

1 APPEARANCES (Continued):

2
3 For Movant-Interceptee
4 John Johnston:FOLEY & LARDNER, L.L.P.
BY: MR. DANIEL S. REINBERG
321 North Clark Street
Suite 2800
Chicago, Illinois 60610-4764
(312) 832-51676 For Movant, an Unindicted,
7 Unidentified Interceptee,
8 also known as Lobbyist 1:COLLINS & COLLINS
BY: MR. JOHN P. COLLINS
332 South Michigan Avenue
Suite 605
Chicago, Illinois 60604
(312) 663-420010 For Special Investigative
11 Committee for Illinois
12 House of Representatives:BAKER & MCKENZIE, L.L.P.
BY: MR. DAVID W. ELLIS
One Prudential Plaza
130 East Randolph Drive
Chicago, Illinois 60601
(312) 861-307213
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17
18
19
20
21
22 COLLEEN M. CONWAY, CSR, RMR, CRR
23 Official Court Reporter
24 219 South Dearborn Street, Room 2524-A
Chicago, Illinois 60604
25 (312) 435-5594
colleen_conway@ind.uscourts.gov

1 (Proceedings in open court.)

2 THE CLERK: 08 CR 1010, U.S.A. versus Blagojevich, on
3 a motion.

4 MR. CHANG: Good afternoon, Your Honor.

5 Edmond Chang and David Glockner for the United
6 States, and we have Reid Schar here as well.

7 THE COURT: Good afternoon.

8 MR. SCHAR: Good afternoon, Judge.

9 MR. GLOCKNER: Good afternoon, Judge.

10 MR. GENSON: Ed Genson.

11 Your Honor, I'd like permission to file a limited
12 appearance on behalf of Rod Blagojevich in this matter.

13 THE COURT: All right. You may do so.

14 Good afternoon.

15 MR. GENSON: Thank you, Your Honor.

16 Good afternoon.

17 MR. ETTINGER: Good afternoon, Your Honor.

18 Michael Ettinger and Cheryl Schroeder for Robert
19 Blagojevich, and we'd like to file a limited appearance.

20 THE COURT: All right. You may do so.

21 Good afternoon.

22 MR. ETTINGER: Thank you, Your Honor.

23 MR. REINBERG: Good afternoon, Judge.

24 Dan Reinberg. I would like to file a limited
25 appearance on behalf of Mr. John Johnston, one of the

1 interceptees in this matter.

2 THE COURT: All right. You may do so.

3 Good afternoon.

4 MR. REINBERG: Good afternoon.

5 MR. COLLINS: Good afternoon, Your Honor.

6 John Collins on behalf of an unidentified interceptee
7 in the complaint and affidavit.

8 And before stating his name, since he is
9 unidentified, I wanted to mention that.

10 We'd be -- I'd be filing a limited appearance as
11 well.

12 THE COURT: All right.

13 MR. COLLINS: It'd be our preference to stay
14 unidentified, also.

15 THE COURT: All right. You may file your appearance.
16 Let me just inquire with regard to that appearance,
17 though. Is your client a person whose voice was identified as
18 among the voices on the four telephone calls that the
19 government seeks to disclose to the Special Investigative
20 Committee of the Illinois House of Representatives?

21 MR. COLLINS: That is my understanding, Your Honor.

22 THE COURT: All right. Does the government agree?

23 MR. CHANG: That's right, Your Honor.

24 THE COURT: All right.

25 All right. We have more appearances and then we will

1 address this further issue.

2 MR. SOROSKY: Sheldon Sorosky, S-o-r-o-s-k-y, on
3 behalf of Rod Blagojevich.

4 THE COURT: Good afternoon.

5 MR. ETTINGER: You got me already, Judge.

6 THE COURT: Okay. All right. Now, with regard to
7 you folks who are seeking to file limited appearances, you
8 actually have to do file them, because, actually, Mr. Sorosky
9 is the only attorney on behalf of Rod Blagojevich and Mr. Ekl
10 is the only attorney on behalf of Mr. Harris, and we do have
11 these additional individuals whom I ordered the government to
12 provide notice to with regard to today's hearing so we could
13 address any issues that need to be addressed with regard to the
14 government's motion.

