

EXHIBIT E

Dempsey - D

1 Q. So you mentioned the California material and the
2 Washington material. Can you tell the Court what happened
3 with those two sets of materials?

4 THE COURT: Excuse me. Why don't we stop for the
5 evening. What time are we scheduled to start tomorrow,
6 Sandi?

7 DEPUTY COURTROOM CLERK: 9:00.

8 THE COURT: 9:00.

9 MR. ASPHAUG: Your Honor, if we could, can I just
10 ask two more questions? And the next phrase of this I would
11 like to ask that it be a sealed proceeding. If I could just
12 ask these last two questions, we could then just start the
13 sealed proceeding.

14 THE COURT: Very well.

15 BY MR. ASPHAUG: (Continuing)

16 Q. What happened to the California material?

17 A. California material never came to my office. It was
18 submitted directly to the -- to the U.S. DAs.

19 Q. What about the Everett, Washington, material?

20 A. Everett, Washington, came to me on a hard drive
21 approximately a year into the case, and because of the way
22 it was organized, I didn't want to release it up to the DA's
23 office until I added my table of contents to it and made it
24 meaningful. So that's what I did, and we submitted it up to
25 the U.S. DAs.

Dempsey - D

1 Q. Okay. But that took longer than -- it took you more
2 time?

3 A. It did add time to the process.

4 MR. ASPHAUG: All right. I don't have any further
5 questions at this time. We'll stop there.

6 THE COURT: All right. We'll resume tomorrow
7 morning at 9:00. Now, you may step down, Ms. Dempsey.

8 Ms. Manes, are you going to want to cross-examine
9 Ms. Dempsey before the sealed proceeding?

10 MS. MANES: I should probably talk with
11 Mr. Asphaug regarding what he intends to go over. I think
12 the majority -- I -- I would have some questions for her
13 that would not normally be under seal. I do believe there's
14 significant questions for her that do need to be under seal,
15 but I would have some questions for her that would not be
16 under seal.

17 THE COURT: All right. Counsel can discuss it,
18 and we'll -- we'll proceed tomorrow morning at 9:00.

19 MR. ASPHAUG: Thank you, Your Honor.

20 (Hearing adjourned.)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 3:12-cr-00431-HA
)	
v.)	
)	April 8, 2014
DAVID JOSEPH PEDERSEN, et al.)	
)	
Defendants.)	Portland, Oregon
_____)	

EVIDENTIARY HEARING
VOLUME 2
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ANCER L. HAGGERTY
UNITED STATES DISTRICT COURT SENIOR JUDGE

Dempsey - D

1 TRANSCRIPT OF PROCEEDINGS

2 (In open court:)

3 DEPUTY COURTROOM CLERK: All rise.

4 THE COURT: You can be seated.

5 MR. ASPHAUG: Good morning, Your Honor. This is a
6 continuation of the evidentiary hearing in United States v.
7 Pedersen. As a preliminary matter, yesterday I -- we told
8 the Court that at the beginning of today's proceedings would
9 be under seal. After discussing this matter in more detail
10 with Ms. Manes, I think we reached a way to not have the
11 remainder of her -- Ms. Dempsey's testimony under seal, so
12 we're ready to proceed.

13 THE COURT: All right. Ms. Dempsey.
14 She's still under oath.

15 MR. ASPHAUG: Good morning. Thank you,
16 Your Honor.

17 KIM DEMPSEY,
18 called as a witness in behalf of the Plaintiff, having been
19 previously duly sworn, is examined and testified as follows:

20

21 DIRECT EXAMINATION

22 (Continuing)

23 BY MR. ASPHAUG:

24 Q. Ms. Dempsey, let's shift our attention to jail
25 recordings.

1 correspondence to or from Richard Wolf. Correct?

2 A. Correct.

3 Q. So there were three specific times within these
4 instructions in which it was referenced that you were to
5 obtain and review and return the Monroe legal mail; correct?

