

[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "RNH (JSPT)" <[REDACTED]>

To: "JLSSC (JSPT)" <[REDACTED]>

Subject: Chief Judge Howell

Date: Sun, 08 Jan 2023 18:00:36 -0500

Importance: Normal

Attachments: Speech_or_Debate_Summary_Memo_1_9_2023.docx

Here's a quick summary from John Pelletieri of the Speech or Debate issues in front of her – so you have it before your meeting with her.

Raymond Hulser
Special Counsel's Office

[REDACTED]

[REDACTED]

[REDACTED]

Metadata

Custodian	Smith Jack SCO-S	[REDACTED]
Date Sent	01/08/2023 6:00 pm EST	[REDACTED]
From	"RNH (JSPT)" <[REDACTED]>	[REDACTED]
Subject	Chief Judge Howell	[REDACTED]
To	"JLSSC (JSPT)" <[REDACTED]>	[REDACTED]

Memorandum

Special Counsel



To: Jack Smith
Special Counsel

From: John M. Pellettieri
Assistant Special Counsel

Subject: *Speech or Debate Litigation Summary*

Date: January 8, 2023

This memorandum summarizes Speech or Debate litigation before Chief Judge Beryll Howell to give you some background before your meeting with her this week. For purposes of brevity, the remainder of the memo is in bullet points:

- The Speech or Debate litigation before Chief Judge Howell generally falls into two buckets: (1) litigation regarding a warrant to search Representative Scott Perry's personal cell phone; and (2) litigation regarding warrants to obtain the contents of Rep. Perry's Gmail and iCloud accounts from Google and Apple.
- The litigation about these warrants arises from questions about application of the D.C. Circuit's decision in *United States v. Rayburn House Off. Bldg.*, 497 F.3d 654 (D.C. Cir. 2007) (*Rayburn*), *cert. denied*, 552 U.S. 1295 (2008).
- *Rayburn* found a "non-disclosure" protection in the Speech or Debate Clause, purportedly to protect against chilling members from candid communications. No other circuit agrees, and two circuits (the 3d and 9th) expressly disagree. We filed for certiorari in *Rayburn*, but the Supreme Court denied our petition.
- *Rayburn* determined that the non-disclosure protection in the Speech or Debate Clause required the government to give a member an opportunity to assert privilege over documents seized from the member's congressional office pursuant to a warrant before government review of the documents.
- When we obtained a warrant from Chief Judge Howell to search Rep. Perry's personal cell phone, as a part of the warrant, we included a *Rayburn*-compliant protocol that stated we would not review anything on the phone that Rep. Perry claims is privileged unless the court reviews the materials and

determines they are not privileged. We argued that this protocol was not required but asked Chief Judge Howell to implement the protocol to avoid investigation-delaying litigation over *Rayburn*.

- Chief Judge Howell applied the protocol, reviewed 2,219 records (emails and texts) that Rep. Perry claimed were privileged, and determined that all or part of 164 records were privileged but that the remainder were not privileged and should be disclosed to the government.
- Rep. Perry has appealed the order. Chief Judge Howell denied a stay pending appeal. The D.C. Circuit is now considering a stay pending appeal. Our brief is due Monday, January 9, 2023.
- We have asked Chief Judge Howell to issue an order determining that we are permitted to search Rep. Perry's Gmail and iCloud accounts without applying the *Rayburn* protocol, based on the distinction between a warrant to seize records from a third party (Google or Apple) versus a warrant to seize documents directly from Rep. Perry (his cell phone).
- Chief Judge Howell held a hearing and indicated that she is unlikely to agree to that approach. She seemed to be seeking some sort of middle ground that would respect *Rayburn* while avoiding some of the difficulties and burdens on judicial resources that arise from applying the *Rayburn* protocol to voluminous electronic evidence.
- She has asked us to consider a protocol that would require pre-disclosure review of only a portion of the records in the Gmail and iCloud accounts, namely communications between Rep. Perry and his staff or other members of Congress. She directed us (with no deadline) to file something with her stating our position.
- Overall, Chief Judge Howell seems frustrated with the repercussions of *Rayburn* and the large burden it imposes on district judges to review voluminous electronic evidence for privilege, but her ire is not directed at us; she understands our hands are tied by the D.C. Circuit's opinion.

