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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 18-CV-80176-BB

4 IRA KLEIMAN,  
5 as the Personal Representative  
6 of the Estate of David Kleiman,  
7 et al.,

West Palm Beach, Florida

8 Plaintiff(s),

March 26, 2019

9 vs.

10 CRAIG WRIGHT,

Defendant(s). Pages 1 - 99

11 HEARING  
12 TRANSCRIBED FROM DIGITAL AUDIO RECORDING  
13 BEFORE THE HONORABLE BRUCE E. REINHART  
14 UNITED STATES MAGISTRATE JUDGE

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1 Thereupon,

2 the following proceedings were held:

3 THE COURT: Good afternoon, everyone.

4 Please be seated.

5 Sorry to be a few minutes late. I was downloading  
6 some of your pleadings and they take a long time.

7 All right. This is case No. 18 80176, Ira Kleiman v.  
8 Craig Wright.



9                   Let me start with counsel's appearances, starting with  
10 counsel for the plaintiff.

11                  MR. FREEDMAN: Good afternoon, your Honor. Devin  
12 Freedman for the plaintiff.

13                  THE COURT: Mr. Freedman, good afternoon.

14                  MS. MCGOVERN: Good afternoon --

15                  THE COURT: Sorry. Is there somebody else from the  
16 plaintiff? Go ahead.

17                  MR. ROCHE: Yes. Kyle Roche, Boies Schiller &  
18 Flexner.

19                  THE COURT: From the defense side.

20                  MS. MCGOVERN: Good afternoon, your Honor. Amanda  
21 McGovern on behalf of Dr. Craig Wright.

22                  THE COURT: Good afternoon, Ms. McGovern.

23                  MS. MARKOE: Good afternoon, your Honor. Zaharah  
24 Markoe on behalf of Dr. Wright.

25                  THE COURT: Ms. Markoe, good afternoon.

1           Before we start, Ms. McGovern -- anyone else from the  
2 defense?

3           MR. KASS: Yes. Zalman Kass, from the Rivero Mestre.

4           THE COURT: Pleased to have you. Thank you.  
5 Anybody else?

6           Before we start, Ms. McGovern, I know you had a health  
7 issue last time. I hope you're better.

8           MS. MCGOVERN: I appreciate that, your Honor, and I am  
9 better.

10          THE COURT: Glad to hear it. Our health is more  
11 important than anything else we do here. So I'm glad to hear  
12 that.

13          So we are here today for a continuation of our  
14 discovery process. I did receive the updated or new joint  
15 discovery memo at docket entry 127, and I have reviewed that,

16 and I did go back as well and review the prior joint discovery  
17 memorandum at docket entry 114.

18 Separately, Judge Bloom just referred me the motion to  
19 strike affirmative defenses. I am not going to rule on that  
20 today. I'm not going to take argument on that today. But I  
21 may have one or two questions at the end that I may ask of you.  
22 But no need to worry. I didn't tell you to be prepared to  
23 argue that so you don't need to be prepared to argue that. I  
24 haven't decided if I need to have argument, but I did receive  
25 it and I will get on it as fast as I can.

1 All right. So I have the joint discovery memo at  
2 docket entry 127. But before we start, if I could turn to the  
3 defense for a second. I just had some -- I think I know the

4 answers to these questions, but I want to make sure because I  
5 think it will help guide me in assessing the issues I have to  
6 assess today.

7 I have read the complaint, second amended complaint.  
8 I have reviewed the answer and amended -- I'm sorry. The  
9 answer and affirmative defenses. So I just want to make sure I  
10 understand from Dr. Wright's perspective, I'm just trying to --  
11 I'm trying to make sure I understand exactly what your defense  
12 is because I want to give discovery that is germane to any  
13 defenses you may have and any claims they may have. But if  
14 you're not fighting about something, I don't want to have a lot  
15 of people spending time and money chasing down an issue that is  
16 not in dispute. So as I said, I think I know the answer to  
17 this, but I am going to ask Ms. McGovern or Ms. Markoe to  
18 respond.

19 Is it Dr. Wright's position that he did or did not  
20 have some collaboration with Mr. Kleiman -- collaboration, not  
21 partnership; so I am going to be very careful -- collaboration  
22 with Mr. Kleiman in the development of Bitcoin?

23 MS. MCGOVERN: It is Dr. Wright's position, your  
24 Honor, that Dave Kleiman assisted in editing the protocol  
25 related to Bitcoin but did not create Bitcoin.

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1 THE COURT: I understand that. That's why I'm very  
2 careful not to use the word partner or anything like that.

3 OK. Just, again, a factual question, so, again, I  
4 just need to know what the answer is. I don't really care one  
5 way or the other. I just want to make sure I'm with you.

6 Is it Dr. Wright's position that he and Craig Wright  
7 did or did not jointly mine Bitcoin and co-own Bitcoin?

8 MS. MCGOVERN: It is Dr. Wright's position  
9 unequivocally that he never mined Bitcoin with Dave Kleiman.

10 THE COURT: OK. So Dr. Wright's position is there are  
11 no co-owned Bitcoin that ever existed.

12 MS. MCGOVERN: That is correct.

13 THE COURT: OK. And it's Dr. Wright's position that  
14 to the extent there is intellectual property associated with  
15 Bitcoin or the Bitcoin protocol, Mr. Kleiman had no legal  
16 rights to that intellectual property, is that correct?

17 MS. MCGOVERN: That is correct.

18 THE COURT: OK. So I thank you. I think that  
19 clarifies some things that were -- I thought that was right,  
20 but I just wanted to make sure.

21 The other question I have is, I have been reading your  
22 pleadings and everything else about this Australian tax  
23 investigation, and it's not really clear to me what was the  
24 Australian tax authority investigating. So if someone could  
25 help me understand what the scope of that is.

1 I understand there is an argument from the plaintiffs'  
2 side that kind of within the, whatever the overall topic was,  
3 within that certain statements and documents may exist that are  
4 relevant, and that's what I'm trying to assess. But it would  
5 help me understand that argument if I could understand a little  
6 better what the grand ATO investigation was.

7 Ms. Markoe.

8 MS. MARKOE: So I will address this to the best of my  
9 ability because it is a massive undertaking and it appears,  
10 based on what I have seen, that the ATO investigations began  
11 sometime in the tax, I think the tax year 2009, 2010, and  
12 essentially appeared to have touched every single company that  
13 Dr. Wright was involved with. And to the extent that any of  
14 those documents refer to W&K or Dave Kleiman, those documents  
15 from those ATO investigations relating to Mr. Kleiman or W&K  
16 are being provided and are being produced.

17                   Further, there was an ATO investigation into Coin  
18 Exchange specifically. Those documents are also being  
19 produced.

20                   THE COURT: OK. Help me out. Coin Exchange was, I  
21 think as I read this, that was what Dr. Wright says was -- I'm  
22 trying to use the right legal terms -- a joint venture maybe in  
23 the generic sense between Dr. Wright and Mr. Kleiman to set up  
24 a Bitcoin exchange.

25                   Is that essentially what Coin Exchange was supposed to

1                   be?

2                   MS. MARKOE: Sort of. From what I can gather, it was  
3 intended to be a company that was going to grow into an  
4 exchange of Bitcoin for various national currencies starting



5 with the Australian dollar.

6 THE COURT: OK.

7 MS. MARKOE: And then expanding out into other  
8 currencies.

9 The intention was that Dave Kleiman would have a  
10 significant amount of shares in that company. Dave Kleiman  
11 died, I believe, shortly after the company was registered. He  
12 accepted a directorship before he died, but that was never  
13 formalized. So there is no paperwork regarding that, that I'm  
14 aware of.

15 Then there was a brief period of time before  
16 Dr. Wright located Dave Kleiman's heirs where Dr. Wright held  
17 Dave Kleiman's shares in trust for those heirs, and then upon  
18 finding the heirs provided those shares and turned those shares  
19 over to Ira Kleiman and Louis Kleiman.

20 THE COURT: OK.

21 MR. FREEDMAN: Your Honor --

22 THE COURT: Hold on one second. I am going to give  
23 you a chance, Mr. Freedman. Just give me a second.

24                   So to the extent when I was looking at Appendix N,  
25                   which was started as part of these materials, there appears to

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1                   be documentation about a transaction between, I believe it is  
2                   W&K and Coin Exchange with the transfer of Bitcoin. Can you  
3                   explain to me what that is or what that was.

4                   MS. MARKOE: So Exhibit N --

5                   THE COURT: I know what Exhibit N was. But within  
6                   Exhibit N there seemed to be documentation about a transfer of  
7                   Bitcoin from something.

8                   MS. MARKOE: So if you're talking about Exhibit N to  
9                   Exhibit 4 of the complaint --

10                  THE COURT: Exhibit N to the affidavit. It is an  
11                  affidavit submitted by Dr. Wright.

12 MS. MARKOE: So the affidavit was in relation to a  
13 lawsuit brought in New South Wales, Australia, against W&K.

14 THE COURT: OK.

15 MS. MARKOE: The only -- Exhibit N is referenced only  
16 at paragraph 27 of that affidavit.

17 THE COURT: So who sued W&K in Australia?

18 MS. MARKOE: I don't want to misspeak. I know that  
19 the --

20 THE COURT: I'm catching you off guard. So if you  
21 don't know off the top of your head --

22 MS. MARKOE: It's Craig Wright R&D.

23 THE COURT: OK.

24 MS. MARKOE: Was the plaintiff in that?

25 THE COURT: OK. So Craig Wright R&D sued W&K in

1 Australia and this affidavit is submitted as part of that  
2 litigation.

3 MS. MARKOE: Correct. And Exhibit N is referred to at  
4 paragraph 27 of that affidavit and simply references the  
5 development of software that W&K worked on, was started in 2009  
6 under a company called Integers Party, Ltd., Integers with an  
7 S.

8 Then Exhibit N itself is a response to the ATO  
9 regarding an audit or proceeding against Integers, with an S,  
10 and referencing a whole bunch of documents that were provided  
11 to the ATO in support of that investigation.

12 THE COURT: OK. So there is a response --

13 MS. MARKOE: That investigation had nothing to do with  
14 W&K. The reference is simply regarding -- our position is that  
15 investigation had nothing to do with W&K. The reference to  
16 Exhibit N was simply to explain that the original source and  
17 software was provided by Integers to W&K and then some of that

18 product is the subject of the complaint.

19 THE COURT: Got it. OK. Thank you.

20 Mr. Freedman, I'll let you respond to anything -- I've  
21 read the complaint so I understand you don't agree with their  
22 version of what this all is, but I will let you explain to me  
23 anything you want to add to that.

24 MR. FREEDMAN: If the court's familiar with the  
25 complaint, then just very quickly, the plaintiffs' theory on

1 the ATO investigation is that we're not exactly sure what they  
2 were exact -- well, the ATO, from what we have, the information  
3 we have, the ATO was investigating R&D credits that had been  
4 issued to Dr. Wright and in defending the R&D credits that he  
5 claimed and received, Craig, Dr. Wright, tried to substantiate

6 the R&D by reference to work he had done with Dave Kleiman and  
7 W&K in Florida. And that's why some of these, a lot of these  
8 documents mention the work that had been done there.

