IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,	No. 07-CR-1023-LRR
vs.	**ORDER**
MARSHALL NEIL KANNER, *et al.*, Defendants.	

I. INTRODUCTION

The matter before the court is Defendant Marshall Neil Kanner's "Motion to Transfer Pursuant to Rule 21(b)" ("Motion") (docket no. 103).[1]

II. RELEVANT PRIOR PROCEEDINGS

On November 7, 2007, a grand jury charged Defendant and five others in a thirty-one count Indictment (docket no. 2). Defendant is charged in two counts. Count 1 charges Defendant with Drug Conspiracy, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(D), 841(b)(1)(D)(2), 846, 856(a)(1) and 861(a)(1). Count 2 charges Defendant with Money Laundering Conspiracy, in violation of 18 U.S.C. §§ 1956(a)(1)(A)(i), 1956(a)(1)(B)(i), 1956(h) and 1957.[2]

On April 1, 2008, Defendant filed the Motion. On April 18, 2008, the government filed a Resistance (docket no. 143). Defendant did not file a reply, and neither party requested a hearing. The Motion is fully submitted and ready for decision.

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[1] Defendant Orlando Birbragher joins the Motion. *See* Order (docket no. 121) (granting Birbragher's "Joinder in Co-Defendant Kanner's Motion to Transfer" (docket no. 115)).

[2] The Indictment also contains forfeiture allegations, in which the government seeks in excess of $40 million from Defendant.

III. ALLEGATIONS IN THE INDICTMENT

The Indictment contains many allegations against Defendant and his five original co-defendants, Orlando Birbragher ("Birbragher"), Jack Eugene Huzl ("Huzl"), Douglas Willis Bouchey ("Bouchey"), Armando Angulo ("Angulo") and Peter Colon Lopez ("Lopez") (collectively, "the original co-defendants").[3] The following allegations are most pertinent to the Motion:

A. General Allegations

1. Drug conspiracy

Between about January of 2003, and continuing until at least May 20, 2004, "in the Northern District of Iowa and elsewhere," Defendant and his original co-defendants conspired with each other and other persons to violate the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, in violation of 21 U.S.C. § 846. Indictment at ¶ 11. This drug conspiracy had four objects:

- to dispense Schedule III controlled substances outside the usual course of professional practice and without legitimate medical purpose, in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(D).

- to dispense Schedule IV controlled substances outside the usual course of professional practice and without legitimate medical purpose, in violation of 21 U.S.C. § 841(a)(1) and 841(b)(1)(D)(2).

- to open, lease, rent, use and maintain pharmacy fulfillment centers for the purpose of distributing Schedule III and IV controlled substances outside the usual course of professional practice and without legitimate medical purpose, in violation of 21 U.S.C. § 856(a)(1).

- to employ, hire, persuade, induce, entice and coerce minors, including A.B., N.S. and G.L., to violate the CSA, in violation of 21 U.S.C. § 861(a)(1).

[3] Huzl died shortly after the Indictment.

Indictment at ¶ 11.

2. Money laundering conspiracy

Between about January of 2003, and continuing through at least August 9, 2004, "in the Northern District of Iowa and elsewhere," Defendant and his original co-defendants conspired with each other and other persons to conduct and attempt to conduct financial transactions that involved the proceeds of their unlawful distribution of Schedule III and IV controlled substances ("the unlawful activity"), in violation in 18 U.S.C. § 1956(h). *Id.* at ¶ 22. This money laundering conspiracy had three objects:

- to promote the carrying on of the unlawful activity through the financial transactions, in violation of 18 U.S.C. § 1956(a)(1)(A)(i).

- to conceal and disguise the nature, the source, the ownership, or the control of the proceeds of the unlawful activity, in violation of 18 U.S.C. § 1956(a)(1)(B)(i).

- to engage in monetary transactions of a value greater than $10,000 in funds derived from the unlawful activity, in violation of 18 U.S.C. § 1957.

Indictment at ¶ 22.