15 Let me just say in a prefatory manner that the
16 government has also filed an unopposed first motion for an
17 extension of time to return an indictment pursuant to 18 U.S.C.
18 § 3161(h).

19 Since it was unopposed, that motion was granted in
20 chambers this morning, and it is hereby ordered that the time
21 in which to file an indictment against the defendants is
22 extended from January 7, 2009 to and including April 7, 2009,
23 as the government requested.

24 MR. GENSON: No objection.

25 THE COURT: Okay. All right. That housekeeping

1 matter has been dealt with.

2 Now, with regard to the motion for disclosure of
3 intercepted communications to the Special Investigative
4 Committee, has each counsel had an opportunity to review that
5 motion?

6 MR. GENSON: We have reviewed the motion, Your Honor.

7 MR. ETTINGER: We have, Judge.

8 MR. REINBERG: We have, too, Your Honor.

9 MR. COLLINS: Yes, Your Honor.

10 THE COURT: All right. I understand from reviewing
11 the motion that the government stands ready, subject to
12 agreement by a protective order, to provide both transcripts,
13 full transcripts and redacted transcripts, of the four
14 telephone calls that the government seeks to have provided to
15 the Special Investigative Committee?

16 MR. CHANG: That is correct, Your Honor.

17 THE COURT: And you also have available on disk form
18 both the full conversations and redacted conversations for each
19 of those four telephone calls?

20 MR. CHANG: We do, Your Honor.

21 THE COURT: All right. The government has submitted
22 those to me in camera, and I am going to order the government
23 to provide those to all counsel who have filed limited
24 appearances this afternoon.

25 How soon can the government make those available?

1 MR. CHANG: Your Honor, if we could have just till
2 tomorrow --

3 THE COURT: All right.

4 MR. CHANG: -- we'll be able to provide those.

5 THE COURT: If I could just -- since you are going to
6 take until tomorrow, if I could just make a suggestion with
7 regard to the full transcripts?

8 If it's possible on the full transcripts to provide
9 either by boxing out or bolding or in some way identifying on
10 the full transcripts that which you seek to have redacted on
11 the redacted transcripts, it would just be easier for the
12 individuals reviewing the transcripts, so they will know what's
13 being sought to be redacted.

14 MR. CHANG: Very well, Your Honor.

15 THE COURT: All right. That just makes it easier for
16 you. You don't have to go back and compare back and forth.

17 MR. CHANG: Right, Your Honor.

18 THE COURT: Okay? All right. Okay. And you will
19 have that available tomorrow?

20 MR. CHANG: Yes, Your Honor.

21 And if I may, Your Honor?

22 THE COURT: You may.

23 MR. CHANG: The motion, of course, sets forth that
24 we -- we have no objection to providing to the interceptees
25 their respective calls, that is --

1 THE COURT: Yes.

2 MR. CHANG: -- the calls in which they are
3 participants.

4 THE COURT: I see.

5 MR. CHANG: Right. We also have no objection to
6 providing all four of the calls in the redacted form to all of
7 the interceptees.

8 And, as we explained in the motion, we do think that
9 if the motion were to be granted, it would be likely that the
10 calls would be viewed sort of as a whole series on one episode,
11 and so we thought it would be appropriate to provide all of the
12 calls to all of the interceptees in the redacted form.