9 The investigations also centered heavily on Bitcoin  
10 and the way that Bitcoin should be characterized, whether it  
11 was a money or a commodity or an asset, and that appears to  
12 have involved Dave Kleiman as well.

13 After the filing of the complaint, the plaintiffs were  
14 contacted by the Australian tax office's criminal  
15 investigations unit.

16 THE COURT: The filing of which complaint?

17 MR. FREEDMAN: This complaint.

18 THE COURT: The complaint in this lawsuit?

19 MR. FREEDMAN: Yes.

20 THE COURT: Not the complaint in South Wales.

21 MR. FREEDMAN: No, this lawsuit.

22 The plaintiffs were contacted by the Australian tax  
23 office in their criminal investigations unit to find out  
24 whether there was information we had that they were looking

25     for. Evidently they are investigating a criminal action.

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1           THE COURT: I understand. OK. I don't need to know  
2 too much about that.

3           MR. FREEDMAN: OK.

4           THE COURT: But basically your understanding is that  
5 the auditor, what everyone wants to call it, the tax  
6 investigation in Australia had something to do with R&D credits  
7 and that Dr. Wright was attempting to substantiate those  
8 credits by reference, at least in part, to work he had done  
9 with Mr. Kleiman here in Florida.

10          MR. FREEDMAN: Correct. Part of the plaintiffs'  
11 theory is that Dave Kleiman died in April of 2013 and despite  
12 the fact that Dr. Wright claims that he died with a fortune of

13 Bitcoin on his drives, Dr. Wright did not reach out to  
14 plaintiffs for almost a full year. Ten months.

15 Just coincidentally, shortly before this the  
16 Australian tax office reached out to Ira Kleiman to verify the  
17 activity of W&K. So as plaintiffs allege in the complaint,  
18 this was an attempt to create an ally in the fight against the  
19 Australian tax office.

20 THE COURT: I understand your theory of the case. I  
21 just wanted to make sure for discovery purposes, this is very  
22 helpful for me to understand a little bit more of the  
23 background. So I thank both parties for that.

24 The last thing before I turn to the specifics of your  
25 requests, the issues in docket entry 127, I don't believe this



1 is an issue that requires my recusal or anything else, but I  
2 just wanted to let the parties know I am familiar with  
3 Mr. Conrad and Mr. Paige from my prior life as a prosecutor.

4 I worked with Mr. Paige when I was prosecuting child  
5 pornography cases and he was working at the sheriff's office.

6 I worked with Mr. Conrad in my private practice,  
7 including up to the time I took the bench. I was involved in a  
8 case where my cocounsel prior to my getting involved in the  
9 case had retained Mr. Conrad as their forensic expert. So I  
10 know Mr. Conrad. It is not going to affect my rulings in the  
11 case. Same with Mr. Paige, not going to affect my rulings in  
12 the case.

13 But if either party thinks there is a basis for any  
14 motion you need to file with Judge Bloom based upon that  
15 disclosure, do what you need to do, but I wanted to make that  
16 disclosure to both parties.

17 I was also looking at this and I realized Mr. Kleiman,  
18 I didn't realize worked at the Palm Beach Sheriff's Office  
19 probably during the period of time I was interacting with them.

20 I will tell you I have absolutely no recollection of ever  
21 meeting Mr. Kleiman. So if there is a case out there that he  
22 worked on and I worked on, it's possible, but I have absolutely  
23 no recollection of ever meeting him.

24 Again, I make that disclosure for whatever purpose the  
25 parties choose to do with it.

1 All right. With that, let me then turn to the joint  
2 discovery memo and, as we usually do, just go through it and  
3 see where we are and hopefully if you have reached on agreement  
4 on some things, you can tell me that.

5 So the first issue appears to be production of  
6 Mr. Kleiman's documents. And, Mr. Freedman, I think your  
7 response was you expected to be making a continuing production

8 as soon as prior to today's hearing. So bring me up to date  
9 where we are in production with what you all colloquially call  
10 "Dave's documents."

11 MR. FREEDMAN: Yes, your Honor. There was continued  
12 production off of -- so previously plaintiffs had been  
13 producing off of keywords that the defendants said W&K, and  
14 there was an initial production off that. But as soon as we  
15 heard the priority was changed to Dave Kleiman, we switched  
16 gears.

17 I can tell you that yesterday evening we produced in  
18 the ballpark of a little over 7,000 pages of documents from  
19 Dave Kleiman. There were -- the combined production was 13,399  
20 because there was some legacy documents that still hit on the  
21 W&K keywords. But once we started turning over, we produced  
22 over 7,000 of Dave Kleiman's, pages of Dave Kleiman's  
23 documents. I think it is around 1200 and change documents of  
24 Dave Kleiman's. And obviously we have a team of seven  
25 reviewers reviewing the documents full time and can expect to

1 continue rolling productions, getting them out.

2 I know that Mr. Roche spent three hours on the phone  
3 yesterday with Mr. Kass working on search terms. So if the  
4 court wants more, I'm sure Mr. Roche can speak to that.

5 THE COURT: Just one question. When you say Dave's  
6 documents, this is documents retrieved from, and I know you've  
7 told me in the past, any number of electronic devices,  
8 computers, phones, hard drives, things like that that you  
9 believe belong to Mr. Kleiman. So this is the production off  
10 of those electronic media?

11 MR. FREEDMAN: His e-mail accounts as well as his  
12 electronic media.

13 There is a slight complicating factor, and I think the

14 parties have come to agreement on it, in that some of these  
15 electronic repositories, as the court knows because of our  
16 objections to turning over the drives, contain both Dave  
17 Kleiman documents and Ira Kleiman documents. So the custodian  
18 was Ira Kleiman because the collection took place from Ira  
19 Kleiman.

20 But I believe the parties have come to an agreement  
21 that any document that was last modified prior to the date of  
22 Dave Kleiman's death would be characterized as a Dave Kleiman  
23 document and priority would be pushed over those.

24 THE COURT: OK. So let me turn to the defense.  
25 Recognizing you don't have everything that you've asked for, do

1 you at least feel like a process is under way that is moving in

2 the right direction and what if anything would you ask me to do  
3 today to help speed things along?

4 MS. MCGOVERN: Your Honor, I have two asks.

5 I was breathing heavily over the microphone.

6 Your Honor, we have two asks and it comes from an  
7 underlying concern. I respect Velvel's representation with  
8 respect to what they are doing in the case, but it is March 26,  
9 2019. Dave died on April 26, 2013. Many years have gone by  
10 and we do not have a robust production from Dave Kleiman to  
11 this date.

12 I can go over with you, but I don't know that it is  
13 going to be very interesting, the buckets of documents we have  
14 received so far.

15 We need, and this is the ask, we need to blow by our  
16 back and forth on the search terms. We have had so many  
17 e-mails back and forth, red-lining Excel spreadsheets trying to  
18 reach agreement on search terms.

19 Let me just get to the request.

20 We would like within ten days all documents that

21 reference Craig Wright, W&K or Bitcoin from Dave's devices and  
22 from Dave's e-mails as a priority production.

23 THE COURT: OK.

24 MS. MCGOVERN: The reason that we ask for this, your  
25 Honor, is because we have a bulk of documents that we have

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1 received which should never have been a priority from Ira,  
2 including junk mail, Craig's List, CoRA Forum, things that are  
3 not helpful. We don't have any relevant documents from Dave's  
4 devices at this stage in the litigation.

5 I ask the court while we continue to work on the  
6 finalization of our search terms, which we will do in good  
7 faith and with as much patience as we need to, but while we do  
8 that we get in ten days all documents relating to David -- I'm

9       sorry, Dr. Craig Wright or Craig Wright, W&K and Bitcoin.

10               THE COURT:   OK.

11               MS. MCGOVERN:  Those three categories.

12               THE COURT:  OK.  I understand that.

13               What is your second ask?

14               MS. MCGOVERN:  The second ask is that we would request  
15       an identification, if that is the right word, or description of  
16       the amount of data on Dave Kleiman's devices, e-mail, which  
17       would be iCloud, and electronic devices, and the amount of data  
18       on Ira's computers or Ira's devices and e-mails separated so  
19       that we understand where this is coming from without having to  
20       look necessarily at the day we have made this request before.  
21       It should be a request.  It is just the amount of data.  The  
22       reason that we ask for that --

23               THE COURT:  Why do you need that?

24               MS. MCGOVERN:  It gives us an idea of how much we're  
25       dealing with.  What is the amount of information that we're



1 going to need to review and get through here.

2 For example, one of our concerns -- we know that  
3 Dr. Wright has massive amounts of data that has to be  
4 processed, reviewed, and search terms run through, and we are  
5 providing the plaintiffs on a daily basis almost with the hit  
6 counts on their changing search terms so they can have an idea  
7 of how to prioritize their review.

8 We also have a lot of reviewers looking at documents.

9 Our concern is I don't know how much we're talking  
10 about. Sometimes I hear 40,000 documents from Dave Kleiman,  
11 sometimes I hear 70,000 documents from Dave Kleiman. And even  
12 though we have the images with our experts, that isn't content  
13 that we are receiving from our experts.

14 THE COURT: But let me ask you. Just knowing that

15 | there's 80 gigabytes on a particular hard drive, how does that  
16 | help you know whether 1 gigabyte of that or 79 gigabytes of  
17 | that is relevant to this lawsuit?

18 | MS. MCGOVERN: It just provides us, your Honor, with  
19 | the universe of information that we're working against.

20 | For example, if we have -- if the amount of documents  
21 | we're talking about are 70,000 documents, OK, we know that the  
22 | search terms that we're going to be running against that is  
23 | against a certain amount of data that we might have to get  
24 | through. I agree, it's not all going to be relevant, but right  
25 | now we feel we are working completely in the dark. We don't

1 | know the amount of Dave's data, we don't know what we should be  
2 | expecting. We haven't been able to prioritize anything. We

3 are already in March.

4           We feel our defense has been severely compromised by  
5 these delays. And I don't mean to be dramatic, but we have a  
6 June 10th discovery deadline. While I know that there has sort  
7 of been some suggestions of continuances and that sort of  
8 thing, our client has absolutely no desire to continue this  
9 case. There are a lot of other things that are affected by  
10 this litigation and are affecting him by this litigation and he  
11 wants to get it over with.

12           So we are trying to move as quickly as we can, but  
13 what we're finding, your Honor, and I'm taking advantage of the  
14 moment to be before you right now to tell you, what we're  
15 finding is we are mired in the minutia with is it going to be X  
16 within Y of Z in terms of a search term, which is why what  
17 we're trying to do is simply get the relevant data from Dave,  
18 which is not going to be privileged, it is going to help us get  
19 a handle on the defense in this case and start taking  
20 depositions. Again, we're not going to wait until that's over  
21 with to start taking depositions. But that's our ask.

22 THE COURT: OK.

23 MS. MCGOVERN: The first one is -- OK. Thank you,  
24 your Honor.

25 THE COURT: Thank you.

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1 Let me turn to Mr. Freedman and you can respond to  
2 those in whatever order you would like to.

3 MR. FREEDMAN: Sure, your Honor. If I may in the  
4 reverse.

5 THE COURT: Sure.

6 MR. FREEDMAN: So I'm not sure why -- let me say this.  
7 The search terms that the plaintiff has been handing over show  
8 that the universe of documents is somewhere around a million  
9 documents collected. I think that's the entire universe. I'm

10 not sure. It seems to me that's about where Dr. Wright's  
11 entire universe is too. Maybe a little more. Maybe 1.2, 1.3.