6 A. To review and return. I don't see anything in here
7 about us seeking it out.

8 MR. WOLF: One second, please.

9 BY MR. WOLF: (Continuing)

10 Q. Ms. Zusman, you're familiar with the Federal Discovery
11 Blue Book created after the Ted Stevens case; correct?

12 A. Yes.

13 Q. And, in fact, you authored chapter 2 of that manual,
14 did you not?

15 A. I think it was chapter 3, and, yes, I co-authored it.

16 Q. Is there anywhere in that manual --

17 A. I'm sorry. I'm sorry. You were correct. It is
18 chapter 2.

19 Q. And is there anywhere in that manual that talks about
20 the creation of taint teams?

21 A. Not that I'm aware of, no.

22 MR. WOLF: No other questions, Your Honor.

23 THE COURT: Mr. Asphaug, anything further?

24 MR. ASPHAUG: Thank you, Your Honor.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 3:12-cr-00431-HA
)	
v.)	
)	April 10, 2014
DAVID JOSEPH PEDERSEN, et al.)	
)	
Defendants.)	Portland, Oregon
_____)	

EVIDENTIARY HEARING
VOLUME 4
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ANCER L. HAGGERTY
UNITED STATES DISTRICT COURT SENIOR JUDGE

Horsley - X

1 evidence to the defendant.

2 Q. Ms. Horsley, before we begin talking about the specific
3 facts of this case, I want to ask with whom does
4 responsibility rest for the Government to provide discovery
5 in a capital criminal case?

6 A. Well, I can speak to this case, and I don't -- I don't
7 have reason -- I mean, the discovery obligations are what
8 they are in every case. And it's the principal
9 responsibilities of the AUSAs assigned to the case is to
10 ensure that discovery is provided consistent with the rules
11 and prevailing law.

12 MR. WOLF: I'd ask that the witness be shown
13 Defendant's Exhibit 350, please.

14 BY MR. WOLF: (Continuing)

15 Q. Do you know what that manual is, Ms. Horsley?

16 A. Yes.

17 Q. Could you tell the Court what that is?

18 A. It's the Federal Criminal Discovery Manual published by
19 the Department of Justice.

20 Q. And isn't it true that that manual was written as a
21 direct result of the discovery debacle which plagued the
22 U.S. Attorney's Office in the prosecution of the late
23 Senator Ted Stevens?

24 A. I guess your -- your characterization is what it is.
25 It's true that for reasons related to that case and others,

Horsley - X

1 I think there's been a heightened concern on discovery
2 compliance within the department, and this is certainly one
3 piece of information that's provided to AUSAs. So they're
4 well aware of their discovery obligations and comply with
5 them.

6 Q. Now I direct your attention to page 31, which is
7 section 2.4.

8 Now, Ms. Zusman testified that she was the coauthor of
9 this chapter, and, in fact, Ms. Zusman served on taint team
10 one in Mr. Pedersen's case. Isn't that correct?

11 A. Are you talking about Kelly Zusman?

12 MR. ASPHAUG: Objection, Your Honor. One moment,
13 please.

14 Ms. Zusman testified that she was the author of chapter
15 2. He's asking her to look at chapter 3, so I object to the
16 form of the question.

17 THE COURT: I thought he said chapter 2.

18 MR. ASPHAUG: He asked her to look at page 31,
19 which is part of chapter 3.

20 THE DEFENDANT: 21. I believe it's 2.4,
21 Mr. Asphaug.

22 MR. WOLF: It's page --

23 MR. ASPHAUG: I'm sorry. Image 31. I withdraw
24 the objection.

25 THE COURT: I'm reading it. It says --

Horsley - X

1 MR. WOLF: Section 2.4 is what we're talking
2 about.

3 THE COURT: Page 31?

4 MR. WOLF: Well, the exhibit number -- we didn't
5 put the entire Blue Book in the exhibit, so I'm having to
6 refer my paralegal to the exhibit page, which is 31 of the
7 exhibit, which is page 21 of the manual. So I can try and
8 be more clear in that respect.

