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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

07 Cr. 220 (BSJ)

DAVID STOCKMAN,
J. MICHAEL STEPP,
DAVID COSGROVE,
PAUL BARNABA,

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Defendants.

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April 16, 2007
4:40 p.m.

Before:

HON. BARBARA S. JONES

District Judge

APPEARANCES

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
HELEN CANTWELL
Assistant United States Attorney

MORVILLO ABRAMOWITZ GRAND IASON ANELLO & BOHRER, P.C.
Attorneys for Defendant Stockman

BY: ELKAN ABRAMOWITZ
JODI PEIKIN
JAMES STOVELL

SULLIVAN & CROMWELL LLC
Attorneys for Defendant Stepp

BY: GANDOLFO DiBLASI
KAREN SEYMOUR

ARNOLD & PORTER LLP
Attorneys for Defendant Cosgrove

BY: CRAIG A. STEWART
KEN HASHIMOTO

SOLOMON WISENBERG
ADRIENNE WISENBERG
Attorneys for Defendant Barnaba

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1 (Case called)

2 THE DEPUTY CLERK: Is the government ready?

3 MS. CANTWELL: Yes. Helen Cantwell appearing on
4 behalf of the United States.

5 THE DEFENDANT: Is defendant Stockman ready?

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7 MR. ABRAMOWITZ: Yes, your Honor. Elkan Abramowitz
8 and Jodi Peikin and James Stovell for the defendant Stockman.

9 THE DEPUTY CLERK: Is defendant Stepp ready?

10 MR. DiBLASI: Yes, your Honor. Gandolfo DiBlasi and
11 Karen Seymour for Mr. Stepp?

12 THE DEPUTY CLERK: Is defendant Cosgrove ready?

13 MR. STEWART: Yes, your Honor. Craig Stewart and Ken
14 Hashimoto for the defendant Cosgrove.

15 THE DEPUTY CLERK: Is defendant Barnaba ready?

16 MR. WISENBERG: Yes, your Honor. Solomon and Adrienne
17 Wisenberg on behalf of Mr. Barnaba.

18 THE COURT: I have a couple of pro hac vice orders for
19 the Wisenbergs. They are signed.

20 Ms. Cantwell, I understand you have begun making
21 discovery?

22 MS. CANTWELL: That's correct, your Honor. I want to
23 give your Honor a preview of the discovery process in this
24 case.

25 I have already been in consultation with each of the
defense lawyers about the situation that we have. There are

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1 millions of documents in this case and every time we have one
2 of these cases the government tries to figure out the best way
3 to produce those materials to the defense.

4 In this case, what the government has decided to do
5 is, without getting into all the technical details because I am
6 not certain I understand them myself, but is to produce all the
7 documents on a Web-based system. Normally, what we might do is
8 just give CDs, DVDs or hard drives to the defense, and then
9 they figure out how to work them themselves. In this case, we
10 are going to take the databases that the government has been
11 using during the investigation and load them into a system that
12 can be accessed by both the government and the defense from any
13 Web portal that they can find anywhere. They will have their
14 separate accounts, and they can look at documents and tag
15 documents, and I won't be able to see it and vice versa.

16 I think this is the best thing to do for the case.
17 The government is going to bear the large, if not the entire
18 expense for this project. It also makes it easier for the
19 government to produce things because we simply load them on to
20 the system and then the defendants aren't left over time to
21 reload documents.

22 THE COURT: I am afraid to ask this question, but I
23 assume there is an index for this Web site.

24 MS. CANTWELL: There are indices to each of the
25 individual productions. For example, some of the documents

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1 come from the company. The company, when they made production
2 to me of the relevant documents, that the company deemed
3 relevant to the investigation, they provided a very detailed
4 index.

5 THE COURT: So there will be something called that
6 production that the defense can go to?
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7 MS. CANTWELL: Yes. It will be one massive database,
8 but within that you will be able to search by source the
9 documents, and so to the extent that counter parties gave me an
10 index, I will give it to the defense.