[REDACTED]
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[REDACTED]

Metadata

Custodian	Smith Jack SCO-S	[REDACTED]
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[REDACTED]
AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JMP (JSPT)" <[REDACTED]>

To: "RNH (JSPT)" <[REDACTED]>, "JIP (JSPT)" <[REDACTED]>

Subject: Re: Chief Judge

Date: Sun, 08 Jan 2023 12:40:36 -0500

Importance: Normal

Got it. Will cut down later this afternoon.

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From: RNH (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:31:33 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

At the risk of creating work, I'm afraid this is too much detail for our current purposes. If you can cut it to a single page with simple bullets, it will get the job done.

e.g., *Rayburn* is a 2007 D.C. Circuit opinion that found a "non-disclosure" protection in the Speech or Debate Clause, in order to protect against chilling Members from candid communications. No other circuit agrees, and two circuits expressly disagree.

From: JIP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:18 PM

To: JMP (JSPT) <[REDACTED]>; RNH (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

Nothing meaningful to add from me. I think it would not be hard to shorten this, though I would keep the current order and structure, i.e., *Rayburn*, cellphone, email/iCloud. Ray's call (of course) on whether something a bit more concise would be preferable for Jack.

From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:00 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

Here's a SoD short summary memo.

Ray, let me know if this is what you had in mind; if it's not high-level enough, I can shorten it.

And James, let me know if there's anything you think needs to be changed or corrected.

Thanks,

John

From: RNH (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:01 PM

[REDACTED]

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

Jack will be meeting with the Chief Judge on Tuesday. We hope that she does not want to get into a legal discussion about SoD, but Jack could use a one-pager that gives a very high-level summary of the issues we're dealing with in the Perry litigation. Let me know if you can put something together for Monday.

Thank you both for all you're doing.

Ray

Raymond Hulser
Special Counsel's Office
[REDACTED]

[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
Date Sent	01/08/2023 12:40 pm EST	[REDACTED]
From	"JMP (JSPT)" <[REDACTED]>	[REDACTED]
Subject	Re: Chief Judge	[REDACTED]
To	"RNH (JSPT)" <[REDACTED]>, "JIP (JSPT)" <[REDACTED]>	[REDACTED]

[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JMP (JSPT)" <[REDACTED]>

To: "RNH (JSPT)" <[REDACTED]>, "JIP (JSPT)" <[REDACTED]>

Subject: Re: Chief Judge

Date: Fri, 06 Jan 2023 18:05:18 -0500

Importance: Normal

Sure, no problem. Will do.

Get [Outlook for iOS](#)

From: RNH (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:00:34 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

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Raymond Hulser
Special Counsel's Office

[REDACTED]

[REDACTED]

[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
Date Sent	01/06/2023 6:05 pm EST	[REDACTED]
From	"JMP (JSPT)" <[REDACTED]>	[REDACTED]
Subject	Re: Chief Judge	[REDACTED]
To	"RNH (JSPT)" <[REDACTED]>, "JIP (JSPT)" <[REDACTED]>	[REDACTED]

[REDACTED]
AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JMP (JSPT)" <[REDACTED]>

To: "RNH (JSPT)" <[REDACTED]>, "JIP (JSPT)" <[REDACTED]>

Subject: RE: Chief Judge

Date: Sun, 08 Jan 2023 17:56:29 -0500

Importance: Normal

Attachments: Speech_or_Debate_Summary_Memo_1_9_2023.docx

Let me know if this works better.

Thanks,

John

From: RNH (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:32 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

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From: JIP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:18 PM

To: JMP (JSPT) <[REDACTED]>; RNH (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

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From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:00 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

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[REDACTED]

[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: RNH (JSPT) <[REDACTED]>
Sent: Friday, January 6, 2023 6:01 PM
To: JIP (JSPT) <[REDACTED]> JMP (JSPT) <[REDACTED]>
Subject: Chief Judge

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Raymond Hulser
Special Counsel's Office

[REDACTED]

[REDACTED]

[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
Date Sent	01/08/2023 5:56 pm EST	[REDACTED]
From	"JMP (JSPT)" <[REDACTED]>	[REDACTED]
Subject	RE: Chief Judge	[REDACTED]
To	"RNH (JSPT)" <[REDACTED]>, "JIP (JSPT)" <[REDACTED]>	[REDACTED]

Memorandum

Special Counsel



To: Jack Smith
Special Counsel

From: John M. Pellettieri
Assistant Special Counsel

Subject: *Speech or Debate Litigation Summary*

Date: January 8, 2023

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- [REDACTED]

determines they are not privileged. We argued that this protocol was not required but asked Chief Judge Howell to implement the protocol to avoid investigation-delaying litigation over *Rayburn*.

