

AMENDED TRANSCRIPT

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Donna M. Ryu, Magistrate Judge

CAITLIN KELLY HENRY, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. C 13-05924-DMR
)	
DEPARTMENT OF JUSTICE,)	
)	
Defendant.)	
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Oakland, California
Thursday, February 26, 2015

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 12:04 - 12:38 = 34 MINUTES

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1 Thursday, February 26, 2015

12:04 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling civil case C-13-5924-DMR,
5 Henry, et al. versus Department of Justice.

6 Please state your appearances, Counsel.

7 MR. STOUT: Your Honor, Jesse Stout for plaintiff
8 Caitlin Kelly Henry.

9 THE COURT: Good afternoon.

10 MS. HENRY: And plaintiff Caitlin Kelly Henry for
11 plaintiff Jesse Stout.

12 THE COURT: Good afternoon to you as well.

13 MS. WANG: Good morning (sic), your Honor.
14 Jennifer Wang for the defendant.

15 THE COURT: Good morning.

16 Okay. I have a few questions, Ms. Wang, for your side
17 and then I'll allow you all to argue both of your positions,
18 at least to hit the highlights.

19 So in reviewing the materials and Mr. Hardy's opening
20 declaration and then there was a supplemental, there were a
21 couple things that I wasn't completely clear on that I'm
22 hoping that you can shed further light on.

23 The first one has to do with the DIVS system, which I
24 think everybody now understands replaced the IDW system. I
25 think the plaintiff has conceded, oh, okay, yes, that's

1 true.

2 In Mr. Hardy's declaration he implies that a search of
3 DIVS would have been cumulative, would have replicated the
4 CRS search. But when I saw the materials provided by the
5 plaintiff on reply, to which there wasn't an objection, the
6 DIVS system is described as not just encompassing a CRS
7 database search but other databases. So there may -- in
8 other words, it sounded like if you do a DIVS search, it's
9 not only going to hit CRS, it's going to hit some other
10 databases that were unspecified.

11 So Mr. Hardy's declaration doesn't talk about that, so
12 I don't know -- I mean it sort of conclusorily says it would
13 be duplicative of CRS, but it doesn't talk about what else
14 it might capture.

15 MS. WANG: The answer to that, unfortunately, this
16 was -- the information that the plaintiffs provided about
17 DIVS was in reply. We did not have an opportunity to
18 object. We would object to some of that evidence.

19 THE COURT: Well, you could object. It's --

20 MS. WANG: But what I can say is that I believe
21 that that is -- it is my understanding that the DIVS, though
22 it's not a case management system, it does pull from more
23 than CRS.

24 The extent of and the description of the databases that
25 it pulls from, I have been told is law enforcement sensitive

1 information because it gets into investigative techniques.

2 So to the extent that the Court believes that
3 additional information about DIVS is necessary, we would
4 request the opportunity to provide a supplemental
5 declaration and with the -- my current understanding being
6 that that declaration may need to be submitted in camera to
7 the extent that the information about DIVS is law
8 enforcement sensitive or classified in some way.

9 THE COURT: Okay. So just to make sure that I
10 understand completely, if I did say please submit a
11 supplemental to explain DIVS and what else it pulls from
12 other than CRS, the declaration might -- when it's
13 describing those additional databases, it might be for my
14 eyes only.

15 MS. WANG: Correct.

16 THE COURT: That what would be sensitive is the
17 other databases themselves?

18 MS. WANG: Right, right. In other words, a full
19 description of what DIVS is other than what may already be
20 publicly available like, for example, in the materials that
21 plaintiffs provided would be for the Court's eyes only.

22 THE COURT: Okay. But I want to -- I'm just
23 trying to nail this down.

24 Would it be for my eyes only if I just asked it to
25 describe the other databases? Is that sensitive or is it

1 other material that I'm not even asking for that --

2 MS. WANG: No, I believe it is -- if the Court
3 would like to know what other databases, sort of what
4 databases it pulls from, then it's my understanding that
5 that information is for the Court's eyes only.