11 By and large, there are indices of the larger
12 databases, the ones which have millions of documents. There
13 are also smaller productions where, maybe there are 1,000 pages
14 or 2,000 pages, an index is not that critical, and I am not
15 even sure I got indices for those productions.

16 THE COURT: You're not making any paper discovery?

17 MS. CANTWELL: Unless there are statements of the
18 defendants or other particular types of Rule 16 material, no.

19 The only problem with this plan -- we have already
20 started it, we have already hired a vendor who met with the
21 defense today, gave them a demonstration -- is that this is
22 going to be something that's going to have to roll out over a
23 period of time. We have had some technical issues because the
24 company at least gave us materials with some sort of propriety
25 software that that vendor wants to charge us a large chunk of

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1 change to unwind from. I think we have already solved that
2 problem one way or the other, but there are going to be a lot
3 of technical start-up issues. In my view, in the long run, it
4 is going to be the most efficient way to do this.

5 However, I have told the defendants, each of them, if
6 they want me to hand them all the DVDs and CDs or hard drives,
7 or my own concordance database which has all sorts of technical
8 issues with it and do their own thing, be my guest. It's just
9 going to be over time not the most efficient way to do this.

10 The defendants have raised some technical issues with
11 the vendor that we have hired and I think, in my view, I am
12 hopeful that those kinds of issues can be worked out. They
13 want some time before they sign on completely to this plan
14 because they need to investigate all the costs associated with
15 it, if they were to do it on their own versus accepting the
16 government's proposal, but the government is going to do this
17 regardless.

18 At least one other large case that my office has right
19 now there have been many, many document problems, and now late
20 in the game the government is considering a Web-based
21 production of document system, and I don't want to be in a
22 position where a year down the line people's own databases
23 haven't worked out for whatever reason. I want to have this in
24 place. They can access if they want or they can do it the
25 other way and pay for it themselves if they like as well.

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1 But it is going to take time. I am pressing them to
2 get as much on as quickly as they can, and then there are, as I
3 have discussed with at least some of the defendants, still
4 documents in paper format because the company has gone into
5 bankruptcy and is being sold off. So the company has no more
6 money to do any sort of document production at this point. So
7 there are still paper documents that I believe may be
8 responsive or may be relevant to this case that we will then
9 still have to scan and load into the system.

10 THE COURT: All right. Do the defendants have any
11 initial comments to this or is it just that you need to meet
12 with the vendor and see what this is all about?

13 MR. ABRAMOWITZ: That's correct. Ms. Cantwell has
14 spoken to all of us about this, and we will just have to wait
15 and see.

16 MS. SEYMOUR: The only question that I would ask, and
17 we can discuss this with Ms. Cantwell outside, is there are
18 projected costs that Ms. Cantwell alluded to that would be
19 borne by the defense, and it would be helpful to know what
20 those projections actually are, at what point they would kick
21 in for the defense, and some estimate of what the government is
22 projecting for the defense to share.

23 MS. CANTWELL: I actually got this information today
24 because I knew this was a topic of conversation.

25 My understanding from the vendor that we have hired is

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1 that as long as we don't put more than one terabyte of
2 information on the database, and I have been told we will not
3 come close to that, that the maximum monthly fee for
4 maintaining this thing is \$26,000 a month.

5 My informal proposal to the defense is that that fee,
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7 taking some period of time, should be divided between the
8 government and the defendants in some formula. I have not got
9 a proposal of the formula, nor do I necessarily want to commit
10 to not leaving it open-ended, or maybe we agree we will
11 maintain it for two years and then we will revisit the
12 question. I am not ready to get into that, but I did confirm
13 that the outside largest figures would be \$26,000 a month.

14 The government is definitely agreeing to pay all the
15 up-front costs, which are substantial, for all the scanning,
16 additional Bates numbering, and loading onto the system, and
17 then from there the \$26,000 a month kicks in.