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[REDACTED]
AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
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[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JIP (JSPT)" <[REDACTED]>

To: "JMP (JSPT)" <[REDACTED]>, "RNH (JSPT)" <[REDACTED]>

Subject: RE: Chief Judge

Date: Sun, 08 Jan 2023 12:17:30 -0500

Importance: Normal

Attachments: Speech_or_Debate_Summary_Memo_1_8_2023_JIP.docx

Nothing meaningful to add from me. I think it would not be hard to shorten this, though I would keep the current order and structure, i.e., Rayburn, cellphone, email/iCloud. Ray's call (of course) on whether something a bit more concise would be preferable for Jack.

From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:00 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

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Thanks,

John

From: RNH (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:01 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

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Ray

Raymond Hulser
Special Counsel's Office
[REDACTED]

[REDACTED]

[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
Date Sent	01/08/2023 12:17 pm EST	[REDACTED]
From	"JIP (JSPT)" <[REDACTED]>	[REDACTED]
Subject	RE: Chief Judge	[REDACTED]
To	"JMP (JSPT)" <[REDACTED]>, "RNH (JSPT)" <[REDACTED]>	[REDACTED]

PRIVILEGED AND ATTORNEY WORK PRODUCT

Memorandum

Special Counsel



To: Jack Smith
Special Counsel

From: John M. Pellettieri
Assistant Special Counsel

Subject: *Speech or Debate Litigation Summary*

Date: January 8, 2023

This memorandum summarizes Speech or Debate litigation before Chief Judge Beryll Howell to give you some background before your meet with her this week. The Speech or Debate litigation before Chief Judge Howell all pertains to searches regarding Representative Scott Perry. The litigation generally falls into two buckets: (1) litigation regarding a warrant to search Rep. Perry's personal cell phone; and (2) litigation regarding warrants to obtain the contents of Perry's Gmail and iCloud accounts from Google and Apple, respectively. The logistical and legal difficulties regarding execution of these warrants arise from questions about application of the D.C. Circuit's decision in *United States v. Rayburn House Off. Bldg.*, 497 F.3d 654 (D.C. Cir. 2007) (*Rayburn*), *cert. denied*, 552 U.S. 1295 (2008).

A. The *Rayburn* Decision

In *Rayburn*, the government executed a warrant to search the congressional offices of Representative William J. Jefferson. The warrant established "special procedures" that contemplated the use of a "filter team" within the Department of Justice that would determine whether any seized materials were privileged under the Speech or Debate Clause and then return any privileged materials to the member within ten days of the search. 497 F.3d at 656-57. The government reviewed paper records in the office (including privileged materials) and seized two boxes of responsive documents it determined were non-privileged. *Id.* at 657, 661. The government also copied all electronic media (*e.g.*, hard drives) in the office. *Id.* at 657. While Rep. Jefferson's appeal was pending, and before any search of the electronic media, the D.C. Circuit issued a "remand order" directing the district court to provide Rep. Jefferson with copies of the electronic media so that he could claim privilege for any records in them and the district court could conduct an *in camera* review to determine whether the records were privileged. *Id.* at 658.

PRIVILEGED AND ATTORNEY WORK PRODUCT

When the appeal proceeded, the D.C. Circuit determined that the search procedures in the warrant that permitted the government to review privileged materials without affording the member an opportunity to assert privilege before compelled disclosure to the Executive Branch violated the Speech or Debate Clause. *Id.* at 661-63. The ~~c~~Court therefore found that the search of the paper files in Rep. Jefferson's office violated the Clause. *Id.* at 663. But the ~~c~~Court found that the "copying of computer hard drives and other electronic media [was] constitutionally permissible because the Remand Order afford[ed] the Congressman an opportunity to assert the privilege prior to disclosure of privileged materials to the Executive." *Id.*

The *Rayburn* decision is erroneous and highly problematic for obvious reasons. We filed a petition for certiorari in the Supreme Court, but it was denied. There is broad and narrow language in *Rayburn* that make it difficult to determine the scope and reach of opinion, as well as what exactly it requires.