B. Specific Allegations

Defendant and Birbragher owned and operated Pharmacom International Corporation ("Pharmacom"). *Id.* at ¶ 12. Pharmacom used the Internet to sell prescription drugs, including Schedule III and IV controlled substances. *Id.*

To purchase controlled substances from Pharmacom, potential customers logged onto one of Pharmacom's websites, completed a short health history questionnaire and provided credit card payment information. *Id.* at ¶ 13. Pharmacom did not verify the customers' identities or require them to submit any medical records as part of the ordering process. *Id.*

Pharmacom contracted with doctors to review customers' orders for the prescription

drugs. *Id.*; *see also id.* at ¶¶ 15-17. The doctors approved the orders without examining any of Pharmacom's customers and, in the vast majority of cases, without reviewing any medical records. *Id.* at ¶ 13. Occasionally, the doctors emailed or called a customer on the telephone. *Id.* If the doctor approved an order, Pharmacom digitally affixed the doctor's electronic signature to a "prescription." *Id.*

For example, Pharmacom employed Angulo and Lopez as doctors from July of 2003 to February of 2004, and October of 2003 to April of 2004, respectively, to review prescription drug orders. *Id.* at ¶¶ 16-17. Angulo was a Florida resident and licensed to practice medicine in Florida. *Id.* at ¶ 16. Lopez was not licensed to practice medicine anywhere in the United States. *Id.* at ¶ 17.

Pharmacom contracted with pharmacies to fill the "prescriptions." *Id.* at ¶ 13; *see also id.* at ¶ 18. Pharmacies downloaded the "prescriptions" from Pharmacom's website and then filled and shipped the "prescriptions" to customers throughout the United States. *Id.*; *see also id.* at ¶ 18.

For example, Pharmacom contracted with Union Family Pharmacy ("Union Family") of Dubuque, Iowa, to fill prescription drug orders. *Id.* at ¶ 18. From August 18, 2003 through September 12, 2003, Union Family filled at least 4,195 "prescriptions" and distributed at least 180,430 Schedule III dosage units and at least 53,310 Schedule IV dosage units. *Id.* Union Family shipped the vast majority of these "prescriptions" to customers outside Iowa, even though Union Family was only registered as a pharmacy in Iowa. *Id.*

Huzl, a licensed pharmacist in Iowa and Colorado, owned and operated Union Family. *Id.* at ¶ 19. Huzl hired Bouchey, a pharmacist licensed in Iowa and Michigan, to fill Pharmacom's prescription drug orders. *Id.* at ¶ 20. Bouchey was a resident of Iowa. *Id.*

Collectively, Pharmacom's doctors and pharmacies authorized and filled more than

246,000 "prescriptions" for controlled substances. *Id.* at ¶ 14. For Pharmacom, they helped to dispense more than 12.5 million Schedule III dosage units and more than 1.9 million Schedule IV dosage units. *Id.* Pharmacom's customers paid in excess of $40 million for their "prescriptions." *Id.*

Pharmacom used the proceeds of its unlawful activity to pay doctors a total of approximately $2.29 million for authorizing "prescriptions." *Id.* at ¶ 24. Pharmacom paid a total of approximately $2.26 million to the pharmacies for fulfilling the orders. *Id.* The funds deposited into the bank accounts of the doctors and the pharmacies allowed them to continue operating as critical members of the drug conspiracy. *Id.* Pharmacom also paid approximately $7.75 million to acquire the Schedule III and IV controlled substances; $1.60 million for shipping costs; $3.14 million for marketing costs, including Internet advertising; and $1.99 million to its employees to help operate its business. *Id.* These financial transactions total approximately $19 million. *Id.*

Defendant, the original co-defendants and others acting at their behest conspired to create various shell corporations to conceal the nature, location, source, ownership and control of the proceeds from the conspiracy's unlawful activity. *Id.* at ¶ 25. Together, they shifted drug proceeds to these shell corporations. *Id.* The shell corporations were almost all Florida corporations, with the exception of one corporation registered in the U.S. Virgin Islands. *Id.* Pharmacom also sent money to various bank accounts or trust accounts controlled by or for the benefit of Defendant's relatives or Birbragher's relatives. *Id.*

Defendant, his co-conspirators and others working at his behest conducted at least 859 transactions involving $10,000 in drug proceeds. *Id.*

IV. ARGUMENTS

In the Motion, Defendant asks the court to transfer this entire case to the Southern District of Florida, pursuant to Federal Rule of Criminal Procedure 21(b). Defendant

generally alleges that "venue in the Northern District of Iowa places undue and unnecessary hardship, inconvenience and expense upon the Defendants and their witnesses and . . . will both complicate and prolong the trial of this matter . . . ." Motion at 1.[4]