12 As part of the hit reports that we've been turning  
13 over to the defendant, it shows the universe of documents  
14 searched, and those searched reports were broken out by the  
15 Dave Kleiman devices, Ira's e-mails and Dave's e-mails. So the  
16 defendant does have the total data amounts, I believe, of Dave  
17 Kleiman's devices, Ira Kleiman's e-mails and Dave Kleiman's  
18 e-mails, which is I think what they are asking for.

19 What we don't have is the exact division between when  
20 you look at Dave Kleiman's devices, what of that is Ira's and  
21 what of that is Dave's. That's because we have just started  
22 coming to agreement on how to do that because they were  
23 commingled.

24 So I'm sure we could run a report that basically says  
25 all data as before X date and probably hand that over. I don't

1 think that would be too difficult. I would be happy to.

2 Separately, and we will discuss this later, I guess,  
3 but plaintiff has a similar concern that they are in the dark.  
4 So I understand Ms. McGovern's concern and I am happy to work  
5 with her and try to get her that information. To the extent --  
6 I just don't want to promise something the vendor can't  
7 deliver. But I think I can deliver all this and I don't have a  
8 problem giving it.

9 THE COURT: OK. So as to the second ask, I hear you.

10 Why don't you talk to me about the first, the request  
11 to have some defined universe of documents within a ten-day  
12 period.

13 MR. FREEDMAN: Yes. So the problem is, your Honor,  
14 there are literally hundreds of thousands of documents from  
15 Dave Kleiman. Those documents have to be reviewed for  
16 privilege and they have -- somebody has to look at them before

17 they go out the door. Like I said, we have seven people  
18 reviewing it, but that is why search terms were invented,  
19 right, so we don't have to review hundreds of thousands of  
20 documents and just hand them over to the defendant. I can't  
21 hand over documents just like that.

22 THE COURT: Well, OK.

23 MS. MCGOVERN: May I respond?

24 THE COURT: Yes. Ms. McGovern, I am going to give you  
25 the last thought on that.

1 MS. MCGOVERN: Thank you, your Honor.

2 When we first met with your Honor on discovery in this  
3 case, we talked about Dave Kleiman, W&K, and that's what we're  
4 asking for now.

5 I understand that they're looking at a lot of data, as  
6 are we, but we have produced 22,000 pages plus of relevant  
7 documents in the case, following the robust production that  
8 your Honor asked us to follow. We have incorporated the  
9 provision which allows us to -- an inadvertent production.  
10 What privilege Dave Kleiman would have, I don't know. But at  
11 this juncture we cannot go back to the table, your Honor, and  
12 start debating search terms and wait for documents that go to  
13 the core essence of this case, namely, Dave Kleiman, the  
14 company that he formed in the United States and his claims  
15 against Craig Wright.

16 So at this point in March against five years, I guess  
17 it is 2013, this case was filed in 2018, it's 2019, and we  
18 don't have any relevant documents from the deceased.

19 THE COURT: But when did Judge Bloom deny the motion  
20 to dismiss and actually reopen this litigation? Because that's  
21 really the operative date for discovery purposes. When was the  
22 motion to dismiss denied?



23 MR. FREEDMAN: I believe in January, your Honor --  
24 MS. MCGOVERN: Yes.  
25 MR. FREEDMAN: -- the motion for a stay was lifted.

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1 MS. MCGOVERN: Yes, it was. Yes, it was.

2 THE COURT: So it's been 60 days. It hasn't been five  
3 years. Let's use the right time frame when you talk about who  
4 is making a robust production and who is making a good faith  
5 effort to produce.

6 MS. MCGOVERN: I didn't mean five years since the --  
7 but we already have concerns, your Honor, about not having the  
8 documents that should have been preserved in the first  
9 instance. So we have that concern and now we have the concern  
10 that we are not getting the relevant documents.

11                   That is our ask, your Honor.

12                   THE COURT: Look, I understand. As I see it, here's  
13 how I see it. Right. There's different phases to a document  
14 production like this, and both sides have massive amounts of  
15 data to go through. This is all an issue you can feel free to  
16 take up with Judge Bloom separately from me as to the discovery  
17 cutoff or, as I mentioned before you can consent the case and  
18 then talk to me about extensions. I understand that is up to  
19 you, and that's fine.

20                   I see there are a couple of phases. There is the  
21 identification of what we are going to search. Collection.  
22 Let's find everything, which I think you have all done and done  
23 relatively quickly.

24                   There's searching. There's coming up with terms and  
25 doing the searches which produces now this universe which gets

1 us to the review stage, and it sounds to me like that's kind of  
2 where we are on both sides, is in different, maybe different  
3 phases of but in the review phase.

4 Then after that there is the production, right? Once  
5 it's reviewed and determined to be producible, it's produced.

6 What I mentioned before is I think the parties should  
7 be on a schedule where -- if you've got seven people on both  
8 sides reviewing this stuff, there is a mass of information  
9 every day, that gets over the hurdle. That gets out of the  
10 review box and into the production box. Maybe it's every 24  
11 hours, maybe it's every 48 hours, maybe it's every 72 hours. I  
12 don't know your vendors. You should work it out amongst  
13 yourselves. But you all should come up with a schedule where  
14 every day or two or three you get whatever is coming out of  
15 that process so we don't sit and wait and now you get 20,000  
16 documents the end of next week when you could have gotten 3,000  
17 tomorrow and 3,000 on Thursday and 3,000 on Friday, etc.

18           That seems to me in a case like this where you have a  
19 tight time frame and you've got teams reviewing, the parties  
20 ought to agree a production schedule that's kind of -- it's a  
21 rolling production but it's a timed rolling production where we  
22 agree that whatever we review by this point is getting turned  
23 over the next day. So I would strongly, strongly encourage the  
24 parties to do that.

25           To the extent that the request is to try to identify

1 quickly things that are not privileged, it seems to me that  
2 within the universe of what's been identified there are maybe  
3 secondary searches that can be done -- again, on both sides --  
4 to exclude documents that would be privileged. Now, there are  
5 certain third parties who are going to destroy any argument of

6 privilege, third parties on the e-mail between you and your  
7 lawyer, everybody knows that destroys the privilege. Or that  
8 sort of thing.

9 Again, I can't micromanage that, but I would urge both  
10 sides to prioritize.

11 That sounds to me, Mr. Freedman, what they are asking  
12 to you do at this point, is within the universe of what you are  
13 reviewing perhaps try to identify a way to cull out things that  
14 everybody would agree more likely than not are not privileged  
15 and if there's a privileged thing in there, we have the 502  
16 provision in place.

17 So I am not going to order a specific deadline to get  
18 that done. I am going to order the parties to figure out some  
19 sort of a robust rolling production schedule along the lines of  
20 what I just talked about.

21 It sounds to me like there is an ongoing dialogue. If  
22 Mr. Roche and Mr. Kass were three hours on the phone yesterday  
23 talking this through, it seems to me the parties are in good  
24 faith in both directions trying to get this done. So just

25       continue with those efforts.

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1               I am not going to order a specific deadline to  
2 complete the production, but I am going to order the parties to  
3 begin a more robust rolling production. I think that is all I  
4 can do at this point. Because I can say do it within ten days  
5 and what I am going to hear is then you have to hire 50 other  
6 people, we have to get them up to speed, we have to get them  
7 cleared, it just can't be done.

8               So I have to trust both these law firms. Both of your  
9 law firms are much more experienced at these large document  
10 productions than I am. I just have to trust -- I know  
11 Ms. Markoe has a lot of experience doing this. I know  
12 Mr. Freedman's firm has a lot of experience doing it.

13           From where I sit and what I see, I see good faith  
14 efforts on both sides. But I don't see it at the level that  
15 you see it at. So I think that's all I can do.

16           Ms. McGovern, I am not comfortable ordering anything  
17 done to its finality within ten days, but we can set another  
18 discovery status conference at the close of this one and if  
19 that keeps everybody's feet to the fire, we will have another  
20 discovery status conference and we can talk about where we are.  
21 But it seems to me if they just gave you 7,000, that's a good  
22 start.

23           But enough for me. I've said what I said.

24           MS. MCGOVERN: Your Honor, can I just make one  
25 request --

1 THE COURT: Sure.

2 MS. MCGOVERN: -- in response to that?

3 THE COURT: I haven't dealt with the second issue. Go  
4 ahead.

5 MS. MCGOVERN: Yes, I guess it is a request.

6 THE COURT: Sure.

7 MS. MCGOVERN: I completely understand what you just  
8 said, and I agree. In light of that or within that, we would  
9 like, however, that these weekly rolling productions prioritize  
10 while we are agreeing on search terms, which has taken a lot --  
11 we don't have an agreement on search terms so we don't have hit  
12 counts that we can say, please, run these search terms first  
13 and produce this first. We are not able to prioritize, which  
14 is what they're doing with our documents.

15 THE COURT: OK.

16 MS. MCGOVERN: What I would request, your Honor, is  
17 that the prioritization starts with Craig Wright, move to W&K,  
18 and then move to Bitcoin so that we're not receiving Google



19 Ads, Craig's List ads, CoRA Forum reviews. So that the next  
20 production we get on Friday is going to be a subset of the  
21 million documents of documents that are actually relevant to  
22 their claims.

23 THE COURT: All right. Mr. Freedman, any problem  
24 prioritizing it that way?

25 MR. FREEDMAN: We already prioritized W&K. Mr. Roche

1 can speak to what was agreed to on the phone yesterday. But I  
2 have no problem with that in theory, no.

3 MS. MCGOVERN: Thank you, your Honor.

4 THE COURT: I think, look, it sounds to me like that  
5 is the discussion you all need to keep having -- what's your  
6 biggest priority. Once you have all got it on your platforms,

7 as I understand it, with these vendors, maybe you can't agree  
8 on all search terms. But clearly there have to be a subset of  
9 the search terms that have been agreeable to both sides. Start  
10 running those. Continue the dialogue and continue -- that's  
11 all I can tell you to do. Have a dialogue and continue to do  
12 the prioritization.

13 I appreciate that, Mr. Freedman.

14 Ms. McGovern, I think he agreed to what you asked for.  
15 So we are good there.

16 In terms of the data, Mr. Freedman, if it is not  
17 unduly burdensome for you to produce the gigabyte count or  
18 whatever everyone wants to call it, I would ask you to do that.  
19 If you have a view that it is -- I would order to you do that.  
20 If you have a reason to believe that it is unduly burdensome or  
21 your vendor says that they can't do it or it is going to divert  
22 you away from doing the other important things that I think  
23 Ms. McGovern would probably agree are probably more important  
24 than that, I will defer to you to talk amongst yourselves. I  
25 think you have agreed to provide it anyway so I would encourage

1       you to do that or order you to do that.

2               So I think we have dealt with that issue more or less.

3       That was issue one.

4               Issue two is Mr. Paige and Mr. Conrad. So just help  
5       me out procedurally there. Have they been served with any  
6       process? Have they been served with deposition subpoenas?

7               MS. MCGOVERN: Yes, they have, your Honor. Their  
8       counsel is actually trying to coordinate their depositions with  
9       us, but plaintiffs are objecting to going forward with them.

