ROYCE LAMBERTH NOT AS EASY TO FOOL AS TUCKER CARLSON'S "COUSIN-FUCKING" "TERRORIST" VIEWERS

Royce Lamberth's opinion upholding the guilty verdict against Jacob Chansley once again vindicates DOJ's approach to discovery on the January 6.

ROYCE LAMBERTH REFERS DC JAIL TO DOJ FOR CIVIL RIGHTS INVESTIGATION

Royce Lamberth referred the DC jail for investigation based on its lassitude in helping Christopher Worrell medical treatment.

JUDGE LAMBERTH TAKES DOJ TO WOODSHED; DOJ MOVES PEAS UNDER DIFFERENT PODS

There was an interesting, albeit little noticed, order issued about ten days ago in the somewhat below the radar case of *Royer v. Federal Bureau of Prisons*. Royer is a federal inmate who has served about half of his 20 year sentence who in 2010 started bringing a mandamus action complaining that he was improperly classified as a "terrorist inmate" causing him to be wrongfully placed in Communication Management Unit (CMU) detention. The case has meandered along ever since.

Frankly, beyond that, the root case facts are not important to the January 15, 2014 Memorandum and Order issued by Judge Royce Lamberth in the case. Instead, Lamberth focused, like a white hot laser, on misconduct, obstreperousness and sheer incompetence on the part of the United States Department of Justice (DOJ) who represents the Defendant BOP in the case.

Here are some samples straight off of Royce Lamberth's pen:

> Plaintiff's discovery requests were served on June 19, 2013. Defendant failed to respond on July 19, 2013, as required, nor did defendant file a motion for extension of time. Defendant's first error, therefore, was egregious—arrogating to itself when it would respond to outstanding discovery.

and

> Defendant's fourth error was on August 5, 2013, when it filed its responses to interrogatories and produced a few additional documents. The answers to

> interrogatories contained no signature under oath, with untimely objections signed by counsel. Even novices to litigation know that answers to interrogatories must be signed under oath. Any attorney who practices before this Court should know that this Court does not tolerate discovery responses being filed on a “rolling” basis

Lamberth then goes on to grant the inmate plaintiff pretty much all his discovery motion and hammers the DOJ by telling plaintiff to submit its request for sanctions in the form of award of attorney fees and costs. Ouch; bad day for the DOJ.

Then the court lowered the boom. After noting that DOJ’s defense was “completely without merit” and “incompetent”, Lamberth puts a giant stake in the heart of the holier than thou DOJ:

> Defendant’s sneering argument that plaintiff is not prejudiced by all this delay by defendant because he remains incarcerated is beyond the Court’s comprehension. The whole point of this litigation is whether defendant can continue to single out plaintiff for special treatment as a terrorist during his continued period of incarceration. Did any supervising attorney ever read this nonsense that is being argued to this Court?

OUCH!!

> I regret that I am away sitting by designation on another court with a terrible backlog, or I would hold a hearing in open court to hold the government attorneys accountable for their misconduct here. Plaintiff’s discovery efforts should not be further delayed, and requiring payment of attorney’s fees will make clear that the

> Court totally and categorically rejects the practice of the government in this case.

Well, you just don't see that every day, and certainly not in the hallowed halls of Prettyman Courthouse in DC. It is, however, something that is a long time coming to the DOJ, who has for years arrogated themselves the right to lie, cheat and violate ethical rules in their litigation at every level of court.

It is why another Chief Judge, Alex Kozinski of the 9th Circuit, also exploded recently about the DOJ's relentlessly unconscionable tactics in engaging in Brady violations. Every judge in this country's federal courts ought be taking note, and bringing the weight of court sanction down on the DOJ.

So, what did DOJ do in response to the blistering whipping Royce Lamberth laid on them in *Royer*? Exactly what you would expect, hiding the pea by switching the pods covering it. Quietly, and under the cover of weekend electronic filing on Saturday, DOJ noticed the wholesale substitution of counsel on the Royer case. It was a terse one page noticed that substantively stated only:

> The Clerk of the Court will please enter the appearances of Assistant United States Attorneys Daniel F. Van Horn and Brian P. Hudak as counsel for Defendant Federal Bureau of Prisons and remove the appearances of all prior counsel for Defendant in the above-captioned case.

There were previously four DOJ attorneys assigned to the Royer defense: Charlotte Abel was designated lead and signer of the initial pleadings, and as Laurie Weinstein (signatory on subsequent responsive answer), Rhonda Campbell and Rhonda Fields. All four were removed as counsel by DOJ Saturday, and replaced by Daniel Van Horn, Chief of the Civil Division, and Brian

Hudak, another AUSA at DOJ Main.