6 THE COURT: Okay. The other -- is there any --
7 would the Government do a DIVS run in lieu of providing more
8 information?

9 MS. WANG: At this -- we don't believe that such a
10 search is necessary to complete an adequate search.

11 In this case, there has been a search of the central
12 records system. That is the FBI's primary records system.
13 That search of the CRS has been done through two platforms.

14 THE COURT: No, I understand. But what I'm
15 getting at is, I have to be able to evaluate whether the
16 search was reasonable, okay. So in order to do that I could
17 see two ways we could handle it.

18 One is we take it off -- you just run the search and
19 either it turned up something or it didn't and that becomes
20 part of the record. Or you give me the information I need
21 to evaluate whether or not it was reasonable to not run DIVS
22 and that would include a submission that you would at least
23 initially submit in camera so then I could see whether or
24 not it should be part of the public record or should be kept
25 in camera. Do you see what I'm saying?

1 MS. WANG: Yes, and I think we would opt for --

2 THE COURT: But I don't have the information I
3 need to make a decision.

4 MS. WANG: Well, our position is that it is
5 speculative for plaintiffs to believe that these other
6 databases that DIVS may pull from would have information
7 responsive to their FOIA request when we have already done
8 multiple searches of the CRS.

9 THE COURT: I understand that's a --

10 MS. WANG: And so -- but to respond -- I'm sorry.
11 To respond to your question --

12 THE COURT: Well, you're not responding actually.

13 MS. WANG: -- to --

14 THE COURT: Let me just cut you off here. You're
15 not responding.

16 MS. WANG: Well --

17 THE COURT: So what I'm telling you, Ms. Wang, is
18 that you may be right. Okay? I don't know yet because I
19 don't have the information that I need to evaluate that,
20 because what Mr. Hardy says was somewhat conclusory. He
21 just said if I did this -- if we did this search, it would
22 just duplicate CRS.

23 It looks like it would do much more than that. So I
24 need to understand what else it might do. I might find
25 that, yeah, it was reasonable not to run DIVS, but I don't

1 have the information to be able to make that call or you
2 could just run it and then I don't think I would need the
3 underlying information, depending on the results.

4 MS. WANG: Right. And I think as between those
5 two options, we would say that we would like the opportunity
6 to provide that additional briefing for you, a description
7 of the databases pulled that are included in DIVS or the
8 DIVS pulls from. With my current understanding, that would
9 be something that is for the Court's eyes only. Rather than
10 doing -- going ahead and doing a DIVS search --

11 THE COURT: Okay.

12 MS. WANG: -- my understanding of DIVS is that it
13 is actually only accessible on a need-to-know basis, that
14 the tool itself --

15 THE COURT: Okay.

16 MS. WANG: -- is not accessible to all employees
17 at the FBI.

18 THE COURT: Okay. So that's fine to go that
19 route, but what you should do is prepare a couple versions
20 of this so that they have at least an understanding of what
21 you gave me, even if some parts of its guts are redacted for
22 the reasons that you stated. But then they'd have an
23 understanding of -- the parts that didn't need to be
24 redacted, they would know what you submitted. And the rest
25 you could do unredacted to me with the understanding that

1 then I would then rule on whether it was properly kept out
2 of the public record.

3 So does that make sense?

4 MS. WANG: Right. So to the extent that there is
5 information that is not law enforcement sensitive or
6 classified, we would try to provide that -- we would provide
7 that in a publicly filed declaration.

8 THE COURT: With redactions.

9 MS. WANG: With redactions, right.

10 THE COURT: Correct. And then I'd get the
11 unredacted.

12 Okay. So that's good.

13 Now, another question has to do with Sentinel and CRS.
14 I know that the Government ran a Sentinel search. I just
15 was not clear from Mr. Hardy's declaration what is the
16 relationship between Sentinel and CRS.