9 MR. ASPHAUG: That's all right. I'll follow
10 along.

11 MR. WOLF: I thought we would be looking at it on
12 the screen, so --

13 MR. ASPHAUG: Withdraw the objection.

14 BY MR. WOLF: (Continuing)

15 Q. Now, so, Ms. Horsley, is Ms. Zusman also -- well, let
16 me back up. The Blue Book requires the -- each U.S.
17 Attorney's Office to designate a discovery coordinator for
18 that office; correct?

19 MR. ASPHAUG: Objection in aid -- question in aid
20 of objection.

21 THE COURT: Very well.

22 MR. ASPHAUG: Do you know whether this book says
23 what he just said?

24 THE WITNESS: No. I know we have a discovery
25 coordinator in the office. I don't know what the specific

Horsley - X

1 legal source is for.

2 MR. ASPHAUG: Foundation.

3 BY MR. WOLF: (Continuing)

4 Q. Who is the discovery coordinator in your office,
5 Ms. Horsley?

6 A. There are two of them. Kelly Zusman and Scott Asphaug.

7 Q. When you were -- recognized you were having discovery
8 problems in this case did you consult with Ms. Zusman?

9 A. At various times.

10 Q. And when was the first time you began consulting with
11 her about the discovery problems?

12 A. I don't remember off the top of my head.

13 Q. After the formation of taint team one?

14 A. Honestly, I don't know. I mean, I know taint team one
15 roughly when it was established, but kind of the specifics
16 of what I consulted with her about and when those were
17 relative to the taint team, I don't know.

18 Q. Well, let's break that down for you. The taint team
19 was formed in November of 2012; correct? November 9th,
20 2012?

21 A. Is that the date on -- I mean, do you have our taint
22 team memorandum?

23 MR. ASPHAUG: We'll stipulate to that, Your Honor.

24 MR. WOLF: Thank you, Mr. Asphaug.

25

Horsley - X

1 BY MR. WOLF: (Continuing)

2 Q. November 9th, 2012, okay?

3 A. Okay.

4 Q. So you testified yesterday the discovery problems began
5 in the summer of 2013; correct?

6 A. I mean, it was really April that I realized we were
7 having -- that we were missing electronic evidence.

8 Q. Does that help refresh your recollection about whether
9 you consulted with Ms. Zusman after the formation of taint
10 team one?

11 A. Potentially. I mean, I understand your point, that I
12 would have consulted with her after she had been designated
13 as the taint team attorney.

14 Q. So that would be yes?

15 A. But I -- my point is, I may have consulted with her
16 before that, as well; but, yes, I would have consulted with
17 her after her assignment as the taint team attorney.

18 Q. That was the question.

19 A. Okay. Just ask it straightly, and I'll understand.

20 Q. So is it your belief that Ms. Zusman, or any other
21 person on the planet, is able to take and receive privileged
22 defense knowledge and yet consult with the prosecution team
23 while possessing that privileged knowledge?

24 MR. ASPHAUG: Ask a question? It's facts not in
25 evidence.

Horsley - X

1 THE COURT: No, I'll overrule that objection.

2 THE WITNESS: Well, I think it would depend on
3 what -- what we were talking about. It certainly wouldn't
4 be appropriate for us to ask her questions that related to
5 her work as a taint team attorney or for her to provide any
6 information that she may have gained as a result of being on
7 the taint team.

8 BY MR. WOLF: (Continuing)

9 Q. But you believe it would be appropriate to consult with
10 her as a prosecution team member when she is wearing the hat
11 of the filter team, the taint team?

12 A. It would depend on what the purpose of the consultation
13 was. She was certainly not the only person we were talking
14 to. In fact, not the principal person we were talking to.
15 I was talking regularly with Jane Shoemaker, the head of the
16 criminal crime section; Scott Asphaug; Billy Williams, the
17 Criminal Chief; the First Assistant U.S. Attorney, you know,
18 several other people.