B. The Cell-Phone Warrant

In August 2022, we obtained a warrant from a magistrate judge in the Middle District of Pennsylvania to seize Rep. Perry's personal cell phone and obtain a forensic extraction of its contents. After executing the warrant and obtaining a forensic extraction, we obtained a warrant from Chief Judge Howell to search the contents of the extraction. Out of an abundance of caution given questions about the scope of *Rayburn*, we included as a part of the warrant an attachment (Attachment C) stating that we would comply with certain *Rayburn*-compliant protocols. Among other things, Attachment C stated that before searching the contents of the phone, we would provide Rep. Perry with a copy of the extraction, Rep. Perry would have an opportunity to assert the Speech or Debate privilege over records in the extraction, and the Government could then ask the district court to make a final privilege determination.

We argued before Chief Judge Howell that this protocol was not required by *Rayburn*—because the concerns that applied to a member's office did not apply to Rep. Perry's personal cell phone—but asked her to apply the *Rayburn*-compliant protocol in order avoid investigation-delaying litigation over the scope and application of *Rayburn*. Chief Judge Howell determined that it was prudent to conclude that *Rayburn* applied to Rep. Perry's phone given broad language in the *Rayburn* opinion. Chief Judge Howell therefore reviewed more than 2,000 emails and texts from the phone to make privilege determinations, ultimately finding that only 164 records were privileged in whole or in part. She denied a stay of her ruling pending an appeal by Rep. Perry, and Rep. Perry has asked for a stay pending appeal in the D.C. Circuit. Our brief in opposition to that motion is due in the court of appeals on Monday, January 9, 2023, at 4 p.m.

PRIVILEGED AND ATTORNEY WORK PRODUCT

C. The Gmail and iCloud Warrants

While the proceedings regarding Rep. Perry's cell phone were ongoing, we obtained a warrant directed at Google to seize the contents of Rep. Perry's Gmail account. The warrant stated that we would wait to search the emails upon further order of the court. We also applied for a warrant directed at Apple to seize and search the contents of Rep. Perry's iCloud account, which the Chief Judge has authorized.

Before Chief Judge Howell issued her order regarding Rep. Perry's cell phone, we filed a motion asking her to enter an order permitting us to search the Gmail and iCloud accounts without any of the *Rayburn*-compliant protocols we had acquiesced to with respect to the cell phone. We argued that even if *Rayburn* applied to the cell phone, it did not apply to records in the possession of a third party (Google or Apple) because, among other things, the warrant did not compel disclosure by Rep. Perry.

Chief Judge Howell called us in for a hearing on the motion on Friday, January 6, 2023. At the hearing, she listened respectfully and engaged with James Pearce as he skillfully advanced our arguments for why the *Rayburn* protocols are not required for the Gmail and iCloud accounts, but it eventually became clear that she was not comfortable with that approach given that those accounts are likely to overlap substantially with the cell phone and therefore it is highly likely they contain some of the same material she already found to be privileged. But Chief Judge Howell was seeking some sort of middle ground that would respect *Rayburn* while avoiding some of the difficulties and burdens on judicial resources that arise from applying the *Rayburn* protocol to voluminous electronic evidence. She proposed judicial review of only communications between Rep. Perry and either members of his staff or other members of Congress. She seemed to settle on this approach based on her finding that most (if not all) of the records from Rep. Perry's cell phone that she found were privileged fell within this category. She asked us to give this some thought and file a supplement to our motion with a proposed order specifying the relief we seek.

D. Summary Thoughts

It's my impression that Chief Judge Howell is (understandably) frustrated with the open questions that remain about the scope and meaning of *Rayburn* and the large burden it imposes on district judges to review voluminous electronic evidence for privilege. At the same time, she understands the importance of our investigation and stands willing to conduct any review that's arguably required by *Rayburn* or that might be prudent given questions about the scope of *Rayburn*. She also understands that the government is similarly frustrated with *Rayburn* (indeed sought certiorari in that case) and she doesn't hold any of this against us. That said, she seems to be looking for some defensible way to limit the privilege review she (or other judges) might be required to conduct under a *Rayburn*-type protocol.