18 MR. WISENBERG: We have no objection in principle to
19 what Ms. Cantwell is proposing, but the devil is in the
20 details, and obviously we don't have any idea right now not
21 only of the cost, but how long it will take for these
22 improvements. I understand there are also technological
23 upgrades that are coming and so it's just difficult to say at
24 this point. But in principle it sounds like a much better
25 proposal than going with paper.

THE COURT: Ms. Cantwell, maybe you told me this and I

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1 didn't hear you. Do you have any idea when the entire
2 production will be on the Web?

3 MS. CANTWELL: I can't answer that question. I really
4 wanted to have an answer for the Court today. What I can say
5 is that at least what I have been told today from the vendor is
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7 that within two weeks we will start to have stuff loaded. But
8 as I have repeatedly told the defense, and I will tell the
9 Court, the main company production is the one that's hampered
10 by this software problem. Again, I won't get into all the
11 details, but that may be delayed. But there are going to be
12 millions of pages for them to look at from the auditors,
13 another company production, and from a private equity firm that
14 made a rather substantial production.

15 So there are going to be other large parts of the
16 discovery that are going to get up to speed much more quickly.
17 They have asked me to make some documents that are still in
18 paper format available for them to review now. That's fine
19 with the government. Eventually, though, those documents and
20 materials will also be uploaded as well.

21 So it's going to be a little bit of a give-and-take.
22 I am hopeful, maybe I am just a dreamer, but we have talked
23 about a next conference date of June 29. I am hopeful that
24 this problem with the company database will be solved by then
25 and that it will be up and running, but I can't commit to that.

THE COURT: June 29 is fine with me, and we can find

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1 out how we are doing in terms of the Web and discovery.

2 Are there any pretrial motions that do not relate to
3 having a complete discovery that the defendants may wish to
4 make?

5 MR. ABRAMOWITZ: I don't think so, your Honor. I
6 think we need to get the discovery up and running before we can
7 talk about any motion in this case.

8 MR. WISENBERG: Your Honor, we may have a motion that
9 doesn't necessarily relate to discovery.

10 THE COURT: Or depend on it.

11 MR. WISENBERG: Doesn't really depend on it. Now that
12 our pro hac vice is signed, if we do that, I anticipate we will
13 file that within the next few weeks.

14 THE COURT: All right. Would you just send me a
15 letter when you have made up your mind and tell me what date
16 you propose to file?

17 MR. WISENBERG: Yes, your Honor.

18 THE COURT: Then I will set a briefing schedule just
19 by order.

20 MR. DiBLASI: Your Honor, no motions at this time. We
21 prefer to see some of the discovery.

22 THE COURT: OK.

23 MR. STEWART: That's our position as well.

24 THE COURT: Mr. Wisenberg, if you do have a motion,
25 that's fine. Let me know when you have decided, and as I said,

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1 I will set a response date and opposition date for the
2 government and give you a reply date.

3 MS. WISENBERG: Thank you, your Honor.

4 THE COURT: Are there any other issues that we have
5 got to talk about today?

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7 All right. Then let's set our next conference date
8 for June 29.

9 What time, Denise?

10 THE DEPUTY CLERK: 3 p.m.

11 THE COURT: You have already talked about it and it's
12 acceptable to everybody?

13 MR. ABRAMOWITZ: Yes, your Honor.

14 THE COURT: I will exclude all the time from today
15 through June 29 under the interests of justice exception of the
16 Speedy Trial Act so that we can get discovery made.

17 MR. ABRAMOWITZ: Your Honor, is it possible to waive
18 the appearance of the defendants at these progressive
19 conferences in which no substantive argument is going to take
20 place?

21 THE COURT: It sounds like the next one is certainly
22 one of that character.

23 Does the government have any objection?

24 MS. CANTWELL: We take no position, your Honor.

25 THE COURT: I would like just a written request,
Mr. Abramowitz, indicating that you have discussed it with your

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1 client, he knows he has the right to be present, and he is
2 waiving his appearance, and if I have that before the
3 conference, they are excused.

4 MR. ABRAMOWITZ: Thank you.

5 THE COURT: Anything else?

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MS. CANTWELL: No. Thank you, your Honor.

7 (Adjourned)

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