


FEB 09 1998

JAMES W. MCGORMACK, CLERK
By: 
DEP. CLERK

JUDGE: Susan W Wright
REPORTER: Lois Lambert
CLERK: Sandy Carpenter
DATE: February 5, 1998

CLERK'S MINUTES

PAULA CORBIN JONES
Repr: Don Campbell
Jim Fisher

VS.

CASE No. LR-C-94-290

WILLIAM JEFFERSON CLINTON, ET AL
Repr: Robert Bennett
Katie Sexton
Amy Sabren
Bill Bristow for Danny Ferguson

UNDER SEAL

ACTION: IN-CAMERA HEARING

3:40 p.m.

Conference call (above counsel present) with Daniel Attridge, Herbert Miller, Randall Turk (of Miller, Larroca Law Firm representing Kirkland & Ellis) on call and Mike Emmick from OIC also included on call.

Court states that yesterday Bennett's firm advised Barry Ward there was a conflict concerning a subpoena issued by Skadden Firm to ~~Clinton~~^{K&E 2/29}. Attridge has requested that Court provide transcript of telephone conference of 1/29 which was followed by order concerning motion by OIC to stay discovery which Court denied in part and granted in part. Court discusses rulings made in that phone conference and states it was unaware at the time of previous ruling that there was a dispute involved.

Court directs that transcript of today's conference be made available to Attridge, Miller & Turk but will not permit them to have access to January 29th conference and states reasons for ruling. Lawyers who are subject to dispute are permitted to take to Judge in District of Columbia and counsel may object for record.

In response to questions from Turk with respect to Court's ruling in Cindy Hays matter, Court can help obtain order because this is public

After additional discussions concerning the Court's prior rulings, Court states it was not intending to bind Kirkland & Ellis by any ruling on that day and was only trying to deal with motion to stay discovery.

Attridge, Miller and Turk hang up from conference.

Court reviews order signed on 1/29 modifying Protective Order permitting OIC to intervene, and when Court was asked to provide certain items to OIC, it would inform parties. So far, copy of docket sheet has been provided and a lengthy subpoena has been received asking for nearly all items under seal and for Court to produce copy of video of Clinton deposition. Court states it has custody of video tapes owned by pltf and deft and will allow parties to object to turning video over to OIC. Court will fax copy of OIC subpoena of court documents to counsel. Objections must be filed by parties by Friday at 1:00 p.m. CST.

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Court advises counsel that Judge Mehrige called Court today and advised that Campbell had received subpoena for deposition of Ms. Willy and that he is in custody of video tape of Ms. Willy. Ms. Willy's attorney objects to giving OIC video tape.

Court discusses concerns on mot for expedited trial and doesn't know how OIC investigation will interfere with civil case and wants to be advised as to this. Emmick inquires as to how Court wants to be advised and can provide periodic status report if necessary and states that investigation is moving quickly.

Court states that OIC should be able to respond to any objections to subpoena by phone conference tomorrow which will be at 4:00 p.m. CST.

Bennett states that he does object to OIC reviewing video in Chambers and is concerned about leaks and that OIC not have physical custody. Emmick objects to this proposal. Court responds that Bennett can state any suggestions but Grand Jury should be able to look at tape. Written objections to be faxed by 1:00 p.m. and conference will be held at 4:00 p.m. tomorrow.

Bristow asks not to be included on conference and is excused. Bennett will not be on call but will be represented.

Emmick hangs up from conference.

The Court discusses the President's motion for an expedited trial and intends to make this portion of the record public because this matter does not involve discovery. The parties may now comment on the motion should they choose to do so.

Bennett states that recent events illustrate why this case should go forward as soon as possible. It is important for the presidency that this matter be resolved. The Supreme Court instructed this Court to give great weight to presidential concerns.

Campbell states that he opposes Mr. Bennett's request and his oral comments today and is happy to allow the Court to decide the motion on the written pleadings submitted by the parties.

Bristow states that Ferguson has no objection to the President's motion and would like to resolve this matter, as well. If the trial is to be expedited, Ferguson requests that it be rescheduled for the week of March 23.

Court announces that the matter is ripe for decision and that an Order will be entered soon but may not be entered before Monday.

Court turns to the issue of leaks and states this Court and Judge Merhige have discussed the leaks and are concerned. This Court could ask the F.B.I. to investigate because leaking these matters might be criminal contempt and asks the attorneys what their reactions are to the suggestion that no one talk to the press after the motion for summary judgment has been filed.

Bennett states that he has no objection to that suggestion and would want to include Susan Carpenter-McMillan and Mr. Whitehead as not being allowed to talk to the press, as well.

Campbell states he has no control over Carpenter-McMillan and raises the issue of James Carville discussing these matters on television. Bennett states he has no control over Carville, but he has requested that Carville not talk to the press. Carville also has no access to discovery matters.

Court discusses motion filed by several news organizations to rescind the gag order and it expects parties to file responses. Court is still thinking about not sealing the motion for summary judgment. The motion could refer to portions of discovery that need to be referred to, but the parties would be prohibited from discussing these matters. The pleadings would have to speak for themselves.

Campbell states that attorneys for plaintiff have been researching the issue a little. It appears that there is a split in the circuits as to whether discovery materials referred to in a motion for summary judgment can be kept under seal. Split seems to indicate that if the motion for summary judgment is potentially dispositive, materials must be unsealed. Campbell also believes that because evidence of Jones' prior sexual conduct will be inadmissible at trial under the Fed. R. Evid. 400 series, that material should be kept out of motion for summary judgment, too. Plaintiff may file a Rule 412 motion to keep that material out of motion for summary judgment and out of trial, as well.

Bennett does not anticipate putting Jones' sexual history into a motion for summary judgment. He anticipates that the motion will be limited to the essential elements of the plaintiff's claim and will demonstrate that plaintiff has been unable to establish those elements.

Court asks that parties agree that no motion for summary judgment or response to such a motion be filed publicly with reference to the sexual history of either the President or Ms. Jones without first notifying the Court and opposing counsel.

Bennett agrees and states that even in regard to the tort of outrage claim, the argument in the motion for summary judgment could be couched as "even assuming all of Ms. Jones' allegations are true" those allegations do not reach the level of outrage in Arkansas. This would avoid referring to Jones' sexual history in relation to her tort of outrage claim and damages requested based on that claim.

Bristow agrees but does not understand why the sexual history of either party should come in at the summary judgment stage. He anticipates the motion for summary judgment will be based upon the theory that Jones' allegations do not rise to the level of a constitutional violation.

Campbell states that because he is unsure of the type of motion for summary judgment the defendants plan on filing, he hesitates to agree that no sexual history will be discussed. However, he does agree that plaintiff will provide advanced notice prior to filing a public pleading containing references to either parties' sexual history.

All parties agree that any sexually explicit discovery material will not be revealed in a public motion for summary judgment or response without prior notification to the Court and opposing counsel. An Order will follow.

Bennett clarifies that if a motion for summary judgment does not contain sexually explicit material, the pleading may be filed publicly without prior notification to the Court or opposing counsel.

The Court confirms that and intends to try to curb leaks by allowing the motion for summary judgment to be filed publicly and by having the attorneys and parties stop discussing the matter with the media and intends that Ms. Carpenter-McMillan also stop discussing these matters publicly.

Campbell emphasizes that he has no legal way to control Carpenter-McMillan. She is no longer a legal representative of plaintiff. He has not shared discovery material with her and has cautioned his client not to discuss these matters with anyone, including her.

The Court states that all parties need to be aware that if leaks and media appearances damage either parties' chance for a fair trial, the Court has considerable discretion regarding the evidence to be admitted at trial and will not hesitate to use that discretion.

Bristow has maintained "no comment" on and off the record, but he would not want to agree not to talk to the press at this time. He promises to abide by the Canon of Ethics in Arkansas regarding counsel's comments on on-going litigation. Campbell agrees with Bristow and suggests that all attorneys review the Cannons of Ethics in Arkansas on this issue by the next phone conference.

Bennett observes that *Newsweek*, which is always a front-runner in publishing leaks, has not joined in the news organizations' motion to rescind the gag order. *Newsweek* also purports to have reviewed under seal depositions in this case.

Court suggests that Bennett make these points in his written response to the motion to rescind the gag order.

The Court summarizes by stating as follows:

- The confidentiality order is still in place, and the Court expects it to be followed.
- No party will file a public motion for summary judgment or response containing sexually explicit material without first notifying the Court and opposing counsel.
- The attorneys are to refer to the Cannons of Ethics in Arkansas regarding comments on on-going litigation and are to abide by those guidelines to ensure a fair trial.
- The Court will take under consideration the President's motion to expedite the trial and anticipates entering an Order by Monday.
- A copy of the OIC subpoena served on the Clerk of Court will be faxed to the parties today and copies of the docket sheets previously provided by the Clerk to the OIC will be faxed to the parties tomorrow morning.

The next conference call will be at 4:00 p.m. central standard time on Friday, February 6, 1998. Mr. Bennett, Mr. Campbell, and Mr. Emmick will participate. Mr. Bristow has been excused from participating.

5:05 p.m. Conference concludes.