13 THE COURT: All right. So that is what you will be
14 doing tomorrow?

15 MR. CHANG: Yes.

16 THE COURT: All right. And all of these calls, it's
17 the government's position, relates to -- all of them relate to
18 paragraph 68(e) --

19 MR. CHANG: That is correct.

20 THE COURT: -- of the complaint?

21 MR. CHANG: That's correct, Your Honor.

22 THE COURT: And the allegation made there?

23 MR. CHANG: That's correct, Your Honor.

24 THE COURT: All right. And that's the limited
25 disclosure that the government seeks to make?

1 MR. CHANG: That's correct.

2 THE COURT: Now, the reason that you are not seeking
3 to provide other phone conversations at this time is the
4 government believes it will compromise your investigation?

5 MR. CHANG: Yes, Your Honor.

6 There was a balancing that we had to undertake, and
7 that's how we struck the balance.

8 THE COURT: All right. And this was all prompted by
9 the letter that the government received or the U.S. Attorney
10 received from the House of Representatives' Special Committee?

11 MR. CHANG: That was the prompt, Your Honor.

12 THE COURT: All right. And that's attached to the
13 motion?

14 MR. CHANG: Correct.

15 THE COURT: All right. All right. Does each counsel
16 understand you will be getting all four redacted as well as the
17 redacted disks?

18 MR. CHANG: That's correct, Your Honor.

19 THE COURT: All right. So all four redacted
20 transcripts, the redacted disks, and then each interceptee
21 whose voice was identified on any of the four telephone calls
22 will receive the full transcript prepared by the government as
23 well as the full audio disk?

24 MR. CHANG: That is correct, Your Honor.

25 THE COURT: Okay. And you folks will have an

1 opportunity -- that's the purpose of this hearing, to give you
2 an opportunity to be heard after you receive this information.

3 But, Mr. Genson, you are leaning toward your
4 microphone, and you look as though you are desirous to comment.

5 MR. GENSON: Yes. I am wondering if we're going to
6 receive any of the Title III papers that go along with this
7 wire, the wire tap.

8 As I understand it --

9 THE COURT: Well --

10 MR. GENSON: -- there are two other wire taps which
11 were the subject or included in the complaint, were portions
12 that were included in the complaint that was filed before
13 Judge -- well, Judge Mason, I believe, and is now pending
14 before Judge Nolan.

15 There is also -- this, I understand, is a third wire
16 tap, and I would ask if the government's going to furnish the
17 accompanying papers to the Title III, when they furnish that.

18 THE COURT: Well, Mr. Genson, I can comment on that.

19 If an indictment is returned in this case, then the
20 full discovery will be available to you. That's available
21 under the Federal Rules of Criminal Procedure. Until that
22 time, the government can withhold that information until that
23 time.

24 But I can assure you that I have scrutinized the
25 procedure that has been followed in connection with each of

1 these wire taps as they were presented to me, and I can assure
2 you that I have done everything in my power to make sure that
3 the government has complied with the law.

4 But until that time, until the time that it is
5 appropriate under the Federal Rules of Criminal Procedure, the
6 government need not disclose that information.

7 MR. GENSON: I understand.

8 THE COURT: I will continue to carefully scrutinize
9 the government's conduct as I have throughout this entire
10 matter --

11 MR. GENSON: I understand.

12 THE COURT: -- because that's my job. Yes?

13 MR. COLLINS: Right. Your Honor, I understand what
14 you've said, and I am sure that's the case. I do note, though,
15 that the statute under which they would be producing this stuff
16 gives us limited basis by which to object.

17 THE COURT: Yes.

18 MR. COLLINS: And that all ties to the information
19 he's requested.

20 THE COURT: The limited basis to object is -- well, I
21 will hear from the government on this point.

22 MR. CHANG: Right. Well, Your Honor, I guess two
23 things.

24 One is by -- I think taking this one step at a
25 time --

1 THE COURT: Yes.

2 MR. CHANG: -- would be the cautious thing. And so
3 if after we disclose the tapes, you know, counsel believes that
4 they're going to invoke their rights under 2518(10)(A), then
5 that could be the time, the appropriate time, to disclose the
6 affidavits, the applications, and the orders.