19 Q. Are you aware of any provision in the Federal Discovery
20 Blue Book for the use of taint teams?

21 A. I don't know if there's anything specifically in the
22 Blue Book about that.

23 Q. Isn't it true that federal law disfavors the use of
24 such teams?

25 A. I don't know.

Horsley - X

1 Q. Are you aware of any authority permitting a member of a
2 taint team who possesses privileged knowledge to be
3 permitted to advise and consult the prosecution team?

4 A. I'm sorry. Can you repeat that?

5 Q. Are you aware of any legal authority permitting a
6 member of a taint team who possesses privileged knowledge to
7 be permitted to advise and consult the prosecution team?

8 A. I'm not aware of authority either way, either
9 authorizing it or discouraging it.

10 Q. But your taint team policy -- you helped create that
11 policy, correct, in this case?

12 A. The policy or the --

13 Q. The protocol.

14 A. The protocol.

15 Jane Shoemaker authored it, and I reviewed it, though,
16 before it went out. And I've use taint teams in other
17 cases, so I'm familiar with the practice, which this was
18 consistent with.

19 Q. So you ratified what Ms. Shoemaker drafted; correct?
20 The final form? You're not disavowing your --

21 A. No, I'm not. I'm not. Again, these legal terms of
22 "ratify" -- but, yeah, I've read it and I joined it. I
23 think my name was probably on it, and I understood what we
24 were asking people to do.

25 Q. You are a lawyer; right? I can ask you legal terms?

Horsley - X

1 substance of the case. It was really -- she's a legal
2 advisor. So if you have a legal question, she is somebody
3 we would turn to.

4 Q. But she's a legal advisor in possession of privileged
5 defense knowledge; correct?

6 A. I had no idea.

7 Q. Well, if --

8 A. I mean, I knew it was envisioned she might be,
9 but -- but the point is, we could go to her in her capacity
10 as the appellate chief, which is different from her capacity
11 as the discovery coordinator.

12 Q. Now, I'd ask that we put Exhibit 350 back up. The
13 Federal Discovery Blue Book. And if we can turn to
14 exhibit -- page 20, which is page 8 of the Blue Book itself.

15 MR. ASPHAUG: Thank you.

16 BY MR. WOLF: (Continuing)

17 Q. And I direct your attention to section 1.8, defining
18 the prosecution team. Would you please read that section,
19 Ms. Horsley?

20 A. Yes. Do you want me to read it out loud or just to
21 myself?

22 Q. Please aloud.

23 A. Section 1.8. Defining the, quote, prosecution team.
24 "Together, all potentially discoverable materials it is
25 necessary to define the prosecution team. A discussion of

Horsley - X

1 this concept, including the related advice set forth in the
2 Ogden memo, at pages 2 to 3, is included in chapter 2 of
3 this manual. Here, as elsewhere -- excuse me -- prosecutors
4 are encouraged to err on the side of inclusiveness," and
5 then it cites to the Ogden memo at 3.

6 Q. Have you also read the Ogden memo?

7 A. Yes, I have.

8 Q. And this next section, section 1.9, references eight
9 categories of materials that should be reviewed for purposes
10 described in section 1.8; correct?

11 A. I mean, it -- eight categories that should be reviewed
12 in -- generally, in determining what's discoverable.

13 Q. In determining whom is on the prosecution team?

14 A. I don't know. Is there a specific reference you're
15 talking about? I mean, it's a separate provision. Eight
16 categories of materials that should be reviewed for
17 discoverable information.

18 So this has to be what -- the sources of material that
19 you're looking for.

20 Q. You just read section 1.8, which indicates that you are
21 to err on the side of inclusiveness. And section 1.9 goes
22 on to describe and identifies the Ogden memo with eight
23 specific categories of materials that should be reviewed for
24 discoverable information. And you have that requirement as
25 to provide information that is part -- that came from the

Horsley - X

1 prosecution team that is in the Government's possession;
2 correct?