10              THE COURT: Let me talk that through. One step at a  
11       time.

12              So neither Mr. Paige nor Mr. Conrad is objecting under  
13       Rule 45 to the subpoena, is that correct?

14 MS. MCGOVERN: Not to my knowledge, your Honor.

15 THE COURT: All right. Mr. Freedman, I have just  
16 dealt with this issue in another case so it is fresh in my  
17 mind. The case law says that the opposing party under Rule  
18 26 -- not under Rule 45 but under Rule 26 -- can move for a  
19 protective order. So it's not really an objection; it is a  
20 motion for protective order. Same effect, different words.

21 Is that what you are requesting in this case? And if  
22 it is, help me out with what it is you are objecting to or why  
23 you seek protection and what you seek protection from.

24 MR. FREEDMAN: So, your Honor, I'm hesitant to call it  
25 a motion for protective order. The defendant reached out to

1 find a mutually convenient time to depose these two witnesses

2 and what plaintiff said was, well, technically the dates we're  
3 free. You know, a person is only allowed to be deposed once in  
4 the case without leave of court. And for the convenience of  
5 the witness it is nice that both sides can do the deposition at  
6 once.

7 Both Mr. Paige and Mr. Conrad were served with  
8 subpoenas for production of documents by the plaintiff and I  
9 believe by the defendant and their response date has not every  
10 come yet. I think it is in early April.

11 Both parties have been served with requests for  
12 production that touch on Mr. Paige and Mr. Conrad because there  
13 was discussion between the defendant and Mr. Paige after the  
14 defendant reached out to the Kleimans to say that there was  
15 this Bitcoin and there was this intellectual property and, in  
16 fact, those e-mails are cited by the plaintiffs in the second  
17 amended complaint in reliance.

18 So those search terms have not returned the documents  
19 yet. So plaintiffs' position is if you go depose them now,

20 yes, the defendant only needs to ask them about what happened  
21 to Dave Kleiman's devices and that doesn't really require  
22 document production. But the plaintiffs have to get into what  
23 was the substance of your relationship with the defendant. We  
24 received e-mails from the defendant showing there was a  
25 relationship between Mr. Paige and Mr. Conrad and the defendant

1 going as far back as 2009.

2 THE COURT: Let me just catch up for a second. I will  
3 make this easy if you want.

4 If your request is you want to depose them separately  
5 from how they want to depose them, I will give you leave to  
6 take their deposition a second time. So if you want to wait to  
7 get your documents and take Mr. Paige and Mr. Conrad's

8 deposition once you get your documents and they want to take  
9 their depositions now, you have a short discovery in the case.  
10 That is what I will give you both.

11 I can take judicial notice, Mr. Paige and Mr. Conrad  
12 are local. They are here in West Palm Beach. If that's how it  
13 has to work out in this case, I'm happy to do that. So that  
14 alleviates everyone's concerns.

15 I didn't mean to cut you off, Mr. Freedman.

16 MR. FREEDMAN: No, it's fine.

17 THE COURT: If I was going to give you what you  
18 wanted, I figured I'd cut you off.

19 MR. FREEDMAN: Absolutely, and obviously the court can  
20 cut me off whenever it wants.

21 I did have one corollary to this, which is, and I know  
22 this is not yet in the court's hands in terms of the discovery  
23 cutoff in June. So this does alleviate the issue of deposing  
24 the parties. However, the discovery cutoff is June 10th.  
25 There are over a million documents. I think we have received

1 under a hundred thousand produced. I can't swear to that.  
2 Maybe Ms. Markoe can testify to represent how many have been  
3 produced.

4 The search terms in our second request for production  
5 haven't even been agreed to yet. We are still discussing  
6 those. I know we have meet and confers set up to discuss  
7 these. We haven't gotten to depose Dr. Wright yet, which we  
8 hope to, and the deposition is set for April 4th.

9 The point is there's a lot to be done. On our initial  
10 call before Judge Bloom preempted all of us and entered a  
11 scheduling order, the defendant on our meet and confer asked  
12 for 18 months for discovery. We still have to ask this court  
13 for letters rogatory to go to the United Kingdom, but the  
14 English courts require very specific requests for documents.



15 So we can't get those letters rogatory filed until we get the  
16 production to know what we have to look for.

17 So I guess this is the long way of saying the  
18 plaintiff is going to be moving to continue the trial date and  
19 the discovery deadline.

20 THE COURT: All I can tell you in that regard is that  
21 that's Judge Bloom, not me. But I will tell both parties if  
22 Judge Bloom asks me, I will tell her that I have been doing  
23 everything I can, the parties have been doing everything they  
24 can to move the case forward, but both sides recognize -- this  
25 is a tight discovery schedule for a case this big. If Judge

1 Bloom asks me -- she doesn't always ask me; sometimes she  
2 does -- I will truthfully tell her that you all are trying

3 really hard to meet her discovery cutoff.

4 I know Dr. Wright doesn't want to continue it, so I am  
5 not going to prejudice Dr. Wright by saying go ahead and do it.  
6 But I will tell Judge Bloom the truth of the matter, which is  
7 the parties have not been sitting on their hands. I know that  
8 much.

9 MR. FREEDMAN: Thank you.

10 THE COURT: But to the extent what you are talking  
11 about is you are going to move to continue, unless you consent,  
12 I have no authority over that.

13 All right. So I have the numbers off from the defense  
14 perspective. Have we resolved the issues with Mr. Paige and  
15 Mr. Conrad?

16 MS. MCGOVERN: Yes, we have, your Honor. Thank you.

17 THE COURT: And Mr. Freedman as well?

18 MR. FREEDMAN: Yes, your Honor.

19 THE COURT: OK. Great. I like that. Excellent.

20 By the way, I am going to take a brief aside. So I  
21 went to an E-discovery conference earlier this year in Fort

22     Lauderdale for magistrate judges and they had someone there who  
23     spoke, who was working on the Qualcomm extensional litigation  
24     in San Diego, and they talked about how Qualcomm, the initial  
25     document preservation that Qualcomm did in that case was over 2

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1     billion documents. After they ran computer assisted and  
2     everything else they got it down to, I think, 110,000. They  
3     did a manual review of 110,000 documents. They turned over  
4     just under 20,000. And at deposition and at trial the parties  
5     used 80.

6             So be careful -- just be mindful of what you are  
7     asking for. You are making a lot of noise, not a lot of  
8     signal. A lot of noise. Again, I will give you the discovery  
9     that the law entitles you to have.

10 All right. So let me move to the next issue. Second  
11 request for production -- I doubled back on myself. I went to  
12 the old document.

13 OK. I am now on page 5 of the docket entry 127.  
14 Objection to revised interrogatories 5 and 6.

15 So 5 and 6 are the request to identify anybody else  
16 who was involved as part of the Satoshi Nakamoto project. Is  
17 that correct, Mr. Freedman?

18 MR. FREEDMAN: Plaintiffs would call it a partnership;  
19 the defendant would call it a collaboration. But yes, your  
20 Honor.

21 THE COURT: OK. I'm trying to avoid terms that cause  
22 everyone's heads to explode.

23 OK. So what is the objection from the defense side?  
24 I've read yours. Anything else you want to add?

25 MS. MCGOVERN: I'm sorry. I was just looking at it.

1 This is with respect to the e-mails and everybody who  
2 controlled the e-mails.

3 THE COURT: Hold on. Let me just doublecheck that I'm  
4 looking at the same documentation you're looking at.

5 MR. FREEDMAN: If I can help, it's 127-3, at page 4.

6 THE COURT: Thank you.

7 Actually, let me go to the plaintiff. What's your  
8 theory of relevance? Why is this information relevant to the  
9 claims in this case?

10 MR. FREEDMAN: Sure. Your Honor, the plaintiffs have  
11 alleged that in circa 2008 the defendant and Dave Kleiman  
12 partnered, and I understand that is a disputed term, to create  
13 Bitcoin, then mine Bitcoin, and then create Blockchain-based  
14 intellectual property.

15 The name of that partnership, the plaintiffs have

16 | alleged, is the -- it was Satoshi Nakamoto. That is the second  
17 | amended complaint, paragraph 197.

18 |         The e-mails -- these are three e-mail addresses that  
19 | were known to be controlled by Satoshi Nakamoto or, as the  
20 | plaintiffs would say, by the Satoshi Nakamoto partnership. The  
21 | individuals who had access to that -- so there are two reasons  
22 | why this is relevant. The first is, plaintiff has the burden  
23 | to prove that the association of the Satoshi Nakamoto  
24 | partnership was an association of co-owners of the business for  
25 | profit.

1 |         To the extent the answer to this interrogatory is no  
2 | one had access besides Dave Kleiman and Craig Wright, it helps  
3 | prove plaintiffs' point that there was an association of owners

4 and the extent of that association.

5 To the extent the answer is five other people also had  
6 access, plaintiffs need access to those individuals as relevant  
7 witnesses and to know that they exist so it can defend its case  
8 and don't get surprised at trial saying, you think it is  
9 association of co-owners, well, there was 18 people with access  
10 to Satoshi's account so this wasn't an association of co-owners  
11 for profit.

12 The same goes for No. 6. They are kind of  
13 interrelated. One just says that the partners -- basically,  
14 this is the partnership's e-mail accounts, who had access to  
15 the partnership's e-mail accounts. No. 6 says: Who assisted  
16 the partnership in getting off the ground; who drafted the  
17 white paper, which was literally the creation document of this  
18 empire Dave Kleiman and Craig Wright created; who programmed  
19 the computer program, which has created a market of trillions  
20 of dollars that these people created together; and who had  
21 access to the computers and servers that were used to mine the  
22 Bitcoins of the partnership.

23                   Again, I guess boiling it down to its essence is, one,  
24                   we need to know the information to see who was involved in this  
25                   association of co-owners for profit and, second, we need to

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1                   identify relevant witnesses.

2                   THE COURT: OK. Thank you.

3                   Ms. McGovern or Ms. Markoe.

4                   MS. MCGOVERN: Our position, your Honor, is that the  
5                   use of an e-mail address does not establish a business for  
6                   profit. This is information that goes back many years. It  
7                   doesn't relate to the claim against Dr. Wright, and there is  
8                   nothing -- there has been no evidence in the case that suggests  
9                   that the use of an e-mail address or, frankly, even the use of  
10                  a pseudonym could somehow be the basis for a partnership.



11               So instead, it's very much a fishing expedition which  
12 essentially seeks to find absolutely any indicia of Dave and  
13 Craig speaking to each other, working together in any way,  
14 shape or form without pointing to any of the documents that  
15 would otherwise form a corporation or form a partnership,  
16 including a memorandum of understanding or share certificates  
17 or otherwise.

18               We think this is a fishing expedition, your Honor, but  
19 I will say this. They are going to London. They are going to  
20 be deposing Dr. Wright on April 4th. Part of the objection to  
21 this type of information, I think, your Honor, has been  
22 addressed by your Honor when you suggested the limited  
23 deposition. That hopefully will shut the door and not open  
24 them on relevant information so that we actually can litigate  
25 the case at hand.

1           So our position is that it isn't relevant, but we  
2     understand, and in fact it is a deposition topic that they have  
3     identified and that has the imprimatur of your Honor that they  
4     are probably going to be asking on April 4th.