Defendant does not offer any evidence in support of his Motion. Instead, Defendant alleges a number of facts that he argues weigh in favor of transferring the case to the Southern District of Florida. Analyzing the ten factors in *Platt v. Minnesota Mining & Manufacturing Co.*, 376 U.S. 240 (1964), Defendant opines: (1) "four of the five present co-defendants [sic] in this case are residents of the Southern District of Florida and all of the conduct alleged in [C]ounts I and II of the [I]ndictment by them occurred in the Southern District of Florida," Motion at 8; (2) "the [g]overnment's case will contain few, if any[,] fact witnesses who reside in the Northern District of Iowa[, . . . and] the [g]overnment will call for [sic] more witnesses who reside in the Southern District of Florida," *id.* at 9-10; (3) "the material events at issue in this prosecution take place almost exclusively in Florida," *id.* at 10-11, and "less than 2% of the prescriptions . . . were filled in the Northern District of Iowa," *id.* at 12; (4) the documents and records likely to be used at trial are located in Florida or, at the very least, originated in Florida; (5) a trial in the Northern District of Iowa will be costly and will disrupt Defendant's real estate business at its locations in Miami, Florida, and Asheville, North Carolina; (6) a trial in the Northern District of Iowa would be more costly to Defendants than in the Southern District

[4] Defendant does not argue that venue does not lie in the Northern District of Iowa. Any such argument would fail, because "any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed." 18 U.S.C. § 3237(a); Fed. R. Crim. P. 18. "In a conspiracy case, venue is proper 'in any district in which any act in furtherance of the conspiracy was committed by any of the conspirators even though some of them were never physically present there.'" *United States v. Hull*, 419 F.3d 762, 768 (8th Cir. 2005) (quoting *United States v. Fahnbulleh*, 748 F.2d 473, 477 (8th Cir. 1984)).

of Florida; (7) Defendant's counsel resides in and maintains his only office in the Southern District of Florida, and "[i]f the Indictment is superceded, there is a strong probability that those additional defendants, who reside in South Florida, will obtain counsel from Miami as well," *id.* at 16; (8) the Southern District of Florida "is far more accessible than" the Northern District of Iowa, and travel from the Southern District of Florida to the Northern District of Iowa by airplane is "complicated, cumbersome and inconvenient," *id.* at 17; (9) the docket conditions of the respective districts is a factor of "'little import,'" *id.* (citing *United States v. Lopez*, 343 F. Supp. 2d 824, 837 (E.D. Mo. 2007)); and (10) substantial negative pretrial publicity is a special condition that warrants transfer.

In its Resistance, the government asks the court not to transfer this case to the Southern District of Florida. The government generally states that transfer "would make this already complex and costly case more expensive and time consuming for the co-defendants, the government, many of the witnesses, and the courts." Resistance at 3. At various points in the Motion, the government points out that (1) Defendant bears the burden to prove that transfer is appropriate, *see, e.g., id.* at 3, 7, 12; (2) Defendant did not present any evidence in support of the Motion, *see, e.g., id.* at 6-7, 12, 21; and (3) the Motion must fail, *see id., passim.*

The government offers its own version of the facts. Analyzing the same ten *Platt* factors, the government opines (1) more defendants are currently located in the Northern District of Iowa than anywhere else; (2) the government anticipates calling over 45 Iowa-based witnesses, less than 25 Florida-based witnesses and a number of other witnesses from throughout the country; (3) this was a nationwide conspiracy and, "[w]hile a large portion of the [D]efendant's activities in the conspiracy may have existed in Florida, much of the dispute at issue pertains to [D]efendant's activities in Iowa" and "[D]efendant's Iowa activities were the catalyst that led to [D]efendant's arrest and to the discovery of the alleged nationwide conspiracy," *id.* at 9; (4) the vast majority of the thousands of

documents, comprising "more than 700 boxes, with additional electronic data housed on specially configured computers and servers located in the United States Attorney's Office in Cedar Rapids," *id.* at 11, to be used at the trial are located in Iowa; (5) Defendant's life and business will be disrupted no matter where trial is held; (6) "[t]ransferring this case to the Southern District of Florida would place tremendous expense on the government, the other defendants, and the witnesses involved," *id.* at 13; (7) all of the other defendants in this case have retained Iowa-based counsel; (8) the Northern District of Iowa is the more accessible and convenient place to try Defendant's case; (9) docket conditions favor trying this case in the Northern District of Iowa; and (10) there are no other factors warranting transfer.