Commented [J(1)]: I appreciate the shoutout but this could obviously come out.
JIP (JSPT)
2023-01-08 12:14:00

[REDACTED]
AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
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[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JMP (JSPT)" <[REDACTED]>

To: "RNH (JSPT)" <[REDACTED]>, "JIP (JSPT)" <[REDACTED]>

Subject: RE: Chief Judge

Date: Sun, 08 Jan 2023 11:59:44 -0500

Importance: Normal

Attachments: Speech_or_Debate_Summary_Memo_1_8_2023.docx

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Sent: Friday, January 6, 2023 6:01 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

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Special Counsel's Office
[REDACTED]

[REDACTED]

[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
Date Sent	01/08/2023 11:59 am EST	[REDACTED]
From	"JMP (JSPT)" <[REDACTED]>	[REDACTED]
Subject	RE: Chief Judge	[REDACTED]
To	"RNH (JSPT)" [REDACTED] >, "JIP (JSPT)" <[REDACTED]>	[REDACTED]

Memorandum

Special Counsel



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Special Counsel

From: John M. Pellettieri
Assistant Special Counsel

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Date: January 8, 2023

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[REDACTED]

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The *Rayburn* decision is erroneous and highly problematic for obvious reasons. We filed a petition for certiorari in the Supreme Court, but it was denied. There is broad and narrow language in *Rayburn* that make it difficult to determine the scope and reach of opinion, as well as what exactly it requires.

B. The Cell-Phone Warrant

In August 2022, we obtained a warrant from a magistrate judge in the Middle District of Pennsylvania to seize Rep. Perry's personal cell phone and obtain a forensic extraction of its contents. After executing the warrant and obtaining a forensic extraction, we obtained a warrant from Chief Judge Howell to search the contents of the extraction. Out of an abundance of caution given questions about the scope of *Rayburn*, we included as a part of the warrant an attachment (Attachment C) stating that we would comply with certain *Rayburn*-compliant protocols. Among other things, Attachment C stated that before searching the contents of the phone, we would provide Rep. Perry with a copy of the extraction, Rep. Perry would have an opportunity to assert the Speech or Debate privilege over records in the extraction, and the Government could then ask the district court to make a final privilege determination.

We argued before Chief Judge Howell that this protocol was not required by *Rayburn*—because the concerns that applied to a member's office did not apply to Rep. Perry's personal cell phone—but asked her to apply the *Rayburn*-compliant protocol in order avoid investigation-delaying litigation over the scope and application of *Rayburn*. Chief Judge Howell determined that it was prudent to conclude that *Rayburn* applied to Rep. Perry's phone given broad language in the *Rayburn* opinion. Chief Judge Howell therefore reviewed more than 2,000 emails and texts from the phone to make privilege determinations, ultimately finding that only 164 records were privileged in whole or in part. She denied a stay of her ruling pending an appeal by Rep. Perry, and Rep. Perry has asked for a stay pending appeal in the D.C. Circuit. Our brief in opposition to that motion is due in the court of appeals on Monday, January 9, 2023, at 4 p.m.

C. The Gmail and iCloud Warrants

While the proceedings regarding Rep. Perry's cell phone were ongoing, we obtained a warrant directed at Google to seize the contents of Rep. Perry's Gmail account. The warrant stated that we would wait to search the emails upon further order of the court. We also applied for a warrant directed at Apple to seize and search the contents of Rep. Perry's iCloud account.

Before Chief Judge Howell issued her order regarding Rep. Perry's cell phone, we filed a motion asking her to enter an order permitting us to search the Gmail and iCloud accounts without any of the *Rayburn*-compliant protocols we had acquiesced to with respect to the cell phone. We argued that even if *Rayburn* applied to the cell phone, it did not apply to records in the possession of a third party (Google or Apple) because, among other things, the warrant did not compel disclosure by Rep. Perry.