5           To put this in the form of an interrogatory  
6     essentially requires Dr. Wright to go back in time, because  
7     it's asking for finite information, and sort of piece together  
8     everything that he's done in his life in this space, as it  
9     were, in this cryptocurrency space, and we think it is  
10    inappropriate.

11          THE COURT: OK. I am going to overrule the objection.  
12    I do think it is relevant. I do think it is information that  
13    is germane to the case, and I think -- I encourage them to use  
14    the deposition of Dr. Wright to limit the scope of the case.  
15    But I think they don't have to wait that long if they don't  
16    want to. I think this is a targeted interrogatory. It  
17    shouldn't be that complicated to answer.

18           If Dr. Wright has to prepare the answer to the  
19 question to the interrogatory and has to prepare the answer to  
20 the question on April 4th at his deposition, it's not an undue  
21 burden to ask him to write it down in response to the  
22 interrogatory. So Mr. Freedman can spend his seven hours on  
23 April 4th of time covering other topics. So I will overrule  
24 the objection to interrogatories 5 and 6.

25           The next one is --

1           MR. FREEDMAN: Your Honor, if I may, can we just have  
2 a date by when --

3           THE COURT: Ms. McGovern, what is a reasonable date to  
4 respond? Again, I still think the most important thing you

5       should be doing is your production of documents. But I assume  
6       Dr. Wright is going to have to do some research.

7               I assume, Mr. Freedman, you'd like that at least in  
8       advance of the deposition.

9               MR. FREEDMAN: It would help, your Honor.

10              THE COURT: Ms. McGovern, today is March --

11              MS. MCGOVERN: Is April 2nd OK?

12              THE COURT: Mr. Freedman, April 2nd?

13              MR. FREEDMAN: Yes.

14              THE COURT: April 2nd it is.

15              Thank you, Ms. McGovern.

16              OK. So we are now on page 6, topic B.

17              Mr. Freedman, can you -- let me see.

18              Ms. McGovern, I read your answer. Maybe there was a  
19       word missing. I apologize. I tried to read that paragraph and  
20       something was missing.

21              MS. MARKOE: That was my mistake, your Honor. It  
22       should say Dr. Wright does not maintain e-mail messages as long  
23       as the relevant time period.

24 THE COURT: OK. No problem. You have other things to  
25 do. I won't beat you up over that one.

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1 OK.

2 MS. MARKOE: I will fall on that sword.

3 THE COURT: That's fine. If that is the worst thing  
4 that I have to deal with in this case, then everybody is doing  
5 a really good job.

6 MS. MARKOE: Thank you, your Honor.

7 THE COURT: No problem, Ms. Markoe.

8 Mr. Freedman, why don't you explain to me what the  
9 issue is here and your theory again as to why you should get  
10 what you want.

11 MR. FREEDMAN: Yes, your Honor. This goes back to

12 what Ms. McGovern was saying about kind of feeling around in  
13 the dark. Plaintiffs have two basic asks here. One is give us  
14 a list, please, of all the e-mail addresses that were relevant.  
15 We don't have one. We have put together one in footnote 5, but  
16 the defendant had agreed to disclose as part of the ESI  
17 stipulation all sources of relevant ESI and we still don't have  
18 a list of what those e-mail addresses are.

19 So one is, please just give us a list of those e-mail  
20 addresses.

21 The second request --

22 THE COURT: Hold on. It seems to me that is a  
23 two-part -- if I can just make sure I understand -- like a  
24 two-part ask. One is tell us whether everything we have listed  
25 in footnote 5 here is in fact an e-mail that Dr. Wright used

1 during the relevant time period, and then, B, other e-mails  
2 that Dr. Wright used during the relevant time period.

3 Do I understand you correctly.

4 MR. FREEDMAN: I didn't intend it to be that way, but  
5 that makes sense, your Honor. I was just trying to demonstrate  
6 to the court that we have identified our own e-mails that we  
7 know are relevant. So obviously they exist and the question is  
8 why haven't they been disclosed.

9 But yes, I understand the court's --

10 THE COURT: No, it is not my question. I'm just  
11 trying to understand. Is that in fact what you are asking, you  
12 want them to confirm whether some or all of these 18 were  
13 e-mails Dr. Wright used during the relevant period and then you  
14 want them to identify any other e-mails that Dr. Wright used  
15 during the relevant period?

16 MR. FREEDMAN: Yes.

17 THE COURT: When I say e-mails, I mean communication  
18 platforms.

19 MR. FREEDMAN: Right.

20 THE COURT: In other words, What's App or whether it  
21 was Signal or whether it was something else.

22 MR. FREEDMAN: And this Bitmessage, your Honor, which  
23 I had not heard of before the case, is an encrypted  
24 communications protocol and this actually, if I may, this is  
25 Exhibit D that we didn't want to file because the defendant has

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1 designated it confidential.

2 May I?

3 THE COURT: Yes. Absolutely. Yes, of course.

4 Bitmessage. You learn something new every day. I  
5 thought I was pretty good with Signal, but I've been lapped.

6 Just generically, Mr. Freedman -- this is marked



7 confidential -- what is it you handed me?

8 MR. FREEDMAN: I have handed you an exhibit that was  
9 produced by the defendant and it appears to be the inbox of a  
10 Bitmessage account.

11 THE COURT: OK.

12 MR. FREEDMAN: I am not going to read the content of  
13 the message underneath, even though it is very difficult to  
14 read, because, again, it's been designated confidential.

15 If the court just looks at the to/froms -- does the  
16 defendant have any objection to me discussing the to/froms on  
17 the record?

18 MS. MCGOVERN: No.

19 MR. FREEDMAN: So they all go from Craig Wright to  
20 Dave Kleiman, and then if the court looks at the topics -- may  
21 I just --

22 THE COURT: I can see what they are.

23 MR. FREEDMAN: These topics relate to issues that some  
24 of the intellectual property that plaintiffs have claimed are  
25 owned by them, some of the trusts that the plaintiffs have

1 alleged hold the Bitcoin that they are entitled to, and so  
2 there was a lot of communications. And if the court flips  
3 through, you can see there are just many, many. This was not  
4 disclosed by the defendant as part of its ESI protocol. We  
5 don't know what it is. We don't know if they've collected it.  
6 It's just --

7 THE COURT: OK. Let me, first of all, kudos to the  
8 defense for turning it over. Let's start with that. They  
9 didn't know about it, but they turned it over anyway. So let's  
10 give credit where credit is due.

11 So the question is you just want to drill down harder  
12 on this and get a little more detail about exactly what

13 | communications were going on through this Bitmessage protocol.

14 |           MR. FREEDMAN: Your Honor, this was a paper production  
15 | of documents. I believe, my understanding is Dr. Wright had  
16 | this printed out in like a binder in his house, but we'd  
17 | request actual collection of the underlying ESI.

18 |           THE COURT: OK. First of all, let me turn to either  
19 | Ms. Markoe or Ms. McGovern.

20 |           Does the underlying ESI still exist? Because I  
21 | thought you said to me they didn't keep it back very far.

22 |           MS. MARKOE: Right. That's exactly why it wasn't  
23 | disclosed, your Honor.

24 |           THE COURT: Put your microphone down.

25 |           MS. MARKOE: That is exactly why it wasn't disclosed,

1 the e-mail addresses and the like. Those e-mail addresses, as  
2 far as I'm aware, either no longer exist or no longer contain  
3 relevant information. Therefore, what we do have and what they  
4 are receiving, either paper copies of messages, PDFs of  
5 messages.

6 We also have collected a large amount of PSTs from  
7 Dr. Wright's electronic devices, and those PST's contain  
8 e-mails and those e-mails, to the extent they are relevant, are  
9 being produced.

10 THE COURT: OK. All right. So, Mr. Freedman, what do  
11 you say? I mean, if it doesn't exist in electronic format,  
12 they can't give it to you in electronic format. What I just  
13 heard Ms. Markoe say, to the extent it exists in hard copy  
14 format they are going to provide that. Certainly you can probe  
15 this issue with Dr. Wright when he is deposed.

16 MR. FREEDMAN: Your Honor, it's just, we're trying --  
17 I guess the ask here, and this relates to I guess the next  
18 issue, we're just trying to wrap our hands around the universe  
19 of collected documents. What was collected, what e-mails were

20 collected.

21 There are PST files. That is just an archive file.

22 PSTs of what e-mail addresses? We're trying to work with the

23 defendants so we can understand the universe and then narrow

24 our production down like the court asked. But we're not

25 getting any information and -- that's an overstatement. We're

1 not getting enough information flowing this way in terms of

2 what's been collected, how much of that has been collected. We

3 just get barred. You know, we can't tell you that, we're not

4 going to tell you that. Then we have to raise it here and they

5 get ordered to tell it to us. Hit reports, give us the hit

6 reports. No. And then we come to the court and the court says

7 hand over the reports.

8           We're trying to work, as the court told us to, to  
9   narrow discovery. But that's tough when we don't have somebody  
10 basically -- so we need, you know, what are the e-mail  
11 accounts. So I guess verify -- in 5, the e-mail accounts. You  
12 collected PSTs. What are those e-mail accounts. Just gives  
13 the details on these e-mail accounts. Which ones exist, where  
14 they are collected from. Do any e-mails exist electronically  
15 anymore. We don't know any of this information.

16           THE COURT: Ms. McGovern or Ms. Markoe.

17           MS. MARKOE: Your Honor, if I may.

18           THE COURT: Yeah. Sure.

19           MS. MARKOE: I would dispute the accuracy of  
20 Mr. Freedman's statements. First of all, I cannot tell you  
21 what the PST e-mail -- what e-mail accounts the PSTs go to  
22 without actually looking at the e-mails in those PSTs, and  
23 that's what we're doing and we're producing them.

24           Further, I would like to hand up to your Honor the  
25 disclosure that we did provide to plaintiffs' counsel regarding

1 what has been collected. And further, I would say that every  
2 single search term hit request that they have requested has  
3 been provided to them. Whether or not we think it was ordered  
4 by the court and whether or not we think it is necessary or  
5 relevant, we gave it to them.

6 THE COURT: OK. Let me see what you've got.

7 MS. MARKOE: I will give you a copy. Give me one  
8 second.

9 I would like to point your Honor particularly to items  
10 2 --

11 THE COURT: Hold on one second.

12 MS. MARKOE: Sure. Sorry.

13 THE COURT: You have all seen this before and I  
14 haven't. One second.

15 I've caught up to you now.

16 MS. MARKOE: Item 2 lists all of the electronic  
17 devices that were collected. I believe it's footnote 1  
18 specifies with regard to what's called a NAS device, which is  
19 essentially a miniserver, what has been processed and how it's  
20 been processed, because some of the data on that NAS device is  
21 not proportional to the needs of the case, it would be to  
22 collect all of the information I believe from the work folder  
23 would be 2 terabytes of data and cost an additional \$130,000.  
24 So to suggest that we have not provided information about what  
25 we have collected is just not accurate.

1 If Mr. Freedman would like information about what hard  
2 copy documents we've collected, I'm happy to share that with



3 him. I personally went and collected those materials myself  
4 and did a cursory review of them before doing a more fulsome  
5 review and prioritizing the actual binders that were the first  
6 set of the production to make sure that they got the most  
7 pertinent information as quickly as possible.