17 Here's what I think it is, but I could really be wrong
18 so I could use your guidance. Here's CRS, been around for a
19 long time, and then in the middle of 2012 Sentinel comes
20 along and it's described as sort of the next generation. So
21 I know from the papers that were given to me that the agents
22 upload directly into Sentinel and that the information in
23 Sentinel from 2012 forward then backfills into CRS. No?

24 MS. WANG: No. So CRS is a system of records that
25 FBI maintains. Sentinel is a portal into the CRS.

1 Similarly, ACS, which is another mechanism or case
2 management system that FBI uses to search CRS, is a portal
3 into CRS as well.

4 So Sentinel is not a replacement for CRS. Unlike CRS,
5 it is not a records system.

6 THE COURT: So what is the relationship between
7 CRS, Sentinel and ACS?

8 MS. WANG: So both Sentinel and ACS are portals
9 into -- sorry. I might have misspoken.

10 Sentinel and ACS are both portals into CRS. They
11 provide a mechanism, a way to search CRS.

12 THE COURT: Are they both searching the same data?

13 MS. WANG: They are both searching CRS. They
14 are -- in this case, both Sentinel and ACS searches were run
15 to search the indexing of the CRS.

16 THE COURT: So why use Sentinel versus ACS?

17 MS. WANG: Our position is that ACS is sufficient
18 and that is the search mechanism that we used. Once we
19 received plaintiffs' cross-motion for summary judgment,
20 opposition to defendant's motion for summary judgment, we
21 did run the same search but through the Sentinel portal into
22 CRS.

23 That search confirmed our ECS result that located no
24 responsive records.

25 THE COURT: Let me ask it a little differently.

1 What is the difference between doing a Sentinel search
2 versus an ACS search of the same CRS database?

3 MS. WANG: Our -- it is duplicative and that is
4 what Mr. Hardy explains in this declaration, that it is
5 duplicative because Sentinel allows a means for indexing
6 records. That information is backfilled into ACS so
7 essentially the two searches should be duplicative. They
8 are of the same information.

9 THE COURT: But why would anyone want to do
10 Sentinel versus ACS? I'm trying to understand the
11 difference. Is there something better about Sentinel versus
12 ACS?

13 MS. WANG: Our --

14 THE COURT: I mean all the papers that were not
15 objected to seemed to say Sentinel is great, this is the
16 next generation, this is a super tool. Is this the one
17 that's the Uber Google? Or maybe that's -- I can't
18 remember.

19 MS. WANG: So we don't believe that for -- that
20 there is a benefit to doing the search --

21 THE COURT: Ms. Wang, I'm sorry, what you're --

22 MS. WANG: -- through Sentinel.

23 THE COURT: You're giving me argument, but I'm
24 asking for facts. Is there some difference between Sentinel
25 and ACS and what are they? What is the factual difference

1 between Sentinel and ACS? Is Sentinel a better portal
2 because it has the following mechanisms? Or is it exactly
3 the same or --

4 MS. WANG: It's not a better portal to search CRS.
5 I think the benefits that Sentinel provide are in the
6 indexing, but that index information gets backfilled into
7 ACS so when you search the CRS whether using Sentinel or
8 ACS, the index information is the same.

9 I don't know if I'm addressing your --

10 THE COURT: I think -- I think so. So the
11 indexing happens when someone uploads something through
12 Sentinel?

13 MS. WANG: Yes.

14 THE COURT: It has better indexing?

15 MS. WANG: Right. It has --

16 THE COURT: Okay.

17 MS. WANG: It has -- I guess it's easier to use
18 for indexing purposes.

19 THE COURT: So let me just give you an example to
20 see if I've gotten this right.

21 I'm an agent in the post-Sentinel -- or the Sentinel
22 era. When I load something up through Sentinel, it now has
23 better indexing capabilities, and so all of that information
24 now gets backfilled into CRS which makes CRS better.
25 There's better indexing because I went through Sentinel.

1 MS. WANG: It gets backfilled into ACS.

2 THE COURT: ACS.

3 MS. WANG: Yes.

4 THE COURT: And then into CRS.

5 MS. WANG: And so they both -- so the documents --
6 the records are contained in CRS system of records. ACS and
7 Sentinel are portals to search CRS. Sentinel allows for
8 indexing of documents that would be within the CRS system.

9 That indexing information gets backfilled into ACS, so
10 when the search is run through ACS, it is duplicative of a
11 search done on Sentinel. That is not to say that the
12 programs are -- that the two portals are the same for all
13 purposes but for the purposes of searching CRS.

14 THE COURT: Okay. The last question has to do
15 with ECF full text searches, I just didn't completely
16 understand what -- there wasn't a lot of detail or
17 description in the Hardy declaration to explain what it is.

18 So I know ECF is the main text-based repository,
19 correct, or that's how he called it.

20 MS. WANG: ECF is a mechanism -- it allows full
21 text searching of documents in CRS.

22 THE COURT: That are text based?

23 MS. WANG: Right, text-based documents in CRS.

24 THE COURT: And so there's -- what exactly is a
25 full text search versus some other kind of search in ECF?

1 MS. WANG: ECF does full text searches. So ECF is
2 the application or the mechanism to run full text searches
3 of text-based documents within CRS. Does that make sense?

4 THE COURT: Yes. So if you were doing -- what
5 would you do if you weren't doing a full text search?

6 MS. WANG: We would --

7 THE COURT: What was done here?

8 MS. WANG: Right. What was done here which is
9 searching the index. So agents index information. That is
10 the way that agents -- that's the process by which agents
11 retrieve information or that -- or -- it's the tool that
12 agents use to retrieve information and documents for later
13 investigations or as part of a continuing investigation.

14 So the indexes to the records in CRS were searched
15 through the two portals we just discussed. ECF is a means
16 to do text -- full text searches of documents within CRS.
17 It is a part of the ACS mechanism. Does that --

18 THE COURT: Okay. Yes, it does.

19 MS. WANG: Does that make sense?

20 THE COURT: So to compare the two, the search that
21 was done here was using ACS and then Sentinel to search the
22 indices only, the automated and the manual -- well, the
23 automated and then manual is something separate.

24 And the terms that were specified were used and run
25 through Sentinel and ACS but only on the indices, correct?

1 MS. WANG: Then the -- the names were -- versions
2 of plaintiffs' names were run through ACS and Sentinel using
3 index searches, yes. Not all of -- so there were associated
4 keywords, those were not run.

5 THE COURT: Okay. Right.

6 And then what they'd asked for, which is a full text
7 search -- or what they're arguing for in this motion -- not
8 in their initial request but in this motion -- is a full
9 text search of CRS which would then -- you'd need ECF to do
10 that and to do that, you would punch in Caitlin Kelly Henry,
11 Occupy, or something like that and then it would search the
12 text or you'd do like a boolean search or how does that
13 actually work?

14 MS. WANG: So ECF is one way to do text-based --
15 to do full text searches within CRS. And the reason that
16 that is unlikely or unreasonable for FBI to undertake is
17 that the names that are indexed, names that are not included
18 in the indices are typically ones that are incomplete and
19 without identifying information for FBI to then look at the
20 documents and determine whether or not Henry, for example,
21 refers to plaintiff Caitlin Henry in this case.

22 THE COURT: Right. That part I understood. He
23 set that out in his declaration kind of what the burdens are
24 in trying to do a full text search that generates a lot of
25 false positives that you then have to chase down to figure

1 out whether they're relevant or not.

2 But what I didn't understand was just the basic what is
3 the full text search? What would they be punching in?
4 Would they punch in versions of the name plus keywords or
5 something else?

6 MS. WANG: I think what plaintiffs are requesting
7 is that we would be punching in all of these, all of the
8 variations of plaintiffs' names as well as all of the
9 associated keywords.

10 And I also wanted to add that ECF is also not the only
11 means to do full text searches. Sentinel we talked about as
12 being a portal into CRS. It allows the searches of the
13 indices but it also does have a text search option.

14 THE COURT: ECF?

15 MS. WANG: ECF and Sentinel.

16 THE COURT: Okay. So --

17 MS. WANG: But the issue --

18 THE COURT: -- another way you could do a text
19 search would be through Sentinel but it would have the same
20 problems?

21 MS. WANG: Exactly.

22 THE COURT: Okay. Okay. Thanks, Ms. Wang. Those
23 were the questions that I had that I just wanted to get
24 clarification on.

25 Okay. So I'll allow each side some brief highlighted

1 arguments that you want to make about -- I don't know that I
2 need to have separate argument on each of your matters
3 because it's essentially the same. But if you want to hit
4 the highlights of why you think their search was
5 unreasonable, then I'm prepared to hear it and then I'll
6 allow a response.

7 MS. HENRY: And can I first please distinguish or
8 clarify our understanding of the -- sort of the third level
9 of the search function?

10 THE COURT: Okay.

11 MS. HENRY: So in our understanding, which as you
12 mentioned, it is the obligation of David Hardy or whoever is
13 doing the declarations, to describe in reasonable detail and
14 nonconclusory fashion in their affidavits what that process
15 is.

16 But we did to try to help the Court, in the de novo
17 review standard, understand and ask the questions that you
18 asked today and that we still have those outstanding
19 questions.

20 But if you visualize the top level in our visualization
21 as this CRS system, you can access it through the ACS or you
22 can access it through Sentinel. What they did was an index
23 search via UNI, and that's something that hasn't been
24 brought up today, the name index.

25 But they did not search it through the ECF function.

1 So it can be searched separately --

2 THE COURT: Well, they searched through Sentinel.

3 MS. HENRY: Right. So the ECF function, as I
4 understand it, is a standalone function, and then there's
5 the separate Sentinel portal for accessing that accesses
6 this smaller world but also accesses hundreds of other
7 databases.

8 And if we're allowed to present more (indiscernible),
9 more papers later, we do have in a case that just came out,
10 something that might be helpful for understanding. This was
11 just released. We didn't introduce it.

12 We can introduce it if it's helpful, but --

13 THE COURT: So a lot of the information --
14 basically all of the information that you submitted was
15 hearsay.

16 MS. HENRY: Uh-huh.

17 THE COURT: They didn't object to some of it other
18 than authentication and I think you've properly
19 authenticated it at this point. But for those where they
20 did lodge a hearsay objection, it's hearsay. You're trying
21 to present it for the truth of the matter.

22 I don't know what you were holding up but it may have
23 the same problem. So I --

24 MS. HENRY: So if we are permitted to do more
25 papers later, we have the attorney and the case that it was

1 released to.

2 It's a training document, a PowerPoint from the FBI on
3 how to use a Sentinel search to access ECF, and we can have
4 it authenticated and introduce it later if we're permitted
5 to respond. If you are going to have the defendant brief
6 the issues in camera or order a search, we would be --

7 THE COURT: Well, so far I'm only -- I only need
8 further supplementation in the record on what DIVS is
9 because it wasn't -- for the reasons that I said, that there
10 wasn't quite enough information for me to be able to
11 evaluate whether it was reasonable for them to not go
12 through DIVS.

13 MS. HENRY: Right. And we agree with that. And
14 don't -- I think you made many of the arguments that we
15 would have made about the reasonableness of the search.

16 THE COURT: These are not arguments. These are
17 simply -- I needed to clarify the record so that I can
18 evaluate whether their search was reasonable.

19 MS. HENRY: Okay.

20 THE COURT: They're not arguments and they're not
21 rulings.

22 MS. HENRY: Right.

23 THE COURT: They're simply, you know, I'm the one
24 that needs to make the call so I need to understand the
25 information. That's the one piece where I think the record

1 should be supplemented by the Government.

2 MS. HENRY: Right. And I apologize for
3 misspeaking. I didn't mean arguments. I meant that because
4 they have the burden to provide these conclusory detailed
5 affidavits, our argument is that that threshold of evidence
6 to explain why this would or wouldn't be burdensome hasn't
7 been met.

8 They haven't said, like in other cases -- in the People
9 for the American Way case we cited or in Hiken or some of
10 those other cases where they say it would take 140 hours, we
11 already searched it.

12 We don't know what it would take. We understand that
13 in 2006 IDW system could run 1,000 names in 50 different
14 search engines in 30 minutes and 10 years later Sentinel and
15 DIVS have replaced that and presumably can do these searches
16 much more faster.

17 THE COURT: Hold that thought. So when you
18 provide the information on DIVS -- and I did have in my
19 notes. I just forgot to also ask -- please provide burden
20 information about that too. So if for some reason I find
21 based on the information that it should -- you know,
22 reasonably could have been searched, the other piece I'd
23 need for that is the burden.

24 So maybe there isn't a burden, but I don't know. Okay?
25 Go ahead.

1 MS. HENRY: And those are the main points. So in
2 conclusion, we think that this case is about finding a
3 needle in a haystack and whether it's reasonable if they --
4 the FBI has a tool such as a magnet to find the needle in
5 the haystack, if it's reasonable to permit them to keep
6 searching by hand using the old tools.

7 And we're asking the Court to evaluate the standard
8 based on the contemporary technology, not the technology of
9 the last Ninth Circuit case on this issue of what would be
10 reasonable under technology because that case was in 1985.

11 So we're asking the Court to understand what the
12 available technology is and evaluate the burden, or the lack
13 of burden as we understand it, to be using these advanced
14 technologies and the multiple ways of searching.

15 So we're asking the Court to have the FBI search --
16 issue an order to search ECF using the full text ECF,
17 Sentinel for full text, and then DIVS for full text. So
18 that's the conclusion of what we asked for in the order.

19 THE COURT: Okay. So Sentinel they did. DIVS
20 they haven't but --

21 MS. HENRY: The name search. They did a name
22 search.

23 THE COURT: Okay. So you have not -- they've
24 explained a lot in the declaration and supplemental of Mr.
25 Hardy of why it is not reasonable to go beyond -- to go into

1 something like a full text search. So they laid out the
2 burden, for example, in using ACS and pulling up the false
3 positives.

4 I know that it was ordered in one of the Shapiro cases.
5 I think it was the one involving Aaron Swartz, materials
6 about him, but that's a very distinguishable situation.
7 Those were very specific requests, unlike the two -- the
8 requests that were submitted in this case and where it was
9 known that the records exist.

10 In that case, I can't remember if there were records
11 found and also the knowledge that there were many more that
12 were out there.

13 In this case, the Government has done a number of
14 searches and came up with nothing. Nothing. Including
15 through Sentinel.

16 So to say well, now you've got to do this extra
17 burdensome one without any basis -- there's no basis for
18 them to believe that that's going to be fruitful, that there
19 have been hits or that, you know, anything else has turned
20 up that would -- or that you have given them to lead them to
21 believe that there's something missing. That's where a full
22 text search might be warranted, but I don't know that you've
23 made that showing here. Okay.

24 So I would like -- how long do you need to provide the
25 DIVS information?

1 MS. HENRY: I would ask for 45 days for providing
2 the additional briefing.

3 THE COURT: All it is is a supplemental
4 declaration. That's an awful long time. Why do you need 45
5 days?

6 MS. HENRY: I have -- just to get out from the
7 next couple of weeks, I have some motions due and it would
8 be helpful for me to have some time to work on obtaining the
9 declaration.

10 THE COURT: Okay. Any objection to 45 days?

11 MS. HENRY: No.

12 THE COURT: No? Okay. Well, since there wasn't
13 an objection, even though it sounds like a long time, I'm
14 going to allow 45 days from today for you to provide two
15 versions. So one -- I guess -- I'm trying to think. I
16 guess the sealing mechanism doesn't work because we're
17 trying to -- it's really for the Court's eyes only.

18 So you should file the redacted version but only lodge
19 the ex parte in camera version. But you should, as part of
20 the un -- I'm sorry, the redacted, whatever you put in the
21 public record -- you should include your support, whatever
22 legal support you have for in camera review, just so they
23 know the basis for your argument that only the Court should
24 see parts of it.

25 MS. HENRY: I'm sorry. So we filed the redacted

1 version and then we lodge with the Court --

2 THE COURT: The unredacted.

3 MS. HENRY: -- the unredacted version and then --

4 THE COURT: Well, I guess --

5 MS. HENRY: I missed the next --

6 THE COURT: Yeah, I was trying to cut down on the
7 work and see if you could put it in the declaration itself.
8 But maybe you need to file a little pleading along with it
9 where you set forth the legal authority for providing it
10 solely to the Court in camera.

11 MS. HENRY: Okay. So is that -- but that's -- are
12 you envisioning a motion for -- a request to file under seal
13 or just a -- I guess I'm wondering is it a motion that you'd
14 like or is it sort of a notice pleading?

15 THE COURT: Yeah, it's not really a motion. But
16 let me -- what's the best way to do it? It shouldn't be
17 under seal because when it's under seal, all the parties get
18 to see it. It's just the public --

19 MS. HENRY: Right.

20 THE COURT: -- doesn't get to see it.

21 MS. HENRY: Right.

22 THE COURT: So that won't be it. But I want to
23 make sure that it's part of the public record and that the
24 plaintiffs see what your support is for keeping some of it
25 out of their purview.

1 MS. HENRY: Okay.

2 THE COURT: So you should just file a memorandum
3 of law in support of that notion.

4 And if for some reason, Mr. Stout, Ms. Henry, you wish
5 to rebut or say that law shouldn't be followed, you can file
6 something within a week about the law, on the legal points.

7 MS. HENRY: After the 45 days. A week after.

8 THE COURT: A week after the matters are filed.
9 So I don't know if Ms. Wang's going to file it on the 45th
10 day but a week after her submission, you can file a short
11 brief.

12 So you know, I'm envisioning yours is maybe two pages,
13 Ms. Wang, explaining the law, if that.

14 So you can have two pages on your side saying no, ex
15 parte, in camera review is inappropriate because of the
16 following cases. Okay?

17 You don't have to but I just want to make sure you have
18 that opportunity.

19 MS. HENRY: Thank you.

20 MS. WANG: Thank you, your Honor.

21 May I just ask for clarification on --

22 THE COURT: Yes.

23 MS. HENRY: In the cross-motion for summary
24 judgment, the plaintiffs had raised issues with the adequacy
25 of the searches done by the U.S. Attorney's Offices and

1 the --

2 THE COURT: Those are all submitted and honestly I
3 didn't see anything in their reply on that.

4 MS. HENRY: I didn't either and I just wanted --

5 THE COURT: And I'm not hearing anything on that.

6 MS. HENRY: Okay.

7 THE COURT: So the record is what the record is.

8 MS. HENRY: Okay.

9 THE COURT: But all I need to supplement the
10 record for the decision I need to make is the information
11 that I just asked for.

12 So let me just make sure there isn't anything else.

13 I think that's it.

14 Okay. Anything further?

15 MS. HENRY: Can you clarify the time line this
16 will end and then you will rule? After the 45 days there
17 won't be anything --

18 THE COURT: Yes. So once I get the information,
19 then I'll have the last piece that I need to be able to
20 evaluate whether it was reasonable and then I'll issue an
21 order --

22 MS. HENRY: Great.

23 THE COURT: -- on both summary judgment motions.
24 Okay?

25 MS. HENRY: Thank you.

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THE COURT: All right. Thank you all.

MS. HENRY: Thank you, your Honor.

(Proceedings adjourned at 12:38 p.m.)

CERTIFICATE OF TRANSCRIBER

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I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



Echo Reporting, Inc., Transcriber

Thursday, March 12, 2015