Chief Judge Howell called us in for a hearing on the motion on Friday, January 6, 2023. At the hearing, she listened respectfully and engaged with James Pearce as he skillfully advanced our arguments for why the *Rayburn* protocols are not required for the Gmail and iCloud accounts, but it eventually became clear that she was not comfortable with that approach given that those accounts are likely to overlap substantially with the cell phone and therefore it is highly likely they contain some of the same material she already found to be privileged. But Chief Judge Howell was seeking some sort of middle ground that would respect *Rayburn* while avoiding some of the difficulties and burdens on judicial resources that arise from applying the *Rayburn* protocol to voluminous electronic evidence. She proposed judicial review of only communications between Rep. Perry and either members of his staff or other members of Congress. She seemed to settle on this approach based on her finding that most (if not all) of the records from Rep. Perry's cell phone that she found were privileged fell within this category. She asked us to give this some thought and file a supplement to our motion with a proposed order specifying the relief we seek.

D. Summary Thoughts

It's my impression that Chief Judge Howell is (understandably) frustrated with the open questions that remain about the scope and meaning of *Rayburn* and the large burden it imposes on district judges to review voluminous electronic evidence for privilege. At the same time, she understands the importance of our investigation and stands willing to conduct any review that's arguably required by *Rayburn* or that might be prudent given questions about the scope of *Rayburn*. She also understands that the government is similarly frustrated with *Rayburn* (indeed sought certiorari in that case) and she doesn't hold any of this against us. That said, she seems to be looking for some defensible way to limit the privilege review she (or other judges) might be required to conduct under a *Rayburn*-type protocol.

[REDACTED]
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[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
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[REDACTED]
AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "RNH (JSPT)" <[REDACTED]>

To: "JMP (JSPT)" <[REDACTED]>, "JIP (JSPT)" <[REDACTED]>

Subject: RE: Chief Judge

Date: Sun, 08 Jan 2023 17:59:06 -0500

Importance: Normal

Terrific, thank you very much.

From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 5:56 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

Let me know if this works better.

Thanks,

John

From: RNH (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:32 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

At the risk of creating work, I'm afraid this is too much detail for our current purposes. If you can cut it to a single page with simple bullets, it will get the job done.

e.g., *Rayburn* is a 2007 D.C. Circuit opinion that found a "non-disclosure" protection in the Speech or Debate Clause, in order to protect against chilling Members from candid communications. No other circuit agrees, and two circuits expressly disagree.

From: JIP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:18 PM

To: JMP (JSPT) <[REDACTED]>; RNH (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

Nothing meaningful to add from me. I think it would not be hard to shorten this, though I would keep the current order and structure, i.e., *Rayburn*, cellphone, email/iCloud. Ray's call (of course) on whether something a bit more concise would be preferable for Jack.

From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:00 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

Here's a SoD short summary memo.

Ray, let me know if this is what you had in mind; if it's not high-level enough, I can shorten it.

And James, let me know if there's anything you think needs to be changed or corrected.

[REDACTED]

Thanks,

John

From: RNH (JSPT) <[REDACTED]>
Sent: Friday, January 6, 2023 6:01 PM
To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>
Subject: Chief Judge

Jack will be meeting with the Chief Judge on Tuesday. We hope that she does not want to get into a legal discussion about SoD, but Jack could use a one-pager that gives a very high-level summary of the issues we're dealing with in the Perry litigation. Let me know if you can put something together for Monday.

Thank you both for all you're doing.

Ray

Raymond Hulser
Special Counsel's Office
[REDACTED]

[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
Date Sent	01/08/2023 5:59 pm EST	[REDACTED]
From	"RNH (JSPT)" <[REDACTED]>	[REDACTED]
Subject	RE: Chief Judge	[REDACTED]
To	"JMP (JSPT)" <[REDACTED]>, "JIP (JSPT)" <[REDACTED]>	[REDACTED]

[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "RNH (JSPT)" <[REDACTED]>

To: "JIP (JSPT)" <[REDACTED]>, "JMP (JSPT)" <[REDACTED]>

Subject: RE: Chief Judge

Date: Sun, 08 Jan 2023 12:31:33 -0500

Importance: Normal

At the risk of creating work, I'm afraid this is too much detail for our current purposes. If you can cut it to a single page with simple bullets, it will get the job done.

e.g., *Rayburn* is a 2007 D.C. Circuit opinion that found a "non-disclosure" protection in the Speech or Debate Clause, in order to protect against chilling Members from candid communications. No other circuit agrees, and two circuits expressly disagree.