3 MR. ASPHAUG: Can I ask a question in aid of
4 objection?

5 THE COURT: Very well.

6 MR. ASPHAUG: The paragraph that Mr. Wolf just
7 read to you cites to Ogden memo at 3. Are you familiar with
8 the Ogden memo at 3 in this particular place? Do you know
9 whether that sentence relates to defining the prosecution
10 team?

11 THE WITNESS: No. Not off the top of my head.

12 MR. ASPHAUG: Object on foundation, Your Honor.
13 Or ask the witness to be shown the Ogden memo at 3, so she
14 can satisfy herself and have enough information to answer
15 the question.

16 MR. WOLF: Please bring up Defendant's
17 Exhibit 351, page 3. First, please show the witness the
18 first page so she may identify it.

19 BY MR. WOLF: (Continuing)

20 Q. Ms. Horsley, is this the Ogden memo?

21 A. Yes. It appears to be.

22 MR. WOLF: Please turn to page 3.

23 THE WITNESS: Can I see page 2, as well, to see
24 what the header is to the section?

25 Okay.

1 BY MR. WOLF: (Continuing)

2 Q. I can tell you, Ms. Horsley, that the Blue Book
3 summarizes these things pretty succinctly. Do you trust
4 that the Ogden memo, mentioned in the Blue Book, is -- that
5 they're the same, having looked at this now?

6 A. Look, these are two documents that speak for
7 themselves, and I --

8 Q. And I --

9 A. If you're asking me to interpret specific parts of
10 them, it's just helpful for me to see them.

11 So, you know, the Ogden memo is one source of guidance
12 for us as AUSAs. The Blue Book is another. There's a lot
13 of overlap, certainly; but I don't want to be forced into
14 agreeing to some textual cross-reference without being able
15 to look at the material. And they really speak for
16 themselves. If you want me to opine on something, I want to
17 know specifically what you want me to look at.

18 Q. It was your counsel that asked you be permitted to
19 refer to the Ogden memo. Have you had the opportunity to do
20 that?

21 A. Well, I'm looking at page 3 now. Is there a particular
22 portion of the page you wanted me to focus on?

23 Q. I didn't want you to look at that page. I would like
24 to go back to page 350, page 3.

25 A. Okay. Let me finish reading page 3, then.

Horsley - X

1 MR. ASPHAUG: This cross-examination is just
2 designed as a gotcha situation. If counsel is going to keep
3 referring to multiple different sections of multiple
4 different documents, the witness has the opportunity to
5 review those documents before answering the question.

6 THE COURT: And I think she's now reading page 3.

7 MR. ASPHAUG: All right.

8 THE WITNESS: Okay.

9 BY MR. WOLF: (Continuing)

10 Q. Now, can we please go back to Exhibit 350, the admitted
11 page 20, which is page 8 of the Federal Discovery Blue Book,
12 section 1.9.

13 Ms. Horsley, is one of the areas that you are tasked to
14 examine for discoverable information the investigative
15 agency's files?

16 A. Yes.

17 Q. And the investigative agencies in USA v. Pedersen
18 included which groups, in your opinion?

19 A. Well, the members of the prosecution team were
20 principally the Oregon State Police and the FBI. Obviously,
21 Everett police, Eureka police, and other law enforcement
22 agencies who participated in aspects of the investigation
23 also had relevant files and materials.

24 Q. And if we could shrink that back down and go to
25 subheading two, which is on the next page, is the second

Horsley - X

1 area, confidential informants, witnesses, and other human
2 sources?

3 A. Yes.

4 Q. And, three, evidence and information gathered during
5 the investigation?

6 A. Yes.

7 Q. And that's anything obtained during searches or by
8 subpoenas; correct?

9 A. That's what it says there, correct.

10 Q. And on the next page where were there any -- was there
11 any evidence in this fourth category that applied in
12 Mr. Pedersen's case? Evidence gathered by civil attorneys
13 or regulatory agencies in parallel criminal -- I'm sorry,
14 parallel civil investigations?