7 Now, having said that, if they do, that is, the
8 interceptees do, exercise their rights under the suppression
9 motion provision, then the government, you know, will -- we
10 state at this time we won't have an objection to disclosing,
11 you know, the orders, the applications, and the affidavits.

12 But in keeping with sort of a one step at a time,
13 if -- I mean, we haven't seen a motion yet, but, you know, we
14 certainly can confer with counsel. If that's what they intend
15 to do, then we could proceed at that time.

16 But I did want to alert Your Honor that we won't have
17 an objection if they do exercise their rights under that
18 provision.

19 MR. GENSON: Thank you.

20 THE COURT: All right. But the first step is to
21 provide the information --

22 MR. CHANG: Correct.

23 MR. COLLINS: Right.

24 THE COURT: -- to defense counsel.

25 MR. COLLINS: Yeah, I just wanted to note it for the

1 record. We weren't waiving any potential arguments.

2 THE COURT: You are not.

3 How much time does the defense need to make their
4 positions known?

5 MR. GENSON: Two weeks, Your Honor.

6 THE COURT: All right. Two weeks. Any objection to
7 two weeks?

8 MR. CHANG: Your Honor, the government has no
9 objection to two weeks.

10 I'd like to note at this time, Your Honor, if I may,
11 that there is a -- counsel for the Committee, for the Special
12 Investigative Committee, he's present in the courtroom. He has
13 not filed an appearance, and so he has not stepped up.

14 But with regard to timing, it may be that the Court
15 might wish to hear from the Special Investigative Committee.
16 It would be an understatement to say the events are fluid in
17 this matter, and so that might be relevant.

18 As far as the United States Attorney's Office is
19 concerned, we will comply with whatever scheduling order, you
20 know, Your Honor enters. We have no stake or position in the
21 impeachment proceeding itself, and so, you know, we will comply
22 with whatever order.

23 And so we have no objection to the two weeks, but I
24 wanted to make Your Honor aware that we do have a
25 representative of the Committee present.

1 THE COURT: All right. With regard to the timing
2 issue, there was a comment, I believe, in the letter. I am now
3 looking for that attachment to the government's motion.

4 Wasn't there -- well, let me ask counsel for the
5 Committee, if counsel for the Committee is present, the
6 requesting committee.

7 MR. ELLIS: Good afternoon, Your Honor.

8 My name is David Ellis, and I'm representing the
9 Special Investigative Committee for the House.

10 And my co-counsel, Mr. Tom Durkin, is not here
11 today -- he's returning from a vacation -- but he will be
12 joining me in any further proceedings.

13 Your Honor, first of all, thank you for your time
14 today, and thank you to the U.S. Attorney for attempting to
15 accommodate us here.

16 We spoke -- from the time when the Committee began,
17 Your Honor, we -- the first order of business was to talk to
18 the U.S. Attorney and make sure we were not interfering with
19 their investigation.

20 And a few weeks ago, we did send this correspondence
21 that you've seen and indicating in that correspondence both
22 areas of inquiry we wanted to pursue, and making sure that
23 they -- whether or not they had any objection, and also asking
24 them for documents, and so here we are. They're willing to try
25 to disclose some wire taps.

1 I think that it's fair to say, Judge, that since we
2 first spoke with the U.S. Attorney until today, that it has
3 become clear with every day that passes that time is of the
4 essence for the Special Investigative Committee.

5 We understand that you have a job to do and that the
6 interceptees have rights. Obviously. If there is a way that
7 all this could be balanced so that the House could do what it
8 needs to do within the time frame that you're setting, then we
9 would like to do that. Certainly, any relevant evidence we
10 want.

11 We have already gathered a very large volume of
12 evidence, and there is -- you know, it's hard for us to say
13 exactly when we will be completing our investigation, Judge,
14 but I think it's fair to say it could be very soon. It could
15 be as early as this week.

16 Now, depending on how we rule, depending on the
17 decision in -- of the Committee and of the House, it may come
18 to an end there or we could -- the inquiry could move to the
19 Senate for a trial.

20 So just because it finishes in the House doesn't
21 necessarily mean that there wouldn't be a use for these -- this
22 evidence, these tapes in the Senate.

23 But all that being said, I think it's fair to say
24 that I can speak for the Committee that with every day that
25 passes and with more events that come up, we feel like we have

1 to complete our impeachment inquiry with all deliberate speed,
2 and I don't know if we can -- I don't know if we can, you know,
3 make all this mesh.

4 We appreciate that you're trying to do that, and
5 whatever you can do, that as quick as it could be, we would
6 appreciate it.

7 And I will commit this to you. Whatever the briefing
8 schedule, the final timeline you set, whatever that may be, if
9 the Committee decides that that is something that it's just not
10 going to work time-wise, we'll tell you immediately.

11 We don't want to waste anybody's time. We know that
12 everybody's got plenty of other things to do.

13 If this is going to not happen quickly enough, we
14 will tell you immediately. We've promised that to the U.S.
15 Attorney. I promise that to you. But we do want to move with
16 speed, if we could, so --

17 THE COURT: All right. Well, two weeks is, more or
18 less, a standard time that is allotted for motions.

19 Let me just inquire, though, in light of the
20 Committee's counsel's remarks, is it possible for the
21 interceptees' counsel to bifurcate the issues and to evaluate
22 whether you have any objection to the redactions within a
23 shorter period of time than two weeks?

24 I think once you see what the redactions are, you
25 will be able to evaluate what the government's thinking on

1 those redactions are.

2 MR. GENSON: Your Honor, I don't think it would be
3 too much of an imposition on us to determine if the -- for
4 purposes of this matter, to see -- to determine if the
5 redactions are appropriate.

6 I'd like to say, though, Your Honor, that one of the
7 objections I am going to have is that we ask not that one tape
8 or two tapes or three tapes or four tapes be offered. We are
9 going to ask that all of them be offered.

10 So I don't want my acquiescence and what Your Honor
11 suggested to say that we're not going to object to the
12 four-tape rule that the government wants.

13 THE COURT: Okay. All right. I understand that.
14 These are the four tapes we're dealing with at this time,
15 however.

16 MR. GENSON: And I have no objection to, after
17 receiving them, submitting our opinion about -- as to what the
18 redactions are, Judge, in a shorter period of time.

19 THE COURT: All right. Do you think you could do
20 that in, say, a couple of days? Listen to them, review the
21 redactions? Just for the redactions.

22 MR. GENSON: It depends on how many days they want to
23 keep me in Springfield, Judge.

24 THE COURT: Well --

25 MR. GENSON: If they don't want to keep me in

1 Springfield this week, a couple of days would be wonderful.

2 THE COURT: Okay. Well, I can tell you that the
3 particular transcripts of those tapes and the tapes themselves
4 are not very long. The transcripts are no more than a page or
5 two. I think the one transcript is only a page long --

6 MR. GENSON: I understand.

7 THE COURT: -- and I think there are no redactions in
8 that particular phone call. And it is just a matter of
9 minutes.

10 MR. GENSON: Then it shouldn't be any difficulty, at
11 least as to that portion of what Your Honor is asking from us,
12 to do it. Today is what, Monday?

13 THE COURT: Today is the 5th, so --

14 MR. GENSON: The days run together --

15 THE COURT: I understand.

16 MR. GENSON: -- the way I have been working, Judge.
17 But we -- what would the --

18 THE COURT: Say by 5:00 o'clock on the 7th?

19 MR. GENSON: It shouldn't be a problem.

20 THE COURT: Two days from now.

21 MR. GENSON: I don't know about the other lawyers.

22 MR. ETTINGER: To contact the government, Judge, with
23 our decision?

24 THE COURT: Actually, what I'd like you to do, since
25 we are trying to provide as much of a public record as possible

1 on this, to file a statement with regard to the redactions.
2 You either agree or you disagree and then you can confer. If
3 you disagree, you can confer with the government.

4 And, again, I could -- you will see, once you see --

5 MR. GENSON: I understand.

6 THE COURT: -- the transcripts and listen to the
7 tapes, what the thought process was.

8 Then two weeks for a motion would take us --
9 actually, two weeks from today is the Martin Luther King
10 holiday, so it would either have to be the Friday before, which
11 would be the 16th, or the Tuesday after, which would be the
12 20th.

13 MR. ETTINGER: Judge, the motion to -- if we're going
14 to move to suppress it, we're going to need the 1003
15 application.

16 THE COURT: The government has agreed to provide that
17 if you make a motion to suppress.

18 MR. ETTINGER: Okay.

19 MR. GENSON: Okay.

20 MR. CHANG: That's correct, Your Honor.

21 THE COURT: Right.

22 MR. COLLINS: Just sort of procedurally, how is that
23 going to work? We file some intention to file?

24 THE COURT: Yes.

25 MR. COLLINS: And then they'll say? Because we can't

1 really put our bases in until we see --

2 THE COURT: These are all of the -- these are the
3 documents.

4 And what the government will be providing is the
5 documents that authorize the interceptions, correct?

6 MR. CHANG: That's correct, Your Honor.

7 THE COURT: All right.

8 MR. CHANG: Including the underlying applications and
9 affidavits.

10 THE COURT: The underlying applications and
11 affidavits.

12 You will not, however, at that point be providing any
13 additional information with regard to the content, will you?

14 MR. CHANG: No, Your Honor.

15 THE COURT: Okay.

16 MR. GENSON: Or --

17 MR. COLLINS: "No" as in you're correct?

18 MR. GENSON: Or in addition --

19 MR. CHANG: No --

20 THE COURT: No, you will not be providing any --

21 MR. COLLINS: Okay.

22 THE COURT: -- additional information with regard to
23 the content?

24 MR. CHANG: That's correct.

25 THE COURT: Yes. This is a rare occurrence that it

1 comes up --

2 MR. COLLINS: Right.

3 THE COURT: -- in a pre-indictment setting.

4 MR. COLLINS: Of course.

5 THE COURT: I mean, it usually comes up in a
6 post-indictment setting where the defendant is entitled to the
7 defendant's statements, and all the information is then made
8 available to everyone. That's why I was saying earlier it will
9 naturally flow from the Federal Rules of Criminal Procedure.

10 MR. COLLINS: Right.

11 THE COURT: But let's focus on these four to begin
12 with, because, frankly, at this time -- I mean, you may see
13 that you agree these can be provided to the Special Committee.

14 Well, and let me just ask, too, by the 7th of
15 January, if after reviewing the contents of these tapes you
16 agree that they can be provided to the Committee, I would like
17 you to put that in your statement as well, that you agree. If
18 you don't agree, just say that you don't agree and then you can
19 go ahead and file any supporting materials.

20 What date did we agree on, the 16th or the 20th?

21 MR. COLLINS: We hadn't.

22 THE COURT: We hadn't.

23 MR. GENSON: The 20th.

24 THE COURT: Mr. Genson?

25 MR. GENSON: The 20th, Your Honor.

1 THE COURT: The 20th. All right.

2 MR. SOROSKY: Is that at 2:00 o'clock, Your Honor?

3 THE COURT: Well, you will just file those at that
4 time --

5 MR. SOROSKY: All right.

6 THE COURT: -- and then I will allow the government
7 to -- the government has already said it will make, then, the
8 materials available if there's a motion.

9 MR. CHANG: That's correct, Your Honor.

10 THE COURT: You are inviting the motion, as you know.

11 MR. CHANG: That's correct, Your Honor.

12 THE COURT: Yes. And how much time, then, does the
13 government need to respond to the motions that will be filed,
14 as we anticipate, on the 20th?

15 MR. COLLINS: Your Honor, I'm still a little confused
16 as to the process here.

17 Are we filing by the 20th notice that we intend to
18 file a motion to suppress?

19 THE COURT: Yes.

20 MR. COLLINS: Okay. So we won't be filing our actual
21 motion for them to respond to it at that time?

22 THE COURT: Well, you will be filing -- well, see,
23 that's why this is quite odd. Because you may move to suppress
24 on the following grounds. You may move to suppress the
25 communication as unlawfully intercepted. You may move to

1 suppress the order of authorization or approval under which it
2 was intercepted, that it was insufficient on its face or the
3 interception was not made in conformity with the order of
4 authorization or approval.

5 So you won't be able to file the precise motion, but
6 if you file your intent to file your motion by the 20th --
7 well, actually, now that I think about it, you won't have to
8 provide any supporting materials or any legal analysis.

9 MR. COLLINS: Correct.

10 THE COURT: It's just a strategy determination that
11 you can make.

12 Mr. Genson, do you think you could make that sooner
13 than two weeks?

14 MR. GENSON: I want to see what they give us, Judge.
15 I might be able to, and I might not. I haven't seen anything.

16 THE COURT: Well, they're going to give you the four
17 tapes.

18 MR. GENSON: I'd like to make a decision when I see
19 the four tapes.

20 If Your Honor is suggesting -- asking if I want to do
21 it sooner, set a date, and I'll do -- I'll do whatever the
22 Court tells me.

23 THE COURT: All right. Well, why don't we do this.
24 Why don't we set the case for a further status on Thursday at
25 1:00 o'clock, and at that time perhaps you will say, "Yes, go

1 ahead and provide these tapes," and, "Yes, we intend to file a
2 motion." At that point, we can move the process along --

3 MR. GENSON: Right.

4 THE COURT: -- and get you the information, get
5 defense counsel the information sooner than later.

6 MR. GENSON: Well, there's a possibility that Mr.
7 Ellis will want me in Springfield Thursday, but I can send
8 someone, if that's the case.

9 THE COURT: Mr. Ellis, do you want Mr. Genson in
10 Springfield on Thursday?

11 MR. GENSON: No, I don't ask --

12 MR. COLLINS: Not a question of want.

13 MR. GENSON: -- anything.

14 MR. ELLIS: Do I want him?

15 MR. GENSON: I'm not sure he wants me at all, but --

16 THE COURT: That's the way he posed it.

17 MR. ELLIS: Yeah. Judge, I'm not sure we're -- what
18 the Committee will be doing this Thursday. I can't answer that
19 right now.

20 THE COURT: Okay.

21 MR. ELLIS: Now, I did mention that Mr. Durkin, Tom
22 Durkin, would also be co-counsel. He might have to come on
23 Thursday instead of me, because I may be needed in Springfield.

24 THE COURT: Okay.

25 MR. ELLIS: Your Honor --

1 THE COURT: That's all right.

2 MR. ELLIS: -- could I ask you, while I've got the
3 microphone for a second, would you like me to file an
4 appearance? I've got them -- if you want to give me leave, I'd
5 be happy to do it.

6 THE COURT: I think you should since --

7 MR. ELLIS: Okay.

8 THE COURT: -- the government's motion actually
9 addresses your client.

10 MR. ELLIS: Yes, sir, yes, sir. I will. Thank you.

11 THE COURT: All right. We will set the case for a
12 further status, then, at 1:00 p.m. on Thursday, the 8th of
13 January, just to see what the defense thought process is with
14 regard to the individual, the one individual who has filed an
15 appearance here, who's a defendant in the complaint. And also
16 the other interceptees, we'll see what their intentions are.