V. ANALYSIS

Federal Rule of Criminal Procedure 21(b) provides:

> **Rule 21. Transfer for Trial**
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> * * *
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> **(b) For Convenience.** Upon the defendant's motion, the court may transfer the proceeding, or one or more counts, against that defendant to another district for the convenience of the parties and witnesses and in the interest of justice.

Fed. R. Crim. P. 21(b). In deciding whether a transfer is appropriate under Rule 21(b), the court agrees with the parties that the ten factors set forth in *Platt* should guide the court's exercise of its discretion. *See, e.g. United States v. McGregor*, 503 F.2d 1167, 1169-70 (8th Cir. 1974) (applying *Platt* factors); *see also United States v. Green*, 983 F.2d 100, 103 (8th Cir. 1992) (stating that the decision to transfer pursuant to Rule 21(b) "belongs to the sound discretion of the district court"). Namely, the court considers:

> (1) location of [the] defendant [or defendants]; (2) location of possible witnesses; (3) location of events likely to be in issue; (4) location of documents and records likely to be involved; (5) disruption of defendant's business unless the case is transferred; (6) expense to the parties; (7) location of counsel;

> (8) relative accessibility of place of trial; (9) docket condition of each district . . . involved; and (10) any other special elements which might affect the transfer.

McGregor, 503 F.2d at 1170; *see also In re United States*, 273 F.3d 380, 388 (3d Cir. 2001) ("Although *Platt* involved a corporate defendant, the ten *Platt* factors are used in cases involving individual defendants as well."); *United States v. Maldonado-Rivera,* 922 F.2d 934, 966 (2d Cir. 1990) (extending *Platt* to non-corporate-defendant context). "No one of these [ten factors] is dispositive, and 'it remains for the court to try to strike a balance and determine which factors are of greatest importance.'" *Maldonado-Rivera*, 922 F.2d at 966 (quoting *Stephenson*, 895 F.2d 867, 875 (2d Cir. 1990)). Defendant bears the burden to prove that transfer is appropriate. *In re United States*, 273 F.3d at 388; *United States v. Moncrieffe*, 485 F. Supp. 2d 1059, 1061 (S.D. Iowa 2007); *United States v. Spy Factory, Inc.*, 951 F. Supp. 450, 464 (S.D.N.Y. 1997); *United States v. Washington*, 813 F. Supp. 269, 275 (D. Vt. 1993), *aff'd*, 48 F.3d 73 (2d Cir. 1995); 2 Charles A. Wright, Federal Practice & Procedure Crim. § 344, at 403 (3d online ed. 2008) ("[I]t is proper to require the defendant, as the moving party, to carry the burden of showing why a transfer would serve the purposes specified in [Rule 21(b)]").

A. Lack of Evidence

Defendant has not presented the court with any evidence to support the factual assertions in the Motion. Defendant has neither asked the court to take judicial notice of any facts nor asked for a hearing at which to present evidence. Defendant has not met his burden of proof. As another district court judge reasoned under similar circumstances in a civil case:

> [D]efendants have made analysis all but unnecessary. Properly considering the factors in the factual context of this case is nearly impossible, because the Court has been provided no facts or evidence on which to base its analysis. On the record before me, I find plenty of argument, but not a trace of

> evidentiary support for defendants' motion to transfer; no affidavits, no depositions, no stipulations, no other documents. Defendants have utterly failed to carry their burden of proving that venue should be transferred. . . .

Simon v. Ward, 80 F. Supp. 2d 464, 471 (E.D.Pa. 2000) (applying 28 U.S.C. § 1404(a)); *see also In re United States*, 273 F.3d at 388 (extending § 1404(a) analysis to Rule 21(b) "given the similarity between the language"); *United States v. Jones*, 43 F.R.D. 511, 514 (D.D.C. 1967) ("A bare assertion . . . is not sufficient to demonstrate the preponderance of inconvenience necessary to warrant a transfer." (citing *Lindberg v. United States*, 363 F.2d 438 438-39 (9th Cir. 1966)).

Accordingly, the court shall deny the Motion. Fed. R. Crim. P. 21(b).

B. APPLICATION OF **PLATT** *FACTORS*

Even if the court were to accept the parties' bare factual assertions in lieu of evidence or even a formal offer of proof, the court would nonetheless deny the Motion. A transfer of this case to the Southern District of Florida would be inconvenient and would not be in the interest of justice.

