UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA


TRANSCRIPT OF STATUS CONFERENCE BEFORE THE HONORABLE RICHARD J. LEON UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

PROCEEDINGS

COURTROOM DEPUTY: Your Honor, we have Civil Action 13-851 and Civil Action 13-881 Larry Klayman et al. versus Barack Hussein Obama, et al. For the record, counsel for the Plaintiff is not present.

I will ask the defense counsel and all counsel to please approach the lectern and identify yourself for the record.

MR. GILLIGAN: James Gilligan, your Honor, with the Department of Justice representing the Government Defendants as specified in our papers. With me at counsel table are Marcia Berman, Rodney Patton and Bryan Dearinger.

THE COURT: Welcome back, Mr. Gilligan. It has been a few years.

MR. GILLIGAN: It has been a few years.

THE COURT: Boumedian as I recall it.

MR. GILLIGAN: It was one of the Guantanamo cases, yes.

THE COURT: Welcome back.

MR. WHITMAN: About Jim Whitman with the Department of
Justice. I represent the individual Federal Defendants who
have not been served, but $I$ am still appearing today.

THE COURT: Oh, you have an interest.

MR. WHITMAN: Yes.

THE COURT: Welcome back, Mr. Moss.

MR. MOSS: Randolph Moss on behalf of the Verizon

Defendants.

THE COURT: Welcome back.

MR. MOSS: Thank you.

THE COURT: Well, for reasons which I can't understand, Mr. Klayman is neither here nor has made arrangements to have anyone else here in his stead so I will make arrangements to have a transcript of this hearing sent to him so he will have the benefit of whatever is discussed today.

The purpose of today's hearing is obviously scheduling. Under the local rules, the Court must have a hearing within 21 days of being filed which by my calculation would be November 18th -- excuse me -- 19th. 19th.

The Defendants have seven days to respond to a Preliminary Injunction Motion which seems a little much, I mean a little penal, penal in this case, typed.

So I think some accommodations need to be made under the circumstances. Now, I mean I don't -- the way this PI is structured I do not believe it is directed at the private companies or the individuals. So I don't see any reason why they have to respond at all frankly and, if it should come to pass that that becomes an issue, then $I$ will give you an opportunity at an appropriate time, Mr. Moss, to respond; but at this point, these are directed at the Government of the United States.

And so I think the Government should have more time
than seven days. That's for sure. I can't give you too much more because I got to build in a little time for his reply. So what I am thinking of is giving you until

November -- Monday, November 11th and then I will give Mr. Klayman until -- I will give him three days, Thursday the 14th and then we will have the oral argument on Monday, the 18 th of November at 11:30 in the morning. Hopefully he won't absent himself for that hearing either, but he is getting a lot more notice this time than he did before.

He did file Motions For Continuances which I denied. He wanted to do it by telephone which it is not my practice to permit that and, frankly, it is surprising to me that he thinks he is going to litigate this alone without other counsel to help him. So hopefully when he reviews this transcript, he will start the process of reevaluating how he is going to do this because obviously this is a case that has lots of parts to it and where it is going, I don't know, all I know is there is a lot of potential moving parts to this case.

Now, there is some other issues besides scheduling that are -- that the Government is uniquely positioned. Mr. Gilligan I will start with you since I assume you are kind of the leader of the team here. I don't know to what extent the Government's position is going to be based on classified information, I have no idea, but obviously if it is going to be in whole or in part based on classified information, then we got to start figuring
out people getting clearances. The Court has clearance, but I have at least one law clerk working with me on this who I believe has clearance up to a certain level, but $I$ don't know what level this is going to go up to.

If this is TSSCI, then $I$ need to start immediately taking steps to try to get my law clerk up to the TSSCI level which gets us to the obvious question: What about Mr. Klayman?

Because if the Government's position is that its defense turns on TSSCI information, and I might add in that context, that might include opinions of the FISC that are currently categorized as TSSCI or Mr. Klayman doesn't have access -- can't have access to it as the lawyer for himself and these other individuals, then we got another problem. It is a pretty fundamental one.

So I am in the dark right now as to what the Government's thinking is on this subject. Maybe the Government is going to be able to respond to this PI without reference to any classified information, but that may not be the case. Do you have any sense?

MR. GILLIGAN: May I respond, your Honor?

THE COURT: Do you have any sense, Mr. Gilligan, where you are likely to be headed in terms of your response to this PI?

MR. GILLIGAN: Well, your Honor, as you say, this PI has a lot of moving parts to it.

THE COURT: Potentially.

MR. GILLIGAN: There are a number of claims that we have not addressed yet in other cases challenging the NSA intelligence activities, and there are a number of alleged activities that are challenged in this case that we have not had to address before so we are starting from scratch here.

And while I appreciate the Court's efforts to provide us with additional time to figure out how we are going to address all the moving parts in these Motions, I would ask the Court's -- if the Court would be willing to consider providing us with some additional time beyond November 11th which I also hasten to point out is Veterans Day.

THE COURT: We work $24 / 7$ around this courthouse, my friend. 24/7. I don't want to hear anything about vacations, weddings, days off. Forget about it. This is a case at the pinnacle of public national interest, pinnacle. All hands 24/7. No excuses. You got a team of lawyers. Mr. Klayman is alone apparently. You have litigated cases in this courthouse when it is matters of this consequence and enormity. You know how this Court operates.

MR. GILLIGAN: I understand the Court's willingness and preparation to address this Court with all the speed necessary, your Honor, but precisely because of its consequence, we feel that informed decision-making on the part of this Court will best be served if we have an opportunity to address the various
issues that are raised in appropriate depth.