15 A. Not in this case.

16 Q. Okay.

17 A. And five relates to substantive case-related
18 communications; correct?

19 Yes.

20 Q. And that would include communications between
21 prosecutors, agents, victims, and witnesses; correct?

22 A. In some instances. Some substantive communication of
23 those types.

24 Q. Well, those which are memorialized -- well, it
25 indicates that they should be memorialized and maintained in

Horsley - X

1 the case file; correct?

2 A. It -- it says, "Communications between prosecutors,
3 agents, victims and witnesses are among the examples of
4 those where they contain discoverable information that
5 should be memorialized and maintained in the case file or
6 otherwise preserved for disclosure."

7 Q. And substantive communications are defined to include
8 factual reports about investigative activity, factual
9 discussions of the relative merits of evidence, factual
10 information obtained during interviews or interactions with
11 witness or victims, and factual issues relating to
12 credibility; correct?

13 A. Yes, that's what it says.

14 Q. And then the sixth subsection of this section 1.9 is
15 potential *Giglio* information related to law enforcement
16 witnesses?

17 A. Correct.

18 Q. And, in fact, there was, and is, *Giglio* information in
19 this case; correct?

20 A. Yes.

21 Q. With respect to Detective Steele; correct?

22 A. Well, this -- this relates to witnesses.

23 Q. And you would not consider Detective Steele a potential
24 witness in this case?

25 A. He's, at this point, not going to be a trial witness.

Horsley - X

1 Q. Previously, was he going to be a trial witness?

2 A. I don't know, honestly.

3 Q. Didn't he interview the defendants?

4 A. Among other people, yes.

5 Q. Okay.

6 A. There were many, many interviews and statements of the
7 defendants, of which a small handful are going to be
8 evidence at trial.

9 Q. And then on the next page, section 7, relates to
10 potential *Giglio* information related to non-law enforcement
11 witnesses; correct?

12 A. Yes.

13 Q. And the last area is information obtained in witness
14 interviews; is that right? These are all sources you should
15 search for discoverable information; right?

16 A. Yes. Correct.

17 Q. And the last section, section 8, information obtained
18 in witness interviews, that section indicates that witness
19 interviews should generally be memorialized by the agent,
20 unless they're audio or video recorded; right?

21 A. Correct.

22 Q. And the prosecutor should confirm this policy with
23 agents. Did you confirm this policy with Detective Steele?

24 A. Generally.

25 Q. And what was your confirmation? What was your -- what

Horsley - X

1 were your instructions to him with regard to witness
2 interviews?

3 A. I mean, I'm -- I'm trying to think of, you know,
4 specifics to him that would be differentiated from anybody
5 else. We had a lot of discussion. The bulk of the problem
6 really related to the FBI, who, as a matter of policy, does
7 not record witness interviews. OSP did record witness
8 interviews. So it was my understanding and all of our
9 conversations centered around the fact that OSP recorded
10 everything and the bigger problem was that FBI didn't and
11 how those would be memorialized and whether FBI would agree
12 to having interviews they participated in be recorded.

13 Q. Now, also in this subsection, Ms. Horsley, that Blue
14 Book indicates that interview notes and original recordings
15 should be preserved and the prosecutor and agent should
16 reach an understanding regarding note-taking and
17 memo-writing responsibilities before an interview begins;
18 correct?

19 A. Yes.

20 Q. And did you make any directions to Detective Steele
21 with regard to that aspect of subsection eight?

22 A. Well, I think most of the interviews that Detective
23 Steele was involved in occurred before we were ever involved
24 in the case. Certainly all of the interviews of the
25 defendants occurred before I was even approached about the

1 case.

2 Q. Now, I want to turn to the next page. Section 1.10.
3 That section refers to conducting a discovery review, and I
4 direct your attention to the sentence following the Ogden
5 memo at eight.

6 And isn't it true, Ms. Horsley, that that section of
7 the Blue Book indicates that because the prosecutor is
8 ultimately responsible for compliance with discovery
9 obligations, he should develop a process for reviewing the
10 pertinent information and his decision as to how to conduct
11 the review process controls? Correct?