First, the location of the defendants weighs slightly against transfer. Defendant is the only defendant presently located in the Southern District of Florida. Bouchey, a former Iowa resident, is located in Michigan; Birbragher and Lopez are detained in Leavenworth, Kansas;[5] and Angulo is on the lam.

Second, the location of the witnesses weighs against transfer. The government will call witnesses from across the nation at trial, including at least 45 Iowa-based witnesses. While Defendant may call many Florida-based witnesses, transferring this case to the

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[5] At the time the Motion and Resistance were filed, Birbragher and Lopez were detained in the Northern District of Iowa at the Linn County Jail. Approximately two weeks ago, the Linn County Jail was evacuated during the Great Flood of 2008 in Cedar Rapids. Birbragher's attorney recently informed the court that Birbragher was transferred to Leavenworth. *See* Motion for Temporary Release or Transfer (docket no. 225), at 2.

Southern District of Florida would only shift the burden and inconvenience of travel to an equal or greater number of witnesses from the Northern District of Iowa. With respect to the remaining witnesses, the Northern District of Iowa is a convenient geographic "mid-point" for a nationwide prosecution.

Third, the location of events likely to be in issue weighs slightly in favor of transfer. This conspiracy originated in Florida; Pharmacom and most of the shell corporations were incorporated in Florida; bank accounts were opened and maintained in Florida, a number of Florida doctors and pharmacies ordered and filled prescriptions in Florida; and presumably Florida residents bought medication from Pharmacom. However, the conspiracy did involve an Iowa pharmacy, Union Family, and Pharmacom's involvement with Union Family sparked the government's investigation and resulted in the instant prosecutions. The importance of the Iowa "events" in this case should not be minimized. As this court observed long ago when denying a motion to change venue for convenience in another nationwide conspiracy prosecution:

> [D]efendants claim that their prosecution in this district is unwarranted because they do comparatively little business here. The short answer to this argument is that the extent of the defendants' business activities in other districts in no way alters the fact that the indictment charges offenses which were committed here. The defendants are, in effect, advocating a prosecutive policy which would compel local residents to wait for relief until some United States Attorney in another district saw fit to act. The public interest cannot tolerate such a procedure. To do so, would deny the residents of this district the lawful means to protect themselves from local distributions of [contraband].

United States v. Luros, 243 F. Supp. 160, 176 (N.D. Iowa 1965) (Hanson, J.) (cited with approval in *United States v. McManus*, 535 F.2d 460, 463-64 (8th Cir. 1976)), *rev'd on other grounds*, 389 F.2d 200 (8th Cir. 1968).

Fourth, the location of the documents and records likely to be involved weighs

heavily against transfer. The amount of documents and records involved in this case are very substantial, and the vast majority of those documents are located in the Northern District of Iowa. *See, e.g., United States v. Perry*, 152 F.3d 900, 904 (8th Cir. 1998) (affirming denial of Rule 21(b) motion, in part because "most of the records used in the case were in [the district]").[6]

Fifth, the disruption of Defendant's business weighs neither for nor against transfer. Defendant's business will be disrupted no matter where he is tried. As a district court in another complex prosecution observed:

> Defending a massive case like this one . . . would be expensive in any forum and, . . . , "[e]very life is significantly disrupted during a trial wherever it is held. Besides the need to be in court every day, the evenings and weekends are usually consumed analyzing the evidence that has been admitted and preparing for the remainder of trial."

United States v. Stein, 429 F. Supp. 2d 633, 645 (S.D.N.Y. 2006) (quoting *United States v. Wilson*, No. 01 CR 53(DLC), 2001 WL 798018, at *3 (S.D.N.Y. July 13, 2001)). In any event, Defendant's business is not only located in the Southern District of Florida, but also in the Western District of North Carolina.

Sixth, the expense to the parties weighs neither for nor against transfer. It will cost Defendant and perhaps Defendant Birbragher more money to defend this case in the Northern District of Iowa than the Southern District of Florida. It is equally true, however, that it would cost the government and the remaining co-defendants more to try this case in the Southern District of Florida. Merely shifting the burden of expense from one party to another is not a good reason for transfer.