17 MR. REINBERG: Judge, are you still requiring a
18 statement be filed on the day before?

19 THE COURT: Yes.

20 MR. REINBERG: On January 7th?

21 THE COURT: Yes.

22 MR. REINBERG: Okay.

23 THE COURT: I would like to know what the statement
24 is.

25 MR. REINBERG: And just so I'm clear, that deals with

1 the propriety of the suggested redactions, and if we're not
2 going to object, to let you know we're not going to object?

3 THE COURT: Correct.

4 MR. REINBERG: Okay.

5 THE COURT: You've got it.

6 MR. REINBERG: All right. Thanks.

7 THE COURT: Anything else?

8 MR. GENSON: There is one matter, Your Honor.

9 THE COURT: All right. What's that?

10 MR. GENSON: Your Honor, I have a motion that relates
11 to possible Grand Jury matters that I've prepared.

12 THE COURT: All right.

13 MR. GENSON: Tangentially to possible Grand Jury
14 matters. And in the abundance of caution, I'd ask permission
15 from Your Honor to file it under seal.

16 If Your Honor would issue an order so I could file it
17 under seal, I could file it by the end of the day.

18 THE COURT: All right. Any objection?

19 MR. SCHAR: I guess not, Judge.

20 THE COURT: You have now put them in the position
21 they put you in. They haven't seen it, so they can't say.

22 MR. GENSON: Well, I've got a copy --

23 THE COURT: But for now, I will allow you to file it
24 under seal; and then if the government raises an objection,
25 then we can address that.

1 MR. GENSON: That's fine, Your Honor.

2 THE COURT: Let me mention one thing that I just
3 mentioned earlier but we didn't address, and that is the
4 protective order.

5 What has been provided to the defense on that?

6 MR. CHANG: Right. Your Honor, we have drafted a
7 protective order. I have not conferred yet with counsel on it.

8 THE COURT: Okay.

9 MR. CHANG: But I will get that to them this
10 afternoon. And then we will submit -- if it's agreeable with
11 defense counsel, then we will submit it to Your Honor through
12 the normal case management procedures, via e-mail, to your
13 chambers.

14 THE COURT: All right. Through the proposed_order
15 e-mail system?

16 MR. CHANG: Right, that is correct.

17 THE COURT: And let me just say this. For the
18 limited time that counsel receive the tapes and the protective
19 order is not yet in place, counsel should consider themselves
20 under the conditions of the protective order. If there's a
21 need to make an adjustment or a change in the government's
22 proposed protective order, we can take that up at a later time.
23 But I want you, interceptees' counsel and defense counsel, to
24 obtain this information as soon as possible, the information of
25 the content of these tapes, okay?

1 MR. CHANG: Thank you, Your Honor.

2 MR. GENSON: Thank you, Your Honor.

3 THE COURT: All right. So what time tomorrow will
4 you be making those available?

5 MR. CHANG: It should be no later than noon tomorrow,
6 Your Honor.

7 THE COURT: No later than noon tomorrow. All right.

8 The government's then statement/representation that
9 it will provide the tapes, as stated here in open court, by
10 noon tomorrow should be abided by, okay?

11 MR. CHANG: Thank you.

12 MR. GENSON: Thank you, Your Honor.

13 THE COURT: Anything else to take up today?

14 All right. Thank you.

15 MR. GENSON: Thank you, Judge.

16 MR. REINBERG: Thank you.

17 MR. CHANG: Thank you.

18 MR. GLOCKNER: Thank you.

19 MR. SCHAR: Thank you.

20 MR. ETTINGER: Thank you.

21 MR. SOROSKY: Thank you.

22 THE COURT: All right. We will stand in recess.

23 (Proceedings concluded.)

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C E R T I F I C A T E

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I, Colleen M. Conway, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable JAMES F. HOLDERMAN, Chief Judge of said Court, at Chicago, Illinois, on January 5, 2009.

/s/ Colleen M. Conway, CSR, CRR, RMR
Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

1/6/09
Date