12 A. That is what the middle sentence says.

13 The prior sentence says, "It is preferable, but not
14 always feasible or necessary, for prosecutors to review the
15 relevant material to identify discoverable information."
16 And then after the sentence you highlighted, it goes on to
17 say, "Although prosecutors may delegate the process and
18 establish criteria for identifying potentially discoverable
19 information, they should not" -- I don't know how it
20 continues on the next page.

21 Q. They should not delegate the disclosure determination
22 itself?

23 A. Correct.

24 Q. Correct?

25 A. That's correct.

Horsley - X

1 Q. So yesterday when you testified that you didn't read
2 all the material that was produced to the defense, you
3 directly violated that recommendation?

4 A. No, I didn't.

5 Q. Well, you didn't comply with it, did you? You
6 didn't --

7 A. Yes, I did comply with it. I had instructed these
8 agents from day one, and they understood, that it was our
9 decision what was produced as discovery in the case. They
10 were not to make that decision. They were to give us
11 everything.

12 So this -- this -- this section speaks to a
13 determination that really -- that things aren't
14 discoverable, and it was our understanding in this case,
15 particularly because it's a death penalty case, that
16 everything should be provided to us. And barring some
17 unusual circumstances or safety issue for a witness, for
18 example, would be provided to the defense.

19 So the reason I wasn't reviewing everything as it was
20 coming in is partly because it wasn't feasible, you know,
21 and necessary. It wasn't feasible because of the sheer
22 volume and pace at which we were producing it, and it wasn't
23 necessary because it wasn't ruling anything out. I wasn't
24 trying to limit what was being provided to the defense.

25 Q. Ms. Horsley, I direct your attention to the bottom of

Horsley - X

1 that same --

2 MR. WOLF: I'm sorry. Bring that page back up.

3 It's 25.

4 BY MR. WOLF: (Continuing)

5 Q. Section 1.13 indicates that your discovery obligations
6 are continuing. Do you agree that that's true?

7 A. Yes.

8 Q. Now I'd like to turn back to chapter 2 -- the one,
9 again, written by Ms. Zusman in your office -- and I direct
10 your attention to section 2.2 on page 27. And this is the
11 section that deals with factors bearing on whether an entity
12 should be deemed part of the prosecution team. All right?

13 A. Okay. Could I have a moment to read this?

14 Q. Yes.

15 A. Thank you.

16 Q. Well, before -- no, go ahead and read that.

17 A. Okay.

18 Q. Now, you would agree, would you not, that the Oregon
19 State Police and the FBI were members of the prosecution
20 team?

21 A. Yes.

22 Q. And, in fact, Brian Stephen was on loan to you from the
23 Oregon Department of Corrections, because Mr. Pedersen spent
24 nearly half of his life in the penitentiary; correct?

25 A. That's not why Mr. Stephen was assigned to the case.

Horsley - X

1 A. But, as I said, he wasn't on for the full two years.
2 That wasn't needed, as it turned out.

3 Q. Now, did having him on the prosecution team aid you in
4 obtaining documents and other information from the Oregon
5 Department of Corrections?

6 A. No. We subpoenaed records from Oregon DOC
7 independently.

8 Q. Well, how about his knowledge, his institutional
9 knowledge of the Department of Corrections? Didn't that aid
10 the prosecution team?

11 A. I don't think so. The subpoena was a federal grand
12 jury subpoena prepared by John Hallock, and I consulted with
13 attorneys at Oregon DOC about the nature and scope of the
14 Department of Correction files and kind of what specifically
15 they called different components of the file and what to ask
16 for on the subpoena.

17 I mean, Stephen's role, again, was really focused
18 on -- he was an intelligence guy, so his role was trying to
19 figure out was there a broader criminal conspiracy here
20 beyond Mr. Pedersen and Ms. Grigsby?