Seventh, the location of the attorneys weighs heavily against transfer. Only

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[6] It is immaterial that many of the documents did not originate in the Northern District of Iowa. This is not a case in which the government purposely moved documents to "create" venue. *But see United States v. Bein*, 539 F. Supp. 72, 74 (N.D. Ill. 1982).

Defendant's attorney is located in the Southern District of Florida. All of the other very capable attorneys in this case, including the attorneys for the government, are located in either the Northern or Southern Districts of Iowa. Defendant's assertion that the government will seek a superseding indictment against additional persons that will hire Florida-based counsel is purely speculative.

Eighth, the relative accessibility of the place of trial weighs slightly against transfer. The Northern District of Iowa is situated in the middle of the country. It will, therefore, serve as a convenient mid-point for this nationwide prosecution. Defendant's criticisms against the Eastern Iowa Airport are overstated. The Eastern Iowa Airport offers frequent and relatively convenient air service to many destinations. Cedar Rapids is not the North Pole.

Ninth, the docket condition of the districts involved weighs neither for nor against transfer. The court has no knowledge of the docket conditions of the Southern District of Florida, and there is nothing remarkable at the present time about the undersigned's docket. Although the undersigned and her staff were recently flooded out of the courthouse, the undersigned will try this case as scheduled in a temporary "courthouse" closer to the Eastern Iowa Airport. Transferring this case would only delay this relatively old criminal case.

Tenth, other special elements that might affect transfer weigh slightly against transfer. Defendant's contention that there is prejudicial pretrial publicity against him is wholly speculative.[7] In contrast, the Northern District of Iowa serves as a convenient

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[7] Although Defendant states that "the pre-trial publicity surrounding this and those related cases in the Northern District of Iowa jury pool <u>alone</u> justifies transfer under Rule 21(a)," Motion at 19 (emphasis in original), the court does not understand Defendant to make a motion, pursuant to Rule 21(a), for transfer due to substantial pretrial publicity. As its title indicates, the Motion is clearly limited to Rule 21(b). In any event, based on the record before the court, the court would deny any such motion. For example, there (continued…)

geographic midpoint for the potential victims of this alleged nationwide conspiracy to gather to observe trial. *See* 18 U.S.C. § 3771(a)(8) (directing district courts to treat victims "with fairness"); *see, e.g.*, *Gannett Co. v. DePasquale*, 443 U.S. 368, 428 (1979) (Blackmun, J., concurring in part and dissenting in part) ("The victim of the crime, the family of the victim, [and] others who have suffered similarly, ... have an interest in observing the course of a prosecution.").[8] Further, the court has already sentenced some of Pharmacom's doctors. The Eighth Circuit Court of Appeals recognizes "the virtue of having the members of a criminal conspiracy sentenced, when possible, by the same district judge, even if all have pleaded guilty . . . ." *Cf. United States v. Lazenby*, 439 F.3d 928, 934 (8th Cir. 2006).

Weighing all of the factors, the court finds that transfer is inappropriate. Accordingly, even if the court were to rely on the parties' bare factual assertions, the court would nonetheless deny the Motion.

VI. CONCLUSION

The Motion (docket no. 103) is **DENIED**. The time between the filing of the Motion and the date of this Order is hereby excluded from calculation under the Speedy Trial Act. 18 U.S.C. § 3161(h)(1)(F) (excluding delay resulting from the filing of any pretrial motion through the conclusion of the hearing thereon); *id.* § 3161(h)(1)(J) (excluding "delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the

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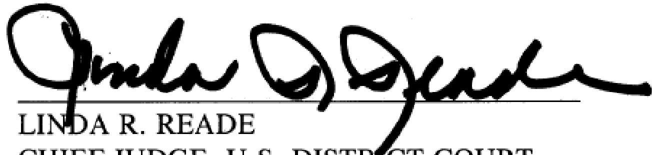
[7](...continued)
is absolutely no indication that "the media coverage [is] so extensive and corruptive that prejudice must be presumed." *United States v. Gamboa*, 439 F.3d 796, 815 (8th Cir. 2006). The court will nonetheless take the necessary steps at voir dire to ensure that Defendant receives a fair trial.

[8] *Cf.* Paul G. Cassell, *Treating Crime Victims Fairly: Integrating Victims into the Federal Rules of Criminal Procedure*, 2007 Utah L. Rev. 861, 919-25.

court”).

IT IS SO ORDERED.

DATED this 27th day of June, 2008.



LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA