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

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Defendants.

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New York, N.Y.
October 11, 2007
2:40 p.m.

Before:

HON. BARBARA S. JONES,

District Judge

APPEARANCES

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

HELEN V. CANTWELL
MARC P. BERGER
ANTHONY BARKOW
Assistant United States Attorney

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

ELKAN ABRAMOWITZ
JODI PEIKIN

SULLIVAN & CROMWELL, LLP
Attorneys for Defendant Stepp

KAREN SEYMOUR
DAVID SCHWARTZ

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APPEARANCES (Cont'd)

ARNOLD & PORTER, LLP
 Attorneys for Defendant Cosgrove
 CRAIG A. STEWART
 MONIQUE GAYLOR

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WISENBERG & WISENBERG, PLLC
 Attorneys for Defendant Barnaba
 SOLOMON WISENBERG

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1 (In open court; case called)

2 THE DEPUTY CLERK: Is the government ready?

3 MS. CANTWELL: Yes. Good afternoon, your Honor.

4 Helen Cantwell, Marc Berger and Anthony Barkow appearing on
5 behalf of the United States.

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7 THE COURT: Good afternoon.

8 THE DEPUTY CLERK: Is Defendant Stockman ready?

9 MR. ABRAMOWITZ: Elkan Abramowitz and Jodi Peikin and
10 James Stovell for Mr. David Stockman, whose appearance has been
11 waived.

12 THE DEPUTY CLERK: Is Defendant Stepp ready?

13 MS. SEYMOUR: Yes, your Honor. Karen Seymour and
14 David Schwartz for Michael Stepp. His appearance also has been
15 waived.

16 THE DEPUTY CLERK: Is Defendant Cosgrove ready?

17 MR. STEWART: Yes, your Honor. Craig Stewart and
18 Monique Gaylor for Defendant David Cosgrove, whose appearance
19 has also been waived.

20 THE DEPUTY CLERK: Is Defendant Barnaba ready?

21 MR. WISENBERG: Yes, your Honor. Solomon Wisenberg on
22 behalf of Paul Barnaba, whose appearance is also waived.

23 THE COURT: When I checked today on the last
24 transcript, I realized that motions were supposed to be coming
25 in. Unfortunately, I don't think we ever got a courtesy copy
of yours, Mr. Wisenberg. I found a very inefficient one filed,

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1 which I never saw. So I am not prepared to decide motions
2 today. I know I have it.

3 MS. CANTWELL: Yes, Judge. And to be clear, your
4 Honor, I think that was one motion that Mr. Wisenberg wanted to
5 file. It certainly is not the case that all defendants have
6 had --

7 THE COURT: No. Everyone else made it very clear they
8 wanted to wait until after discovery if my memory serves me.

9 MS. CANTWELL: And to be fair to Mr. Barnaba's
10 counsel, I think his counsel may want to file further motions
11 as well.

12 THE COURT: Absolutely.

13 MS. CANTWELL: Your Honor, I guess I will start with
14 giving the Court an update about what has taken place. As is
15 the case with electronic discovery, there is good news and bad
16 news. We are certainly not as far along as I had hoped nor
17 have the defense hoped, but I think we are in a position to
18 report good progress. I try to keep in touch with the defense
19 team as best I can so they are aware of most, if not all, of
20 what I am about to say.

21 Essentially when we left the Court last, we were up
22 and running with our CACI system. Not with all the documents,
23 but at least we had a system in place and we were loading
24 documents. That process has continued and we will hopefully be
25 completed with the vast majority of documents for which our

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1 vendor CACI is responsible for processing and loading data.

2 It is not done now, Judge. I would say within three
3 to four weeks that should be done. There is one major database
4 left to be loaded, which was from the private equity firm
5 Heartland that gave the government a tremendous amount of
6 documents. They have that database. They have been processing
7 it. I just don't have a fixed time as to exactly when that
8 will be up and running. We have identified some problems along
9 the way, many technical problems from the document and data
10 form. As we got them, people bringing them to our attention,
11 we find things, we have been trying to fix them as best we can.

12 So I know that only one of the defense counsel has
13 opted to use the CACI system. That is Mr. Wisenberg on behalf
14 of Mr. Barnaba. He can speak to his experience good, bad or
15 ugly. We have that he had available to everyone and only
16 Mr. Barnaba's counsel has been using that system for review to
17 date.

18 THE COURT: Now, am I right, though, you believe you
19 will have everything on CACI in three to four week?

20 MS. CANTWELL: Well, I specifically meant to
21 exclude -- let me make sure I am being crystal clear. The
22 documents we have always had biggest problem with were the
23 documents produced by the company itself. What we did since
24 the last conference, your Honor, is we hired the service or the
25 vendor that actually the defense has hired for their separate

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1 database. That company is called EPIQ. They were the original
2 vendor that Davis Polk and Wardwell had used to create the
3 database. There were a whole host of technical problems CACI,
4 our vendor, had. Ultimately the government decided that even
5 though it would be more expensive to do it this way, we would
6 simply hire EPIQ on our own to process that data. We were
7 given estimates.

8 THE COURT: This is the company's data?

9 MS. CANTWELL: Correct. And it is the vast majority
10 in my view of the documents.

11 We were given what turned out to be unreasonable
12 estimates about how long that process would take. Then the
13 company had noticed somehow there were a bunch of privileged
14 issues that the government was unaware of that had to be
15 resolved, documents apparently they never intended to give the
16 government needed to be removed from the database. That took a
17 couple weeks to resolve. Obviously no one could have
18 anticipated that.

19 We are now in a position where EPIQ is processing the
20 company database successfully. They have begun to give back to
21 CACI -- and as of this morning they have given back two-hundred
22 thousand documents to be loaded onto CACI's website. In the
23 meantime and simultaneously they are giving that data to the
24 defense. So EPIQ is now giving it both back to the defense
25 database and to the government and both are in the process of

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1 making that available.

2 I hesitate to give the court any assurances about how
3 long that is going to take. There is still some further
4 processing that needs to be done to that data, which the
5 government is paying for. And to be specific, and I don't know
6 how much familiarity the Court has or wants to have with this
7 issue, but there are a bunch of native files which are files
8 like EXCEL spreadsheets that were never converted into a form
9 that was searchable. We are going to make those documents
10 searchable now, but because of the nature of the data and the
11 desire to get the most important documents to the defense as
12 quickly as possible, we are going to sort of save that task for
13 last, produce everything on a rolling basis, which is already
14 started, and get the data to them as quickly as we can.

15 The bottom line here, Judge, is that we are not done.
16 I am hopeful we will be done expeditiously as I have been
17 hopeful from the beginning. I think the delays since July are
18 sort of attributable to a couple things that we couldn't have
19 anticipated like the Davis Polk privilege issues and to the
20 vendors just taking longer to do stuff, encountering technical
21 difficulties, which at least the government's position in this
22 case has been to the extent that we should be fixing these
23 rather than leaving it for the defense to fix them, we are
24 trying to do them so we can get it on CACI at least and make
25 sure that we have something for them to look at.

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1 The defense has made its decision to hire EPIQ, which
2 I don't think is slowing things down at all, but obviously
3 there is an increased coordination that needs to take place and
4 I think we are finding a place where the two vendors understand
5 the urgency and are communicating better together.

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6 THE COURT: Can I ask the defendant: How is it that
7 you are using EPIQ?

8 MS. PEIKEN: We plan on using EPIQ the same way that
9 the government intended for use of CACI.

10 THE COURT: Once you get documents you are going to --

11 MS. PEIKEN: Well, once EPIQ processes all the
12 materials, basically there will be a big website in which each
13 of the defense counsel will have their own passwords.