No mention of punishment of the DOJ attorneys for their misconduct. There never is as Alex Kozinski complained so vociferously of. Even when there is no option but to have the Department of Justice Office of Professional Responsibility (OPR) open a case on a department attorney, the investigation turns into a black hole to conceal and whitewash the bad behavior. As I wrote in 2010, the OPR is an intentionally feckless, conflict infested, black hole designed by David Margolis and DOJ leaders to hide misconduct and shield their own attorneys.

Fordham University law professor Bruce A. Green, a former federal prosecutor and ethics committee co-chair for the ABA Criminal Justice Section, once famously said of OPR:

> I used to call it the Roach Motel of the Justice Department, Cases check in, but they don't check out.

Don't be looking for any substantive actions addressing, much less punishing, the previous attorneys Judge Royce Lamberth took to the woodshed in Royer. DOJ imperiously simply won't stand for it, and their first move was to shuffle the pea under the shell pods under the cover of a weekend.

Out with the old, in with the new, all better now over a sleepy weekend! If past is prologue, look for DOJ to be giving awards to Abel, Weinstein, Campbell and Fields for their incompetence. After all, DOJ has a history of rewarding bad behavior, and efforts to cover it up.

Because that is the way of the DOJ.

JUDGE LAMBERTH UPHOLDS GITMO DETAINEES' RIGHT TO COUNSEL

I'm a bit cranky, so reading this scathing opinion from Royce Lamberth rejecting the government's effort to impose a new Memorandum of Understanding concerning Gitmo detainees' right to counsel was just the ticket. The operative ruling reads,

> The court, whose duty it is to secure an individual's liberty from unauthorized and illegal Executive confinement, cannot now tell a prisoner that he must beg leave of the Executive's grace before the Court will involve itself. The very notion offense the separation-of-powers principles and our constitutional scheme.

But the part where Lamberth lists the differences between the existing Protective Order and the MOU the government proposed.

> For example, the Protective Order assumes that counsel for the detainees have a "need to know," which allows them to view classified information in their own and related Guantanamo cases. Counsel for detainees are also specifically allowed to discuss with each other relevant information, including classified information, "to the extent necessary for the effective representation of their clients. And, the Protective Order assures that counsel have continuing access to certain classified information, including their own work-product.
>
> The MOU, on the other hand, strip counsel of their "need to know"

> designations, and explicitly denies counsel access to all classified documents or information which counsel had "previously obtained or created" in pursuit of a detainee's habeas petition. Counsel can obtain access to their own classified work product only if they can justify their need for such information to the Government. "Need to know" determinations for this and all other classified information would be made by the Department of Defense Office of General Counsel (DoD OGC), in consultation with the pertinent classification authorities within DoD and other agencies. However, there is no assurance that such determinations will be made in a timely manner. As this Court is keenly aware from experience, the inter-agency process of classification review can stretch on for months. It is very likely that this provision would result in lengthy, needly and possibly oppressive delays. It would also require counsel to divulge some analysis and strategy to their adversary merely to obtain their past work-product.
>
> [snip]
>
> While this Court is empowered to enforce the Protective Order, all "disputes regarding the applicability, interpretation, enforcement, compliance with or violations of" the MOU are given to the "final and unreviewable discretion of the Commander, Commander, Joint Task Force-Guantanamo Bay" (JTF-GTMO). The MOU further gives the JTF-GTMO Commander complete "authority and discretion" over counsels' access to classified information and to detainees, including in-person visits and written communications. Apparently, the MOU also gives the Government to unilaterally modify its terms.

> [snip]
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> Unlike the Protective Order, which repeatedly states that the Government may not unreasonably withhold approval of matters within its discretion, the MOU places no such reasonableness requirement on the Commander of JTF-GTMO. Because the MOU does not come into effect until countersigned by the Commander at JTF-GTMO, the Commander could presumably refuse to sign the MOU, leaving a detainee in the lurch without access to counsel. The MOU also states that both the "operational needs and logistical constraints" at Guantanamo as well as the "requirements for ongoing military commissions, periodic review boards, and habeas litigation" will be prioritized over counsel-access. This provision is particularly troubling as it places a detainees' access to counsel, and their constitutional right to access the courts, in a subordinate position to whatever the military commander of Guantanamo sees as a logistical constraint. [citations removed]

This is a better summary of all the potential abuses in the new MOU than any I've seen in commentary on this issue. Rather than treating the government as an entity that has always acted in good faith in the history of Gitmo litigation (and other counterterrorism cases), Lamberth lays out all the big loopholes that the government would use to infringe on habeas corpus.

It's worth a read. Cause I'm sure the government will appeal, and who knows what this will look like after someone like Janice Rogers Brown gets ahold of it.

ROYCE LAMBERTH: LET'S MAKE A DEAL

Royce Lamberth appears to be having a split the baby moment in the Richard Horn suit.

As you recall, back in the Clinton era, a DEA official sued the government for illegal spying on him. He alleged that State and CIA conspired to thwart his efforts to cooperate with the Burmese government on drug eradication by spying on him and using information collected to trump up reasons to get him ousted from his post. The suit had been drawing on for years, most recently through the improper invocation of state secrets. Judge Royce Lamberth went ballistic last year when he discovered the CIA and DOJ had been lying to sustain their invocation of state secrets. As predicted, in response DOJ decided to settle the suit, not least because any decision on this case was going to imperil their effort to hide behind state secret to get away with illegally wiretapping al-Haramain. Since last fall, Lamberth has been deliberating whether to let them settle the suit, and/or whether he should go on with investigations into the government's misconduct in the suit itself.

As Josh Gerstein reports, Lamberth has proposed an implicit deal with the government: if it will treat the case as it would have under Eric Holder's new state secrets policy, he will allow the government to settle. His proposed deal is this:

- Al-Haramain will be permitted to submit their amicus curiae brief opposing the vacating of Lamberth's earlier opinion in the suit,

but he will allow the settlement anyway (see this post for more background on the issue)

- Horn will get his $3 million settlement and taxpayers will, as they did with the Hatfill settlement, pay to make up for the misconduct of government officials
- DOJ will refer the misconduct of the CIA and DOJ in this case to the Inspectors General of those agencies
- DOJ will also alert Congress to details of the case, in particular regarding "disturbing evidence" from a sealed motion "indicating that misconduct occurred in the Inspector General's Offices at both the State Department and the Central Intelligence Agency"

Aside from the injustice (which Lamberth is bugged about, but not bugged enough to refuse the settlement) that taxpayers have to pay because government officials engaged in misconduct, this proposition will pretty much guarantee that the government gets away with its scheme to avoid legal consequences by invoking state secrets.

Plus, there's a tremendous level of irony here. Some of the documents over which the government had invoked state secrets were IG Reports. Yet Lamberth's proposal to make this right is to do more IG Reports? And while the CIA Inspector

Generals has turned over at least twice since the misconduct in question, Lamberth is literally proposing that having CIA's Inspector General investigate wrongdoing by CIA's Inspector General will somehow make this right.

Update: I've been informed that there is a practice of having other IGs investigate when an agency's IG is accused of misconduct.

OBAMA DOJ CONTINUES TO FLIMFLAM JUDGE LAMBERTH ON STATE SECRETS

The state secrets doctrine was born on the wings of fraud and lies by the US government in the case of *US v. Reynolds* in 1953. As Congress struggles to rein in the unbridled use of the doctrine to cover up illegality by the Executive Branch (see here, here and here), it is a good idea to keep focus on just how addicted the Executive Branch has become to this unitary ability to quash inquiry into their malfeasance.

It took over four decades for the outright lie in *Reynolds* to surface and be exposed. The government was well on their way to covering up their similar dishonesty in *Horn v. Huddle* for decades, if not eternity, when a relentless plaintiff was finally able to demonstrate to Judge Royce Lamberth the fraud being perpetrated upon the court, nearly a decade after the original state secrets assertion. After giving the government multiple opportunities to come clean, Judge Lamberth blistered the DOJ with an opinion literally finding their acts a fraud upon the court.

After being exposed on the record by Judge Lamberth, the government suddenly decided to

settle with the plaintiff, with a non-disclosure and no admission of wrongdoing agreement of course, and then moved the court to vacate its rulings against them. The DOJ literally wants to erase the record of their fraud.

But not everybody is quite so excited about the thought of the DOJ wiping the record of their time worn proclivity to dishonesty in state secrets assertions. It important for there to be such a record, with written opinions of the court behind it, because the government is still out there seeking to shirk accountability for illegality and Constitutional malfeasance in critically important cases such as *al-Haramain* and *Jeppesen*.

In this regard, the attorney for al-Haramain, Jon Eisenberg, has just taken the extraordinary step of seeking leave to file an amicus brief to Judge Lamberth in the *Horn v. Huddle* case objecting to the government's attempt to vacate the court's opinions. The amicus filing by Eisenberg is brief, but a thing of beauty. And he nails the government for continuing dishonesty with the court by pointing out how the DOJ unethically failed to cite to the court directly adverse authority to their arguments in seeking to vacate the previous opinions.

> The purpose of this brief is to apprise the Court of legal authorities – as to which the United States's vacatur motion is silent – that are directly adverse to the United States's position and support this Court's denial of the motion.
> ….
> The United States contends there is "minimal" value in leaving this Court's opinions "extant," because they are interlocutory and thus are "non-precedential." See United States's Motion, Dkt. #508, at 6. But a district court's interlocutory opinions, while lacking precedential value, are hardly valueless. In Fraser, 98 F. Supp. 2d at 791, the court refused vacatur of

> opinions concerning interlocutory issues because “there can be little doubt that, like the appeals court opinion in Bancorp, opinions on such matters are a valuable resource for litigants and courts,” especially where the opinions address “questions of first impression.”
>
> That is the situation here. The opinions that the United States wants vacated concern questions of first impression — whether a district court may decline to give a high degree of deference to an assertion of the state secrets privilege where the government has previously made misrepresentations to the court regarding the privilege (the opinion of July 16, 2009), and whether a district court may decide whether counsel who have been favorably adjudicated for access to classified information have a “need to know” the information within the context of pending litigation (the opinion of August 26, 2009). The opinions will be a valuable resource for litigants and courts as these issues arise in other cases. In fact, the opinions have already proved to be a valuable resource in Al-Haramain Islamic Foundation, Inc. v. Obama, where the plaintiffs (amici curiae in the present case) have cited them in briefing on a pending motion for partial summary judgment. See Al-Haramain Islamic Foundation, Inc. v. Obama, MDL Docket No. 06-1701 VRW (N.D. Cal.), Plaintiffs’ Reply to Government Defs.’ Opp. to Pls.’ Motion for
> Partial Summ. Judg., Dkt. #104, at 13 n. 2 & 17 n. 3.

Get that? After perpetrating a fraud on Judge Lamberth’s court, and being caught redhanded, the Obama DOJ files a brief that fails to disclose directly adverse authority, which is fundamentally unethical. It never stops on the

pernicious dishonesty and outright fraud when the government is involved in state secret assertions; that was the case in the outset with *US v. Reynolds*, and that is the case now.

And you have to wonder why, at this point, Judge Lamberth would possibly be interested in granting the government's wish to wash their hands here. It was Judge Lamberth, and his court, the fraud was directly perpetrated on, and that is the very conduct seeking to be escaped from by the settlement and motion to vacate. If not for having been caught, the fraud would still be ongoing. Justice, and the sanctity of the court, require Judge Lamberth to leave those opinions in place (not to mention the authority Eisenberg cites in the amicus filing); it would not be right to give the government the ability to wash away the opinion record of such outrageous perfidy when other litigants across the country are facing potentially similar circumstances.

Judge Lamberth should leave his opinions in place and let them have whatever value they may for other litigants, as a message to Congress, and, most of all, support for other judges, like Judge Vaughn Walker, trying to wrangle with an obstreperous and obstructionistic Department of Justice and US government. Quite frankly, after all the disingenuous conduct perpetrated by the DOJ in covering up the violations of the executive branch, the court should still impose stiff sanctions on the government as was being contemplated by the court in *Horn v. Huddle* before settlement; but, at a minimum, the court should send a message that such conduct will not be tolerated by leaving its opinions in place and in force.

THE ROYCE LAMBERTH-VAUGHN WALKER GOLF MATCH

Royce Lamberth and Vaughn Walker must have been golfing together recently. Because their rulings on governmental secrecy sound totally alike.

LAMBERTH DOESN'T SEEM TO THINK THE BOUMEDIENE SKY IS FALLING

Because Chief Judge Royce Lamberth of the DC Circuit (where many Gitmo habeas petitions are currently pending) sure seems to be moving forward on developing procedures to give the Gitmo prisoners their habeas petitions.

U.S. District Court Chief Judge Royce C. Lamberth met today with lawyers from the Department of Justice and representatives of the Guantanamo detainees to discuss how the court should proceed in light of last week's Supreme Court decision

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HOW RYAN NICHOLS RESPONDED TO TRUMP'S MIKE PENCE

TWEET

“Pence did the wrong thing … So we stormed the Capitol, and they stopped the vote,” Ryan Nichols explained how he responded to Trump’s tweet targeting Mike Pence. That’s the kind of evidence we should expect to see at Trump’s trial.

DOJ REFUSES TO LET TRUMP DISAVOW HIS MOB

DOJ intends to prove that Trump was very much a part of the mob that attacked the Capitol on January 6 and almost got his Vice President killed.