THE COURT: Now, Mr. Gilligan, when was this lawsuit
filed?

MR. GILLIGAN: This lawsuit was filed over four months ago, your Honor.

THE COURT: You have had, not you personally, the

Department of Justice, the NSA and the allied Government agencies that have an interest in this have had four months to think through its position. That's a lot of time, Mr. Gilligan. I am sad to say I don't believe or assume that they worked seven days a week for four months. I wish it were true, but I am sure it isn't.

But $I$ am not asking you to tell me, but the point is in my judgment, you have got four months. That's a long time. I might add you have got a case going on with Judge Pauly up in the Southern District of New York. Now, it is a little bit different in the sense that Klayman 2 deals with, you know, a different aspect of the NSA's program than Klayman 1. Klayman 1 is telephonic. Klayman 2is internet traffic as you well know.

MR. GILLIGAN: Yes.

THE COURT: The cases have not been joined yet which kind of begs the next question: Have you had any discussions with Mr. Klayman to join any of these or whether his intention is to join them or not? I don't know. We have two separate PI's.

For the purpose of briefing, you can do one set of briefs. You don't need to do two sets of briefs, but we have got two PIs here and I am giving you extra time. I am giving you a week extra.

MR. GILLIGAN: Understood, your Honor. I would just point out, the last word on this subject at least for me, that regarding the four months, it says something that the Plaintiffs waited four months to bring these Motions. It says something about what level of urgency there is actually to immediate consideration of these Preliminary Injunction Motions.

THE COURT: Your answer to the Complaint is not due -you got an extension from the Court to the first week of December, right?

MR. GILLIGAN: No, actually I believe -- the Verizon Defendants got an extension, but December 2nd is in fact the 60th day of service of the Complaint on the Government by the U.S. Attorney's Office.

THE COURT: Okay. So your answer is technically due the first week of December?

MR. GILLIGAN: That's correct, your Honor. That's three weeks, nearly a month following the November 11 th date.

THE COURT: So Mr. Klayman is not here, unfortunately, and he can't share with us why he believed circumstances exist that required him, compelled him to feel like he needed to file a PI. But whatever the reason is that they have done it, they
have done it; and the reality is I have the to deal with it.

And from where I am sitting at least, the Government has had four months to figure out its position as to these cases. So it is now time to get going.

MR. GILLIGAN: Very well, your Honor.

THE COURT: You get your briefs in on that Monday, the 11th and you can have until close of business on the 11th unless you want to do it on Friday. I assume you wanted the weekend to have the benefit of that extra time. I could make it that preceding Friday at close of business, but I thought you would want the extra time.

MR. GILLIGAN: No, your Honor. Harking back to your point earlier, we work plenty of weekends.

THE COURT: Good. Keep your sleeves rolled up.

MR. GILLIGAN: November 11 by close of business did I hear your Honor say?

THE COURT: Well, we won't be open for business technically. I will be here. I would love to start reading them that early, but if you don't have them ready until midnight, you have got to midnight technically.

MR. GILLIGAN: Very well, your Honor. Thank you. Regarding then your Honor's inquiry about reliance on classified information --

THE COURT: Yes. How does that stand?

MR. GILLIGAN: We have, as your Honor may be aware in
the litigation in the Southern District of New York with Judge Pauly, the ACLU case, we have thus far not found it necessary to rely on classified information to present our arguments. We believe that that will be the case here.

THE COURT: Good.

MR. GILLIGAN: If anything, it may be the Plaintiffs ultimately who may have to rely on classified information in order to make their case and that will raise issues that perhaps we will need to grapple with at a later time.

THE COURT: Okay. That's encouraging to hear that that's where you come out at the moment anyway because that would add amazing complexities to things over the next 3, 4 weeks. That's for sure.

MR. GILLIGAN: A number of complexities, your Honor. Speaking of complexities, there is the matter still of the Plaintiff's Motion For Leave to Take a $30(\mathrm{~b})(6)$ deposition. May I assume based on the schedule your Honor has set that that Motion will not be granted?

THE COURT: I haven't ruled on it yet, but I think you have got some sense of how I am inclined. I will wait to issue the ruling, but $I$ don't think $I$ would have set this kind of schedule if $I$ was inclined to grant it.

MR. GILLIGAN: Very well.

THE COURT: I think you should focus on the briefs. Don't focus on depositions.

MR. GILLIGAN: Very well, your Honor. Thank you.
THE COURT: Very good. Mr. Moss, do you have anything you need to add for the good of the order or are you okay? MR. MOSS: I am okay, your Honor. I think from our perspective this is something that we can deal with in our Motion To Dismiss in a fairly straightforward manner. The Plaintiff's allegations with respect to Verizon are simply that it allegedly complied with a Court Order; and under the law, that doesn't -- there is no cause of action or basis for bringing the suit under those circumstances. That's our principal intention to dispose of the case on that basis.

THE COURT: I am going to be very curious to hear the arguments about the authority this Court has to review or overrule a decision by another Court. I don't know what Mr. Klayman's theory is going to be just yet, but we will see. MR. MOSS: We will be interested as well, your Honor. In addition, there are other defenses relating to personal jurisdiction that we will raise, but $I$ think they are all fairly garden variety.

THE COURT: Anything else, counsel? All right. We will have a copy of the transcript sent to Mr. Klayman's address as it appears on the record. We will stand in recess.
(Whereupon, at 4:10 p.m., the proceedings were concluded.)

| 1 | CERTIFICATE OF REPORTER |
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| 3 | I, Patty A. Gels, certify that the foregoing is a |
| 4 | correct transcript from the record of proceedings in the |
| 5 | above-entitled matter. |
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