14 THE COURT: Are you giving them the raw material and
15 they are processing it, is that what is going on?

16 MS. PEIKEN: EPIQ has basically gotten the material
17 from CACI, the material that CACI loaded on to their system and
18 they have exported it to EPIQ and that in and of itself had
19 some technical glitches involved. Now EPIQ is actually doing
20 the company's document production itself and it is exporting
21 that one back to CACI.

22 The one sort of added complication, which will come
23 once it is all up, which as Ms. Cantwell says will be in the
24 next few weeks, is there is a big project that needs to be done
25 in de-duping the documents. As the Court may imagine, there

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1 are so many duplicates with the e-mails and the files and
2 everything else. So once it is up and running, that will be
3 another task that needs to be undertaken which of course we
4 hope will make the document review much more efficient and we
5 will not have to be reviewing the same document multiple times.

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6 THE COURT: I don't really know anything about this at
7 all, but having two different systems when we get to trial in
8 this case if they identify a document in their system are you
9 going to be able to find it in yours?

10 MS. CANTWELL: Yes. The answer is yes. Everything is
11 going to have the same unique Bates number. So the prefix will
12 indicate where the document came from and then there will be a
13 number. The point of the government hiring EPIQ do some of
14 this work is so that the government can control the numbers and
15 ensure that a systematic numbering system is put into place.

16 Just so the Court understands, the de-duping function
17 that the defense just mentioned is -- I don't want to speak for
18 them -- one of the main reasons they decided to go with their
19 own system. They think, and they may well be right about this,
20 that taking some extra technical time up front will save them
21 time and money and review in the back end. The government
22 decided it we weren't going to pay for that, which I don't
23 think they have a problem with that. I think that may cause
24 additional technical delays, which again all of these technical
25 delays have been designed or have occurred as part of a design

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1 to try to get the review to be as efficient and as effective as
2 possible.

3 I don't want the Court to think that this de-duping
4 thing is a delay. It is not. It is something that they have
5 decided through their analysis is the right thing to do for
6 their clients and I think it is just going to take some
7 additional technical time, but ultimately with the goal of
8 making it more efficient, the review, in the end.

9
10 MR. WISENBERG: Your Honor, at some point in time at
11 the Court's pleasure, I would like to be heard on behalf of Mr.
12 Barnaba on some of these issues because we have been working
13 with CACI and I think we've probably got -- I know we have a
14 different view than the government about the base of discovery
15 and we may have some different views than our codefendants on
16 this. Whenever the Court is ready.

17 THE COURT: I gather there is a consensus among the
18 rest of the defendants when we should have our next conference?
19 I am not hearing complaints, but are there any other than
20 Mr. Wisenberg reserving time for his?

21 MS. PEIKEN: Your Honor, I think we do have a
22 consensus that we should have another status conference set for
23 January when we will hopefully been able to have reviewed some
24 of this discovery, understand where we are, and I think we had
25 discussed a January date. I think that is fine counsel.

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1 THE COURT: Denise, when is it?

2 THE DEPUTY CLERK: January 11 at 3:30.

3 THE COURT: Is that convenient for everybody as far as
4 you know?

5 MS. CANTWELL: Yes, your Honor. That will work for
6 the government. Case 1:07-cr-00220-BSJ Document 40-5 Filed 04/24/2008 Page 11 of 24

7 THE COURT: It seems reasonable to me. I may wrong.
8 We know a little bit more today.

9 Mr. Wisenberg.

10 MR. WISENBERG: Thank you, your Honor. I will start
11 with incorporating by reference, if I may, by comments in
12 general agitation from the last conference statement.

13 THE COURT: I won't repeat my response.

14 MR. WISENBERG: There are some points we need to make
15 for the record. First of all, it has been six and a half
16 months since the indictment in this case. There were no
17 statute of limitations issues necessitating an indictment
18 exactly at that time. We have approximately 15 percent of the
19 discovery that the government said they would have. They have
20 said at last count, I believe, that they have approximately
21 seven million pages. We have approximately 1.2 million as of
22 this morning pages on the CACI system.

23 THE COURT: You have gotten those on a rolling basis,
24 is that right or not right?

25 MR. WISENBERG: I guess it depends on the definition

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1 of rolling. We had at the last status nothing. We had no
2 discovery literally other than witness statements, defendant's
3 own statements given to each defendant. We had literally no
4 discovery through the first three months. At the time of the
5 last status conference, which was I think roughly three and a
6 half months almost, four months after indictment, that status
7 conference was July 12, we had just given about 10 days or two
8 weeks before the first chunk and it was slightly less than 10
9 percent. So basically between July 12th and today it has
10 rolled from less than 10 less than 15 percent.

11 THE COURT: But we are talking about 700,000 to a
12 million-something?

13 MR. WISENBERG: Yes.

14 THE COURT: In documents?

15 MR. WISENBERG: To 1.2 million.

16 THE COURT: How many of those have you been able to
17 review so far?

18 MR. WISENBERG: Well, we have been looking through all
19 of them. We are doing various searches through all of them.
20 We are also working with counsel for Mr. Barnaba on the civil
21 case. The wait for EPIQ was so long we finally decided to
22 start using their team on the CACI documents. Obviously we
23 have been tailoring primarily our searches to issues pertaining
24 to Mr. Barnaba.

25 First of all, I just would like to state in my

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1 experience -- 12 years as an AUSA and nine or 10 as a defense
2 attorney -- I never encountered a situation like that, six and
3 a half months since indictment and 15 percent of discovery.

4 THE COURT: I think this case is unique.

5 MR. WISENBERG: It is unique, but I would like to
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comment on some of the statements of Ms. Cantwell and I think
7 it is important for the record. We were not basically offered,
8 for example, the old-fashioned way, which I think your Honor
9 mentioned last time. We were not offered a chance to look at
10 hard copy documents. We were offered the CACI system as
11 basically the favor that the government had done for us and
12 that is what we were offered.

13 THE COURT: I was under the impression that there was
14 an offer to you to look at the hard copy.

15 MR. WISENBERG: Based upon my knowledge there was a
16 particular extremely small set that before it went through a
17 certain place copy we were asked to.

18 THE COURT: Look, do you want to look at it?

19 MR. WISENBERG: What we want are the documents.

20 THE COURT: No. Answer my question. Do you want to
21 sit down and start looking at hard copy?

22 MR. WISENBERG: If it is the only way we can look at
23 all the documents, we would.

24 I spoke with EPIQ this morning. I spoke with a
25 representatives of EPIQ this morning and they actually believe

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1 that they can get one of the chunks of documents that Ms.
2 Cantwell spoke about as early as mid next week.

3 THE COURT: Well, that's great, right?

4 MR. WISENBERG: That is great if it happens. We have
5 been hearing things like that all along. As Ms. Cantwell
6 indicated, there have been several target dates that haven't
7 been met.

8 An important thing I want to make clear, and
9 Ms. Cantwell partly made this clear, the stuff that is on the
10 CACI system should be on that CACI system irrespective of the
11 hiring of EPIQ. In other words, we have been on the CACI
12 system. There are issues relating to EPIQ and CACI that the
13 government certainly should have been aware of at the time of
14 the indictment. You cannot anticipate everything, but the
15 government was aware that the great bulk of the documents were
16 prepared by another vender.

17 The reason it is important to Mr. Barnaba and why
18 Mr. Barnaba would like a trial date set is because he doesn't
19 have hundreds of millions of dollars or even millions of
20 dollars. He is only able to afford counsel because he is
21 fortunately to have a D and O policy. That is a D and O policy
22 that I imagine has a very high burn rate. There are tons of
23 civil attorneys, civil witnesses, and defendants who are using
24 that. I am very concerned with the slow pace here. First of
25 all, he wants to go to trial. He wants his day in court. I am

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1 also concerned about that money being burned.

2 Last time, as your Honor recalls, I had asked for the
3 government to be required to get the documents produced within
4 30 days or face some kind of sanction. And your Honor, based
5 on what Ms. Cantwell said, said we are going to see what
6 happens at the next status conference, see how far they have
7 gotten. If we get all the documents within the next three
8 weeks, then that is great and we can get going. The problem is
9 it has been six and a half months and we have 15 percent of the
10 documents.

11 I guess what we are asking for is -- and there may or
12 may not be some kind of motion at some point based upon the
13 handling of discovery in this case. I certainly do not want to
14 see -- we would ask that any time between now and the next
15 status conference or trial date your Honor picks not be
16 automatically excluded under speedy trial because I don't
17 believe there is a justification. There may be other
18 justifications that it is a complex case at some point in time
19 that the government has -- from the defense perspective that
20 the government hasn't provided enough discovery, but I don't
21 think the government's inability to provide the discovery is an
22 excuse for excluding time under the Speedy Trial Act. We never
23 specifically objected to that before. We took no position last
24 time. We didn't come out screaming and yelling. But I would
25 object to that time being excluded. A lot of time it is not

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1 excluded because motions are pending. I would object to an
2 exclusion on the record due to the delay in discovery that I
3 believe clearly lies -- not intentionally -- but clearly lies
4 at the feet of the government.

5 Second thing is we would like to have a trial date
6 preferably in May or June. Now, we understand that if we have
7 the kind of progress we had on discovery that we have had to
8 date that we might be coming to your Honor and asking for a
9 later date. But we would like to have some kind of a trial
10 date set and no more exclusion for speedy trial purposes based
11 upon the government's inability to get the documents to the
12 defendants in the format that the government decided.

13 THE COURT: Ms. Cantwell.

14 MS. CANTWELL: Yes, your Honor. I believe on the
15 issue of whether or not Mr. Barnaba has been offered a chance
16 to look at documents in another format, at the last conference
17 your Honor specifically made a notation certainly -- I think
18 you asked Mr. Wisenberg whether or not he wanted the documents
19 in hard copy or in electronic copy in a different electronic
20 copy. For example, as in other cases, the government simply
21 sends out the disks with whatever errors are there or whatever
22 problems are there in what is called a concordance format. I
23 certainly have offered that to counsel in this case. I can't
24 sit here and tell you the exact conversation I had with
25 Mr. Wisenberg about that, but I know that it was put on the

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1 record at of the last conference, your Honor specifically posed
2 the question to him. So I think it is a bit disingenuous for
3 Mr. Barnaba to come to court today and say that he has never
4 been offered the chance of having the documents produced in a
5 different format when he was clearly on notice at a minimum in
6 July, if not before, for the possibilities to have discovery in
7 another format.

8 Secondly, your Honor, I think Mr. Barnaba's counsel
9 made claims about our, meaning the government's, ability to
10 anticipate problems. When we first hired CACI, the first thing
11 the government did was give them the EPIQ database that the
12 company had provided and said, Can you do this? Can you deal
13 with this? They told us, Yes. They hired a subcontractor.
14 The subcontractor apparently told them that they could fix the
15 database, de-archive the data and get the data in a format that
16 CACI could load it. That did not come to pass. It just wasn't
17 technically possible without paying EPIQ a few for some
18 proprietary software or mechanism to get the data into a format
19 where CACI could load it. So what the government decided to do
20 instead was hire EPIQ to do that work for us. That happened --
21 I don't have the exact date with me, Judge. I think it
22 happened shortly after the last conference. We had to get
23 Washington approval for the funds. The approval came through
24 and we are paying EPIQ now more than we would have had to pay
25 CACI to get it done as efficiently as we possibly can.

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1 I am sympathetic to Mr. Barnaba's situation. I am
2 sympathetic to all the defendants' situations. The government
3 wants to get the documents to defense as quickly in possible.
4 In this age with this many pages, Judge, we have done the best
5 we can. We've done it as efficiently as we can. We have spent
6 what I think is a lot of money but is appropriately spent so
7 the documents can get to the defense in the format that is the
8 most effective for their use.

9 If Mr. Barnaba would like a box full of DVDs and CDs
10 with all the company's data in the mail, I will copy them
11 tonight and send them to him. If he wants me to print off
12 every piece of paper from the data that we have here that will
13 take us a few weeks, we will do that. He hasn't asked me for
14 that, Judge. And I can't imagine he really wants it. Because
15 to do the kinds of searches and to do the kin of review that is
16 appropriate for this volume of documents, one simply has to do
17 it in electronic format. I don't really think that he wants it
18 in paper format. If he wants to make that request, he should
19 make that request and the government will comply.

20 To be clear about the current status, EPIQ has already
21 sent 200,000 documents to the government's vendor CACI from the
22 company's database and that is being loaded as we speak. EPIQ
23 will continue its analysis and processing and continue to
24 produce to us and the defense system on a rolling basis.

25 As we stand here today, I believe that is the most

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1 efficient and effective thing. I believed that from the
2 beginning, it has just taken much longer than we thought it
3 would, Judge.

4 MR. WISENBERG: May I very briefly respond, your
5 Honor?

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7 THE COURT: Sure.

8 MR. WISENBERG: The reason I haven't asked for it --
9 the reason we haven't asked for that is because we have been
10 told repeatedly from the very beginning from the very first
11 status conference by the government this is a great system, it
12 is going to be beneficial to you. We were told it initially.
13 We were told it back in July and said we think it should be
14 settled at the very latest the next status conference. I don't
15 think it is fair for the government to say it is unimportant,
16 your concerns are unimportant because you could have had it the
17 old way or you could have had it on a disk any time you wanted,
18 because the fact is an indictment is a triggering event. Our
19 client was rifted, to put it politely, within 48 hours of the
20 indictment. That is an event and we were told this was the
21 system and this is what you are going to have, we would expect
22 to get it in -- we would get that in a reasonable time.

23 Obviously I would much prefer to have the EPIQ system
24 than a disk on concordance or the hard copy. If we get it by
25 next week or by a couple of weeks, it will be great. It is way
too late, but it is obviously better than getting the hard

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1 copy. I mean, we heard these things on July 12th at the status
2 conference. I believe I have a right to bring to the Court's
3 attention and my client rightfully is very concerned about it.
4 If we are going to get them -- the EPIQ told me we will get the
5 first chunk of them -- it should be up by mid next week. If we
6 get them and the rest of them by two weeks from now that is
7 even better.

8 I will tell you what we will try to do is have a team
9 in place to do the searches that attorneys do -- document
10 review attorneys do and to get the key documents to us within a
11 reasonable amount of time so that we can further prepare for
12 trial. Obviously, we can't start doing that until the stuff is
13 up.

14 One other comment. It is a historical issue now, I
15 guess, but I don't understand why in terms of anticipation some
16 of these processes couldn't have been started before an
17 indictment went down.

18 THE COURT: I have heard that comment before.

19 MR. WISENBERG: Thank you, your Honor.

20 THE COURT: Look, if it wasn't clear before, it
21 certainly was clear by the July conference that if you wanted
22 to proceed more quickly in obtaining documents, they were going
23 to be made available to you by the government in a different
24 format. Perhaps hard copy is the wrong way to put it, but
25 clearly that was available.

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1 It is hard for me to listen to you, Mr. Wisenberg,
2 when you are telling me that you would rather use CACI and in
3 fact you agreed that that would be the best way to receive
4 discovery, but by the same token you are not going to go ahead
5 and try to start reviewing documents for the lack of a better
6 expression under the more old-fashioned format and then say but
7 since the government can't give it to me in a better more
8 efficient way, Judge, you are supposed to find that these
9 delays are not excusable. I don't get it. I don't get the
10 posture that you are putting yourself in.

11 I understand, and believe me I have sympathy for
12 Mr. Barnaba, you have a million documents. You are going to
13 have more documents if not all seven million in the next three
14 or four weeks. It sounds like a considerable number of them.
15 You can have at any time this discovery in a different format.
16 So it seems to me that you don't really have much grounds to
17 complain.

18 I have to also comment that I have had other cases far
19 less complex than this where the discovery took as long, if not
20 longer, than what I think we are going to see here. So I am
21 not quite sure where your experiences are coming from, but I
22 don't see inordinate delay here. In view of the volume of
23 discovery, if you are that concerned you can start receiving it
24 under a different format. If you wish to stick with CACI, then
25 you are going to have to abide with what I see so far as

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1 reasonable delays.

2 MR. WISENBERG: If I can make one clarification for
3 the record. Just to make it clear, we started with CACI
4 because we wanted to get our hands on the documents. But we,
5 along with the other defendants, will be using the EPIQ system.
6 The only difference is, I believe the codefendants have not
7 used the CACI system at all.

8 THE COURT: I understand. You are trying to use CACI
9 for the reasons you've stated. You want to get started.

10 MR. WISENBERG: Yes, your Honor.

11 THE COURT: There are available a million dollars on
12 CACI so you started there.

13 MR. WISENBERG: Obviously, if I had known on the date
14 of the indictment it would have taken this long, it may have
15 been a closer question.

16 THE COURT: A closer question as to what?

17 MR. WISENBERG: As to whether or not I wanted to look
18 at it in a different kind of format. But if I am told they are
19 going to be ready, they are now going to be ready within two or
20 three weeks, I obviously rather use the EPIQ system.

21 THE COURT: I am not holding the government to two or
22 three weeks. I hope and I expect they are going to do what
23 they can and this vendor is going to do what they can, but I
24 don't find the delay is unreasonable yet. You made the choices
25 you made, Mr. Wisenberg, and I think that is about all I am

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1 going say.

2 MR. WISENBERG: Thank you, your Honor.

3 THE COURT: When is the agreed upon date, January 11?

4 MR. ABRAMOWITZ: Yes, your Honor.

5 THE COURT: What time?

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7 THE DEPUTY CLERK: 3:30.

8 THE COURT: Over your objection, Mr. Wisenberg, I am
9 excluding the time from today through that date because of the
10 complexity of the discovery in the case and the need to be able
11 to produce it in an efficient form for all counsel. And the
12 explanations the government has given for various delays, I
13 find that the necessity of getting it done, producing it in an
14 efficient way to all counsel outweighs the interest of the
15 defendants in this case -- all of the defendants -- and the
16 public in a speedy trial.

17 Are there any other issues besides this document
18 production issue at this point?

19 MS. CANTWELL: No, your Honor.

20 I would add to the Court's record on the speedy trial
21 motion, it is also the case that Mr. Barnaba's motion is still
22 pending. So it is my understanding under the Speedy Trial Act,
23 until your Honor has decided that motion time would be excluded
24 anyway.

25 THE COURT: Let me make sure I have everything.
Mr. Barnaba, as I say, I did get your motion off of the ECF but

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1 I didn't get a courtesy copy, but I have it now.

2 MR. WISENBERG: I apologize.

3 THE COURT: We have the government's opposition.

4 Did you make any other submissions?

5 MR. WISENBERG: We did not.

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THE COURT: There was no reply.

7 MR. WISENBERG: Correct, your Honor.

8 THE COURT: I am going to decide that relatively
9 quickly. You are right, Ms. Cantwell, it is fully submitted as
10 of the end of August. So I think there is some reasonable
11 amount of time I am allowed to consider it. Maybe not as long
12 as this, but in any event I think the time is excluded through
13 today anyway on discovery grounds.

14 MR. WISENBERG: Your Honor is not going to set a trial
15 date?

16 THE COURT: No. I think that would be unreasonable
17 under all the circumstances when the defendants are able to
18 review the discovery. I have no idea how long it is going to
19 take the defendants to review discovery so that they can
20 actually after consultation with their clients figure out what
21 motions they want to make. I think it is just too early to set
22 a trial date at this point.

23 Does anyone else feel any differently?

24 MS. CANTWELL: No.. Thank you, Judge.

25 o0o