8 THE COURT: OK. Thank you.

9 So, Mr. Freedman, what is it you're asking me to  
10 order?

11 MR. FREEDMAN: What I'm hearing for the first time  
12 today, your Honor, is that none of these e-mails exist on a  
13 server anymore. If that's true, I mean, we'll have to deal  
14 with that when the time comes, but I didn't know that. Are  
15 there no -- none of the e-mails that we have listed in the  
16 footnote 5, none of them still exist on a server?

17 THE COURT: Are you asking me or asking them?

18 MR. FREEDMAN: I'm asking for communications from the  
19 defendant. I guess what I am asking is to have the defendant  
20 supplement its ESI production to state clearly, if any e-mails

21 addresses still exist on the server, if so, which ones those  
22 are on the server, and so that we can -- for example, this  
23 document that the defendant has just handed up starts off in 1,  
24 there are no e-mail addresses that are potentially relevant to  
25 the case. I don't even understand what that means. How can

1 that be? That can't be true.

2 THE COURT: I think, Ms. Markoe, do you mean there are  
3 no extant e-mail addresses, that whatever e-mail addresses he's  
4 currently using were opened up after the relevant time period  
5 here and so there are no current e-mail addresses that are  
6 relevant to the case? Is that what that says?

7 MS. MARKOE: There are no current e-mail addresses  
8 that contain any relevant information.

9 THE COURT: OK.

10 MS. MARKOE: I'm not saying that he doesn't use some  
11 of those e-mail addresses still, but what I'm saying is that  
12 the relevant information that would have been from those e-mail  
13 addresses does not exist on those e-mail addresses anymore  
14 except the extent that they might be in the PSTs.

15 THE COURT: OK. I am issuing an opinion.

16 Did it go out yet?

17 We are issuing an opinion today or maybe first thing  
18 tomorrow morning talking about the issue of, the extensional  
19 question of what is an e-mail address or e-mail account. The  
20 e-mail account is just a bunch of files. All an e-mail is is a  
21 digital file just like anything else. So whether that file  
22 resides in a PST file that is connected to an operative e-mail  
23 account, whether it is archived as an OST file, whether it is  
24 saved as a separate MSG or EML file, it's a file.

25 But I'm hearing from both sides -- I'm confused, I

1 have to be honest with you. I see a lot of work on both sides.  
2 I see a lot of communication on both sides. Yet what I hear  
3 both sides saying is I don't really know what the other side  
4 has. To me, that is a fairly fundamental discussion that you  
5 don't need me to be here today. If you all are meeting and  
6 conferring for hours at a time, it seems the first question  
7 would be, all right, you just sent us whatever this was, your  
8 disclosures, all these hard drives. You said there's no e-mail  
9 accounts for it. Where did these PST files come from, which of  
10 these many devices did the PST file come off of, and how many  
11 e-mails are in the PST file. Those sorts of questions.

12 I would expect that would be occurring as part of your  
13 continuing meeting and conferring over production here.

14 So if that is really where we are, that both sides  
15 feel like they just don't know what the other side has, please

16 don't make me order you to sit down and talk to each other and  
17 make full disclosure of what you have and what you are looking  
18 at. That seems so obvious to me. That information should be  
19 exchanged.

20 Tell me -- again, I guess I have to ask. What is  
21 everyone asking me to order?

22 MS. MCGOVERN: Your Honor, if I could just respond to  
23 that particular point. We have been talking about that before  
24 the hearing internally.

25 THE COURT: "We" being?

1 MS. MCGOVERN: Internally.

2 THE COURT: OK. Talk to them about it.

3 MS. MCGOVERN: I wish it were a bigger we.

4           I think the fundamental problem is the desire to truly  
5 get to the heart of the matter and drill down on what really  
6 matters. So a lot of the discovery disputes that we find  
7 ourselves spending an inordinate amount of time on, and we do,  
8 and we want to address them because we want to act in good  
9 faith. But at the end of the day it's not that we don't know  
10 what they have. We just want what they have.

11           THE COURT: OK.

12           MS. MCGOVERN: On our side, we do believe and we feel  
13 that there's just sort of a fundamental refusal to accept what  
14 we represent as accurate. Ms. Markoe and I were talking about  
15 that earlier today because -- I don't want to speak for her,  
16 but we have explained this. If there is a further drill down,  
17 at this point there will be access to our client in a  
18 deposition and those questions can be asked, because we have  
19 explained this.

20           I think the other point I would like to raise, and  
21 this is an ask, and that is the manner in which we bring these  
22 discovery disputes to your Honor. They are so helpful, but I

23 think they are too helpful. What I mean by that is that if  
24 you're not around, we are just kind of the gerbil on the wheel.  
25 I think what we need to do in order to make this more

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1 efficient, because Judge Bloom may not move this date and we  
2 all need to prosecute and defend our claims. So what our ask  
3 is is that the procedure that we use, the protocol that we use  
4 before we get your incredibly valuable time, is that we truly  
5 sit down -- not at 5,000 meet and confers, but just on one. It  
6 is the one before we spend time preparing this joint submission  
7 and giving it to your Honor. So that by the time we get here,  
8 we haven't received a last-minute production or we haven't --  
9 we had a whole section on interrogatory responses. We got the  
10 amended answers on the eve and we took that out. I don't think

11 we need to be doing that.

12 THE COURT: Trust me, this case is a little -- first  
13 of all, people overutilize free resources all the time. So if  
14 it is free to come and see me or keep coming to see me, and I  
15 enjoy your company, but so be it.

16 The idea behind my stated protocol is what you just  
17 said, that the parties should meet and confer and have a robust  
18 meet and confer before you put together this memo and before  
19 you come to me and all that.

20 Now in this case because of the time constraints and  
21 because of the scope of what we're trying to do here, all of us  
22 collectively, myself included, and trying to get our hands  
23 around, I thought it would be helpful to make myself available  
24 to you on these regularly-scheduled dates. That doesn't mean  
25 you have to use them. If you haven't had time to meet and



1 confer and you haven't had time to go through my process and  
2 really have a meaningful report for me to use as an outline and  
3 identify the topics, cancel the hearing. I just put the  
4 hearings out there so they are available if you need them.

5 I didn't want to smack you down for not really  
6 following my procedure because I think you are all acting in  
7 good faith and there are a lot of complicated issues that need  
8 to get decided here. But truly going forward that is what we  
9 should be doing. We shouldn't be having these hearings until  
10 the parties, on both sides, have had a chance to go through the  
11 full process I've asked for.

12 Again, I'm not pointing the finger at either side  
13 here. Trust me. I see both sides are working through a very  
14 difficult situation together. So I don't want to turn this  
15 into finger pointing because it really isn't.

16 Mr. Freedman.

17           MR. FREEDMAN: Yes, your Honor. I just want to try to  
18 get us back to this request.

19           THE COURT: Sure.

20           MR. FREEDMAN: I'm more than happy to try and sit down  
21 again with the defendants and work it out. Before I do so, if  
22 I could direct the court's attention to skip over C for a  
23 section and jump to D.

24           THE COURT: D in the --

25           MR. FREEDMAN: So this is page 8 of 127.

1           THE COURT: OK.

2           MR. FREEDMAN: I mean, the court has read the  
3 submission, but the simple issue -- this is a demonstration of  
4 the issue we're having.

5           The court's aware that the defendant came in and said  
6       there's about 30 trusts or companies that are not related to  
7       Dave Kleiman in this case and we're not producing based on  
8       those documents. So I think very reasonably plaintiff said,  
9       OK, can you give us a list of the trusts and companies so we  
10      can know what they are, we can prepare for the deposition. We  
11      have been met with you can ask our client at deposition, we're  
12      not giving it to you.

13           So I mean, again, if we're supposed to be having open  
14      meet and confers, that is not happening.

15           The second is, there is a dispute -- you know, your  
16      Honor talked about there is identification of the universe of  
17      documents, collection of that document, and then production.  
18      There is a dispute over what has to be collected or not  
19      collected. And that is C, and I want to get back to that in a  
20      minute.

21           But before we get to that, we've simply asked so we  
22      can identify the dispute, please give us a list of all ESI that  
23      you have collected from Australian companies, lawyers and

24 accountants. If the answer is I haven't collected anything  
25 from Australia, tell us. If the answer is you have got from

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1 accountants but not attorneys or attorneys but not accountants  
2 or not companies, just tell us so we can know what we're  
3 dealing with. We don't get an answer.

4 So Ms. McGovern is saying we should have meet and  
5 confers, but we do have meet and confers. They end in impasse,  
6 and that is why this court's hearings have been very helpful.

7 THE COURT: OK. Let's break this apart. Let me go  
8 back to B, which is the e-mail issues.

9 Turn to the defendants. Ms. Markoe and Ms. McGovern,  
10 any problem just identifying whether Dr. Wright has ever used  
11 the e-mails listed in footnote 5?

12           I'm not saying that there is any relevant information  
13 in them at all, but simply confirming yes or no that's an  
14 e-mail address -- you don't have to do it right now -- that's  
15 an e-mail address that Dr. Wright has used at some point in the  
16 past.

17           MS. MCGOVERN: Yes. I think there is nothing wrong  
18 with us conferring whether he's used -- I don't -- he's used  
19 some of those. I don't know about all of them.

20           THE COURT: I understand.

21           Can we agree to do that?

22           MS. MCGOVERN: Sure.

23           THE COURT: Let's start with that. To the extent that  
24 there are other e-mail addresses here, I'm not saying if you  
25 identify them I'm going to order you to produce it or I'm going

1 to order you to collect it or I'm going to order that it's  
2 relevant, but I think it would be reasonable to direct you to  
3 simply provide -- I'll point this in both directions. Both  
4 parties should inform the other side of any e-mail accounts  
5 that they know that either Mr. Kleiman or Dr. Wright used  
6 during the relevant time period. Just so you both know what  
7 you are working with. So I will order both sides to do that.

8 Again, I am clearly not ruling that any of that is  
9 going to be searchable, producible, or otherwise, just an  
10 exchange of information.

11 In terms of -- let me jump ahead, then, to the issue  
12 of the trusts and the D. What is D here?

13 Ms. McGovern, Ms. Markoe, I will give you a chance to  
14 respond. I skipped over C. I know that. I will go back to C  
15 in a second.

16 MS. MARKOE: No. Your Honor, again, Mr. Freedman -- I  
17 hate to do this -- wasn't completely fulsome in his response to

18     you. He makes it sound like we're not giving them any  
19     information about the companies. We have provided thousands of  
20     pages of documents about the various companies.

21             THE COURT: OK.

22             MS. MARKOE: The compilation of the companies and  
23     distinguishing companies from trusts, it is our position that  
24     is work product and that is not something that needs to be  
25     shared with the other side.

1             THE COURT: OK.

2             MS. MARKOE: That was collected in order to respond to  
3     your Honor's questions.

4             They have documents sufficient to ask questions about  
5     the various companies and trusts at the April 4th deposition.

6 They just have to look at them.

7 THE COURT: Mr. Freedman, I think if that is going to  
8 be their position, you can tender an interrogatory between now  
9 and the 4th, but the response is not going to be in time, or I  
10 will order Dr. Wright to answer all those questions at his  
11 deposition. If you want to prove this area with Dr. Wright,  
12 you go at it and I will order him and he has to answer  
13 questions related to this topic. But I don't think I can  
14 rule -- I think they are right that it is their work product.  
15 If they distill down -- that's all I can do.

