inmates at CCA-Leavenworth at the numbers listed, for the purpose of obtaining legal advice. Any person who sends information not meeting these criteria is subject to contempt of court. All telephone numbers submitted will be checked to ensure they belong to the submitting attorney.

RESPECTFULLY SUBMITTED,

/s/ David R. Cohen

David R. Cohen
Special Master

DATED: December 6, 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
9139629800	R. Bruce Kips	4
8163632795	Rebecca Woodman	1
7858458500	Richard Benson	1
7852351650	Rork Law Office	1
8162216400	Yonke Law	18