21 MR. WOLF: I'd ask the witness be shown page 29 of
22 Exhibit 350, which is page 19 of the Federal Discovery Blue
23 Book regarding section 2.3.

24 BY MR. WOLF: (Continuing)

25 Q. The constitutional duty to search. That would be for

Horsley - X

1 discoverable information.

2 And I direct your attention to the section partway down
3 the first -- that paragraph, which begins, "The obligation
4 under *Brady* and *Giglio* is the obligation of the Government,
5 not merely the obligation of the prosecutor." Correct?

6 A. That's -- that's what the language there says, yes.

7 Q. And do you agree with that sentence and the following
8 sentence, which says: To repeat, *Brady* and *Giglio* impose
9 obligations not only on the prosecutor, but on the
10 Government as a whole.

11 A. Yes. It says that.

12 MR. WOLF: Now I'd ask that -- one second please.

13 Now I'd ask that the witness be shown page 42 of this
14 same exhibit, which is page 341 of the Federal Discovery
15 Blue Book.

16 BY MR. WOLF: (Continuing)

17 Q. And would you agree, Ms. Horsley, that a prosecutor
18 faced with an inadvertent disclosure of attorney-client
19 information must always be mindful of any ethical
20 restrictions applicable in the jurisdiction in which he or
21 she practices?

22 A. You know, I'm sorry. Could you just go ahead -- this
23 doesn't specifically -- it says "inadvertent disclosure,"
24 but it's not clear to me of what. Could you go to the
25 heading, so I know the context here?

Horsley - X

1 Q. Yes. I think we have the prior page.

2 A. Thanks. Let me take a look at this for a second.

3 Okay. Thank you. Just look at this section for a
4 second.

5 Okay. Yes, I've read the section.

6 Is there someplace where it defines inadvertent
7 disclosure? I mean, I have my understanding of it, but --

8 Q. What is your understanding of it?

9 A. Well, that if I had received something privileged
10 inadvertently, that would be an inadvertent disclosure.

11 Q. Didn't you testify yesterday that you did not expect to
12 receive privileged jail calls or have them provided to any
13 members of the prosecution team?

14 A. That's correct. And I never did receive them. I never
15 had an inadvertent disclosure that I was made aware of until
16 September, you know, when we were told they were in
17 discovery. But I didn't -- I personally have not received
18 any such materials inadvertently or intentionally.

19 Q. Well, hold on a second. Didn't you testify yesterday
20 that you knew that Gil Levy was the attorney for
21 Mr. Pedersen in the Washington double aggravated murder case
22 and that Ruben Rivera of the Department of Corrections at
23 Monroe had forwarded to Brian Stephen and Dave Steele a
24 letter of Gil Levy's and you sent a -- I -- I believe your
25 testimony yesterday is that you were shocked that that was

1 additional briefing is necessarily necessary.

2 MS. MANES: Your Honor, we hadn't prepared closing
3 argument because we had anticipated that there would be
4 briefing. And there was one issue which is, we had
5 conferred with Mr. Asphaug -- there's sections of the
6 Federal Criminal Discovery Blue Book that we wanted to offer
7 to the Court, pursuant to protective order, so we haven't
8 shown it or offered it in open court.

9 MR. ASPHAUG: Are you now offering your Exhibit
10 1 -- what is it?

11 MR. WOLF: 350.

12 MR. ASPHAUG: I have no objection to 350 coming in
13 as a sealed exhibit. And, as part of or as a companion to
14 that sealed exhibit, I would ask the Court to take judicial
15 notice of the first page of that document, and I'll offer
16 Exhibit 41 as another sealed exhibit and ask the Court to
17 take judicial notice of the limitations on the Federal
18 Criminal Discovery Handbook, as described.

19 THE COURT: All right. The Court will receive 350
20 and 41 under seal.

21 I just remembered something else. There was discussion
22 that 188 and the Government's 29 were the same. In looking
23 at them, they're the same document, but 188 has emails which
24 are redacted, whereas Government's 29 does not have any
25 redactions of the emails. So to make them the same, there