16 I will give you a last word on that, Mr. Freedman, but  
17 I don't know that I can legally order them to do more than  
18 they're doing. If they want to stand on the work product  
19 privilege, I guess can challenge the privilege.

20 MR. FREEDMAN: No, I understand, your Honor. The  
21 issue is that they're withholding documents based on the fact  
22 that these companies and trusts don't involve Dave Kleiman and  
23 the court's allowed them to withhold documents based on the  
24 mystery companies and trusts that allegedly don't involve Dave



1           THE COURT: If you find out on April 4th that they  
2           have been withholding documents based upon -- for improper  
3           purposes, then we will have a much more complicated proceeding  
4           at that point that won't end well for somebody.

5           MR. FREEDMAN: Your Honor -- we'll ask on April 4th,  
6           your Honor.

7           THE COURT: Ask on April 4th and see where we are.

8           Again, I pointed this out a couple of times to other  
9           people this week. Under Rule 26(g) when a party responds to  
10          discovery and they give an answer, they are representing that  
11          they have done a reasonable and diligent search and that the  
12          answer is true and correct.

13                   So if they're telling you there's nothing -- none of  
14 these trusts have anything to do with Dave Kleiman or W&K, they  
15 are experienced members of the bar, they are very professional  
16 and ethical people, and I have to believe and I have to accept  
17 that representation. If it turns out when you probe their  
18 client that that's incorrect, then we will deal with it as we  
19 have to. But that is all I can do.

20                   Let me turn back to --

21                   MR. FREEDMAN: Your Honor, there is one other issue.  
22 The list of what they have collected in Australia.

23                   THE COURT: In D.

24                   MR. FREEDMAN: And plaintiff is simply asking to  
25 provide a list of Australian companies, attorneys, accountants

1 and employees that Dr. Wright has collected ESI from.

2 THE COURT: Only ESI?

3 MR. FREEDMAN: Well, you know what, instead of having  
4 to come back to you, any Australian people, persons, that  
5 Dr. Wright has collected. Not whether it is relevant, not  
6 whether he has to produce it. We just want to know who have  
7 you collected ESI from in Australia.

8 THE COURT: Ms. McGovern or Ms. Markoe.

9 MS. MARKOE: So, your Honor, what I will tell you  
10 right now is that the ESI that is disclosed and that we have  
11 collected, some of that -- some of those devices were from  
12 Australia. To be honest, I don't know how they went from  
13 Australia to the UK. I'm sure there was some mode of  
14 transportation.

15 Some of those devices were company devices of various  
16 companies. Not all of them were identified as whatever it was.  
17 Some of them were from former employees, as identified in our  
18 disclosure. We're providing the information that we have at  
19 the current time.

20           In terms of collecting documents from attorneys and  
21 accountants in Australia, we have not done that.

22           One of the things that we can say and that I can say,  
23 and this sort of goes back a little bit to C so I'm not trying  
24 to mesh them, but they are sort of meshed a little bit  
25 anyway --

1           THE COURT: Go ahead.

2           MS. MARKOE: -- what I can say is that I did review  
3 some of the privileged material because I was curious as to  
4 why, when we were prioritizing their request for documents from  
5 davekleiman.com, when we ran our searches -- there's 1500  
6 privileged documents -- that makes no sense to me, let me go  
7 look at those.

8           So you know what I did. I did not look at all 1500.  
9 I'm not going to make that representation. But I looked at a  
10 number of them, and what I found was a lot of those were  
11 e-mails to his attorneys where Craig Wright attached documents,  
12 some of which had Dave Kleiman's e-mail address, and that is  
13 why they were coming up on our search term hits. Those  
14 documents -- they are satisfied for now for a privilege review.  
15 But those attachments, we are not going to be asserting the  
16 privilege over those attachments if they are not otherwise  
17 privileged. But the communication with his counsel in  
18 Australia certainly will be. That privilege will be asserted.

19           So one of our concerns is going to Australian  
20 counsel -- and if we have to, we have to -- and getting a whole  
21 bunch of redundant material that has to be reviewed and  
22 produced and then they are going to say, oh, well, there's  
23 500,000 documents. There's 500,000 documents because you asked  
24 us to go and get copies of stuff that we already have what was  
25 sent to the attorneys.

1 MR. FREEDMAN: Your Honor, if I may.

2 THE COURT: Yes.

3 MR. FREEDMAN: I think that's getting into the meat of  
4 C, which I'm happy to get into. But right now --

5 THE COURT: Why don't we move C and D together because  
6 I think they would be merged together.

7 MR. FREEDMAN: In the first instance, in D we're just  
8 asking for the list of what you've done and what you haven't  
9 done. I think the answer to that is we haven't done anything,  
10 which brings us to C.

11 THE COURT: That is not what she said.

12 MR. FREEDMAN: That was a misstatement. We haven't  
13 gone to Australia and gotten the documents.

14 THE COURT: All right. What she said is they asked,  
15 contacted any attorneys or accountants. I think she said they  
16 had contacted other people in Australia, possibly former  
17 employees. She wasn't exactly sure, if I'm remembering right,  
18 wasn't exactly sure where some of these hard drives came from  
19 or devices came from, but they clearly came from somebody in  
20 Australia. So I think -- I think what clearly is your request  
21 is the attorneys and accountant information is really what you  
22 are most interested in, and I think what Ms. Markoe said is  
23 they haven't done that yet.

24 MR. FREEDMAN: So then we jump to C.

25 THE COURT: OK.

1 MR. FREEDMAN: I want to be clear before I start this,

2 because I get a little heated about this issue, that there is  
3 no heat here being directed at the lawyers, at Rivero Mestre,  
4 that I think are extremely professional and great lawyers.  
5 However, Dr. Wright has exhibited a continued pattern of saying  
6 untruths under oath to this court.

7 In the defendant's affidavit in support of his motion  
8 to dismiss, where he moved to dismiss a multibillion dollar  
9 lawsuit on grounds of forum non conveniens, he asserted that he  
10 has no documents in his possession from any ATO investigation,  
11 and to the extent that my attorneys have any documents from any  
12 ATO investigation, they will be located in Australia. That's  
13 33-3.

14 THE COURT: Got it.

15 MR. FREEDMAN: I have a copy for the court.

16 THE COURT: You cited it here and I have seen it  
17 before.

18 MR. FREEDMAN: OK. So that is part of the reason why  
19 plaintiffs were pushing the defendant to go to Australia to get  
20 documents.



21           But then Ms. McGovern has told me that getting  
22 documents from Australian lawyers would be duplicative. When  
23 this issue was raised, the defendant's response is simply it is  
24 clear from the productions thus far -- I am at 127, at page 7,  
25 second-to-last box -- clear from the production thus far that

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1       Dr. Wright was mistaken in his statement in the affidavit.

2           That mistake could have resulted in the dismissal of a  
3 multibillion dollar dispute. We would have never known about  
4 it. Maybe it's just a mistake, but there's another mistake  
5 that Dr. Wright made to the court swearing that he never had  
6 any ownership interest in W&K, which plaintiffs then showed,  
7 they submitted a sworn affidavit exactly the opposite to the  
8 Australian courts. And document production from the defendants

9 has shown stock registers of W&K that show that Dr. Wright did  
10 have an ownership at some point in W&K.

11 So --

12 THE COURT: And you will have a lot of fun  
13 cross-examining him at the trial.

14 MR. FREEDMAN: But the problem is the court is  
15 expecting us to rely on the representations of Dr. Wright about  
16 what is and is not relevant and he has repeatedly demonstrated  
17 that he cannot be trusted.

18 THE COURT: Right, but I will again credit his counsel  
19 that he and Ms. McGovern and Ms. Markoe apparently gave you  
20 accurate information, which is we are producing these documents  
21 and we have done our independent due diligence. So I  
22 understand you can have whatever feelings you have toward  
23 Dr. Wright and, as I said, if he testifies and you want to try  
24 to impeach him with all these prior statements, you will have a  
25 good time trying to do that. But I'm focused now on what are

1 we dealing with here.

2 It seems to me the argument that is being made is, we  
3 have reviewed documents. Ms. McGovern seems to be -- I will  
4 let her speak for herself in a second -- but seems to be saying  
5 that they have identified documents to be responsive to  
6 whatever request generated this. They have produced those  
7 documents and that based on what they can figure out, the  
8 Australian documents would be cumulative.

9 Ms. McGovern or Ms. Markoe, I will give you the last  
10 word. I don't mean to cut you off, but let me hear from  
11 Ms. McGovern.

12 MS. MCGOVERN: Am I safe in not responding to the  
13 integrity of my client?

14 THE COURT: You can defend the integrity of your

15 client if you want to, but it is not relevant to my decisions  
16 today.

17 MS. MCGOVERN: All right. Thank you, your Honor.

18 THE COURT: I just want to be clear, as far as I'm  
19 concerned your integrity, Mr. Freedman's integrity,  
20 Ms. Markoe's integrity is not a question to me.

21 MS. MCGOVERN: Thank you, your Honor.

22 THE COURT: Your client, that is for somebody else to  
23 decide.

24 MS. MCGOVERN: I have actually been communicating  
25 directly with Velvel Freedman on this issue and we have

1 actually engaged Australian counsel to advise us on this issue  
2 in response to your Honor's request that we inquire as to what

3 our client's legal rights are and in determining whether he has  
4 custody and control of the documents that the plaintiffs have  
5 requested us to get from former employees, corporations,  
6 attorneys, and accountants. I am not trying to broaden the  
7 issue. If you are not talking about the companies and the  
8 former employees anymore with respect to the documents you're  
9 asking us to represent to the court in good faith that we have  
10 responded to in discovery, that's fine. I just want to make  
11 sure that we're talking about an issue that did originally  
12 incorporate all of that.

13 We went out and we hired Australian counsel because  
14 these are Australian companies. Many of them are -- I think  
15 actually all of them are in liquidation. I've had several,  
16 worked pretty deeply with Australian counsel just to figure out  
17 exactly how we answer that question to your Honor.

18 The answer is the following.

19 These corporate documents are corporate documents.  
20 Even if Dr. Wright were still a director of any of these  
21 companies, which I do not believe that he is, but even if he

22 | were, the documents requested under Australian law of an  
23 | Australian corporation would have to be requested in his  
24 | capacity as director. The corporation would have the right to  
25 | determine whether in fact those documents are directly related

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1 | to Dr. Wright's position as a director in those companies.

2 |         If the company's in liquidation, it's a completely  
3 | different sort of quagmire. In seeking documents, you have to  
4 | go directly to the liquidator, and it becomes more complicated.

5 |         It is a different issue with respect to attorneys and  
6 | accountants. Clearly if the attorneys and the accountants have  
7 | documents that are Dr. Wright's in his individual capacity, not  
8 | his corporate capacity, then they would provide -- he would  
9 | have the right to provide it. And in my response to --

10 THE COURT: He would have the duty to produce them?

11 MS. MCGOVERN: Yes, he would. He would. I am  
12 obviously barring any past dues, but that is not the issue.

13 So in my e-mail of March 20th to Mr. Freedman on this  
14 particular issue, I specifically said, in response to your  
15 request that we sort of ferret out documents in Australia,  
16 here's what we're doing. We're looking to see whether we truly  
17 have the legal right and it's within our custody and control to  
18 get these documents from corporations of former employees, and  
19 we'll get back to you. But in the meantime, please know we are  
20 producing documents, any documents, because we understand this  
21 is part -- we don't think it's relevant. I don't agree with  
22 the analysis of the motion to dismiss on this discovery issue.  
23 I think it conflates the issue. But regardless, we are  
24 producing them. So it would -- we're not blocking anything.  
25 It's not being delayed. As soon as we know, I said once we

1 know whether Dr. Wright has a legal right to additional sources  
2 of data, we will let you know.

3 I found out two days ago the final word, and here's  
4 the answer. It is not an answer anybody is going to be happy  
5 with. But the answer is it's complicated and -- I'm not  
6 kidding -- there were five lawyers on the phone. That's where  
7 we are.

8 THE COURT: OK. All right. Mr. Freedman, I will give  
9 you a last chance to comment and then I have some thoughts as  
10 well.

11 Go ahead, Mr. Freedman.

12 MR. FREEDMAN: Just on the companies' issue, I thought  
13 the court resolved that, that we would ask that at the  
14 deposition and to the extent he has custody and control over  
15 it, he would be required to produce it. Maybe there is a fight  
16 coming on who's definition of custody and control governs,



17 United States law or Australian law, but I'm not talking about  
18 the companies at the moment. Right now the focus is  
19 accountants and lawyers.

20 THE COURT: But let me -- actually, I said I wasn't  
21 going to interrupt you, but I will interrupt you for a second.

22 I think prevalent within talking about the  
23 custodian -- I'd like to drill down a little bit on what's the  
24 information we're looking for regardless of whether it is an  
25 accountant, a lawyer, an employee, a neighbor. What is the

1 relevant information we're looking for. I made some notes for  
2 myself based on what I understand the case to be, and I'm  
3 certainly not ruling that I'm limiting anything to this. But

4 it seemed to me, for example, if in the Australian tax matter  
5 Dr. Wright made statements that related to the ownership or  
6 acquisition of Bitcoin or Bitcoin-related IP by either W&K and  
7 Mr. Kleiman, that information would be relevant. If Dr. Wright  
8 made representations about any transactions he had with W&K or  
9 with Mr. Wright that involved the transfer of IP or Bitcoins or  
10 property rights -- again, what things Dr. Wright is saying to  
11 the Australian tax authority seems to me arguably is relevant.

12 If there is conversations about money owed back and  
13 forth. Because I know one of the issues in the case is the  
14 plaintiffs' view is there was a sham transaction. The  
15 defendant's view is it is not a sham transaction involving the  
16 transfer of certain things. So if he's making representations  
17 about those sorts of transactions.

18 So it would seem to me, and this is why I asked  
19 earlier about help me understand the ATO investigation, but at  
20 a minimum it would seem to me that if there are statements that  
21 Dr. Wright is making either to the Australian tax authorities  
22 or in the context of talking to other people about the

23 Australian tax investigation that relate to those topics, it  
24 seems to me -- I'm not ruling, so don't pull the transcript and  
25 tell me you had to do this -- it seems to me that is kind of

1 the core of what the plaintiff seems to be looking for, but it  
2 also seems to me that you're going to now tell me that's pretty  
3 much what you are turning over anyway.

4 MS. MCGOVERN: Correct.

5 THE COURT: So it seems to me we may have targeted the  
6 bull and the dart going to the same place and maybe we just  
7 need to understand that. And then the question just becomes,  
8 at the margin, is there anything of value beyond that that is  
9 worth looking for, is it unduly burdensome, is it cumulative,  
10 etc.

11           Mr. Freedman, now I've given you my thoughts, I will  
12 hear from you.

13           MR. FREEDMAN: No, that is very helpful, your Honor.

14           I think the issue that plaintiffs are having -- I  
15 think the court's crystallized the dispute -- is that the  
16 defendant has gone from one extreme to the other, saying in the  
17 first instance that he has nothing from the ATO and now saying  
18 that he has so much from the ATO that going to his Australian  
19 lawyers would be cumulative.

20           It seems to me that there is no way for -- because  
21 Rivero Mestre is not involved as far as I'm involved in the ATO  
22 investigation. There is no way for them to know the universe  
23 of the ATO documents and they would have to be relying on their  
24 client's representation that there is nothing more with their  
25 lawyers.

1           The district court has determined that it wouldn't be  
2   a big deal to get documents from Australia because it comes  
3   electronically in the order on the motion to dismiss, and as  
4   far as I recall at the last hearing the court said that  
5   Dr. Wright had to go to his Australian counsel and accountants  
6   unless he filed a motion to show that it was too burdensome.  
7   There's been no such motion.

8           So plaintiff asked for an order directing Dr. Wright  
9   not to produce, to just collect from his Australian counsel and  
10   accountants.

11           THE COURT: Back to the -- go ahead, Ms. Markoe,  
12   Ms. McGovern. I will hear from you first.

13           I will rule on that. Listen, I am not going to order  
14   them to go get the information. I think I will order them to  
15   do what I think the rules already require them to do, which is  
16   to engage in a due diligence process with Australian counsel,  
17   accountants, and whatever, as they are required to do under

18 Rule 26, whatever due diligence they otherwise would be  
19 required to do, to try to determine if discoverable material  
20 exists.

21 I have laid out what I believe would be a reasonable  
22 scope. Again, I'm not necessarily ordering them to get that  
23 from Australia because they can argue that it is cumulative or  
24 that it is unduly burdensome. But to the extent -- and I'm not  
25 saying they have not done so. Let the record be clear. I am

1 not saying they have not already engaged or started to engage  
2 in the due diligence process. But I think that is all I can  
3 order them to do. I am not going to order them that they have  
4 to go to Australia or tell the Australian lawyers give us your  
5 entire file so we can look through it. I think they are

6 entitled to rely to some extent on Australian counsel and  
7 Australian accountants.

8 I understand you don't believe they should ever rely  
9 on their own client. I have been in practice for 30 years. I  
10 have learned the lesson sometimes you can rely on your client  
11 and sometimes you can't. But all I can do is direct them to  
12 continue to engage in the due diligence process they have  
13 engaged in. You can certainly inquire of all of this when you  
14 depose Dr. Wright.

15 I think that's all I can do today.

16 MR. FREEDMAN: Your Honor, can I just ask one thing?

17 THE COURT: Sure.

18 MR. FREEDMAN: Can we get a date by which -- because,  
19 as the defendant has pointed out multiple times, until an  
20 extension is granted, we have got a trial date coming up. So I  
21 need to know whether these documents are coming or not coming  
22 or are they in his possession. Can we get a date by which  
23 Dr. Wright has to take a position on the Australian documents?

24 THE COURT: I think that date is April 4th because I

25       just told you, you can ask him about it.

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1               MR. FREEDMAN: Fair enough.

2               THE COURT: So in advance of that, perhaps Ms. Markoe  
3 or Ms. McGovern have their -- by April 2nd, because they agreed  
4 to pick that date for something else, if you could just provide  
5 Mr. Freedman with a status on what you have gotten from  
6 Australia. Just a status on this process.

7               I don't want to start enumerating categories, but  
8 essentially do you expect more to be coming, have you sort of  
9 finished your due diligence process and you believe anything  
10 you could get from Australia would be cumulative to what you  
11 already produced. Just bring him up to date so when you go to  
12 the deposition in England, we're not wasting a whole lot of



13 time on an issue that isn't really an issue.

14 I think that is a fair way to proceed with that.

15 April 2nd is the date, Mr. Freedman.

16 MR. FREEDMAN: Thank you, your Honor.

17 THE COURT: OK. Have I now ruled on everything? I  
18 don't know.

19 MR. FREEDMAN: No, your Honor.

20 THE COURT: What is left that I didn't rule on?

21 MR. FREEDMAN: There are disputes over search terms  
22 and some of the outstanding requests for production.

23 THE COURT: Hold on. Let me go back to that.

24 Now you're cycling back to the prior --

25 MR. FREEDMAN: I'm going to E. So I'm at page 9, the

1 last page of the submission, your Honor.

2 THE COURT: Search terms. What do you want me to do  
3 with search terms, guys? You know this case. I don't know  
4 this case to the level of granularity that I can decide what  
5 search terms you have to have and what search terms you don't.  
6 Is that really what you are asking me to do?

7 MR. FREEDMAN: Your Honor, we just are not getting  
8 anywhere with trying to reach agreement on it.

9 MS. MCGOVERN: Your Honor, if I could respond quickly  
10 to that. I had a conversation with Kyle Roche specifically  
11 about this issue, because in trying to get a joint submission  
12 to be five pages long and not continue to ask for more pages, I  
13 called and asked whether we were going to bring the search term  
14 issue before the judge.

15 We explained that the only reason we are disputing  
16 search terms, to be very clear, is not because we care. We are  
17 using search terms and we are doing hit counts and we are not  
18 deciding whether that hit count or that search term has any

19 value or whether we like the way it is worded. It merely has  
20 to do with the fact that some of these search terms are  
21 triggering such a high hit count that in our cursory review the  
22 false positives are so large that it is crazy. Number one.

23 Number two, it is just not relevant because it deals  
24 with the way they have sort of -- we are trying to explain, if  
25 you have 95,000 hits on a particular search term when we have

1 already got all of this data. Do you really want to pursue  
2 that particular one? Why can't we just table the disputed  
3 search terms for now, because we have so much more we're  
4 perusing with all your other search terms, table that search  
5 term and then if you find as you're reviewing documents, and  
6 it's been my experience that this has been very helpful, and

7 whenever I've had a problem with any of the lawyers at Boies on  
8 some of these really big ESI cases, this is the way we've  
9 resolved it, which is, if you find documents that suggest that  
10 your other search term, which had a whole bunch of hits that  
11 seemed like false positives and it was just going to be a big  
12 waste in effort and money, come back, explain I just saw this  
13 document, it has this particular material, I think we need to  
14 run it. But that exercise is not happening here. And we  
15 simply can't willy-nilly agree to all of these because we'll  
16 never finish reviewing it.

17 MS. MARKOE: Further, I just want to add one thing,  
18 which is that we have undertaken the task of -- not with every  
19 single one of these proposed search terms, but at least with  
20 some of them -- going in and looking at them and looking at the  
21 documents that hit on them before promoting them for review.

22 What we have found is that a lot of them really are  
23 false positives. And Dave is a really common name. Ramona,  
24 Craig's current wife, her ex-husband's name was Dave. There  
25 are many Dave's that were in Craig's life. There are Davises

1 that were in Craig's life. Because they don't want just Dave  
2 or David. They want D-A-V with an asterisks, meaning that it  
3 will hit Dave, David, Davide, like a thousand things. So  
4 that's really where -- we want them to get what they are  
5 entitled to because the facts are what they are. That is the  
6 great thing about litigation. We're looking at something that  
7 is historical. It's already happened. So I can't change that.  
8 And documents aren't going to be changing. So they are what  
9 they are.

10 They are getting what they are getting, and we want to  
11 get them the most targeted stuff. Rather than dumping a bunch  
12 of nonsense on them and us having to go through it and them  
13 having to go through it, it just seems kind of silly when we