From: JIP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:18 PM

To: JMP (JSPT) <[REDACTED]>; RNH (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

Nothing meaningful to add from me. I think it would not be hard to shorten this, though I would keep the current order and structure, i.e., *Rayburn*, cellphone, email/iCloud. Ray's call (of course) on whether something a bit more concise would be preferable for Jack.

From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 12:00 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

Here's a SoD short summary memo.

Ray, let me know if this is what you had in mind; if it's not high-level enough, I can shorten it.

And James, let me know if there's anything you think needs to be changed or corrected.

Thanks,

John

From: RNH (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:01 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

Jack will be meeting with the Chief Judge on Tuesday. We hope that she does not want to get into a legal discussion about SoD, but Jack could use a one-pager that gives a very high-level summary of the issues we're dealing with in the Perry litigation. Let me know if you can put something together for Monday.

Thank you both for all you're doing.

[REDACTED]

Ray

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Raymond Hulser
Special Counsel's Office

[REDACTED]

Metadata

Custodian	Hulser Ray SCO-S	[REDACTED]
Date Sent	01/08/2023 12:31 pm EST	[REDACTED]
From	"RNH (JSPT)" <[REDACTED]>	[REDACTED]
Subject	RE: Chief Judge	[REDACTED]
To	"JIP (JSPT)" <[REDACTED]>, "JMP (JSPT)" <[REDACTED]>	[REDACTED]

[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JIP (JSPT)" <[REDACTED]>

To: "JMP (JSPT)" <[REDACTED]>

Subject: Re: Chief Judge

Date: Fri, 06 Jan 2023 18:10:02 -0500

Importance: Normal

I'm happy to do this. I know you've got the brief.

On Jan 6, 2023, at 6:05 PM, JMP (JSPT) [REDACTED] wrote:

Sure, no problem. Will do.

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From: RNH (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:00:34 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

Jack will be meeting with the Chief Judge on Tuesday. We hope that she does not want to get into a legal discussion about SoD, but Jack could use a one-pager that gives a very high-level summary of the issues we're dealing with in the Perry litigation. Let me know if you can put something together for Monday.

Thank you both for all you're doing.

Ray

Raymond Hulser
Special Counsel's Office
[REDACTED]

[REDACTED]

[REDACTED]

Metadata

Custodian	Pellettieri John SCO-S	[REDACTED]
Date Sent	01/06/2023 6:10 pm EST	[REDACTED]
From	"JIP (JSPT)" <[REDACTED]>	[REDACTED]
Subject	Re: Chief Judge	[REDACTED]
To	"JMP (JSPT)" <[REDACTED]>	[REDACTED]

[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JIP (JSPT)" <[REDACTED]>

To: "JMP (JSPT)" <[REDACTED]>

Subject: RE: Chief Judge

Date: Sun, 08 Jan 2023 09:57:57 -0500

Importance: Normal

I was just about to start when your draft came in. If you want to do it, I won't stop you. But I'm happy to do it later today if you want a breather. Your call—let me know your preference.

From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 9:56 AM

To: JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I can bang out this one-pager no problem right now if you haven't had a chance to turn to it. Let me know.

From: JIP (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 8:26 PM

To: JMP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I would likely do this tomorrow evening or Sunday morning. Let me know if there's some reason you are particularly eager to do it instead. I can't imagine that is the case but also don't want to grab this if you are keen on it.

From: JMP (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:05 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: Re: Chief Judge

Sure, no problem. Will do.

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From: RNH (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:00:34 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

Jack will be meeting with the Chief Judge on Tuesday. We hope that she does not want to get into a legal discussion about SoD, but Jack could use a one-pager that gives a very high-level summary of the issues we're dealing with in the Perry litigation. Let me know if you can put something together for Monday.

Thank you both for all you're doing.

Ray

Raymond Hulser
Special Counsel's Office

[REDACTED]

[REDACTED]

Metadata

Custodian	Pellettieri John SCO-S	
Date Sent	01/08/2023 9:57 am EST	
From	"JIP (JSPT)" < >	
Subject	RE: Chief Judge	
To	"JMP (JSPT)" < >	

[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JIP (JSPT)" <[REDACTED]>

To: "JMP (JSPT)" <[REDACTED]>

Subject: RE: Chief Judge

Date: Sat, 07 Jan 2023 07:33:50 -0500

Importance: Normal

I'm working on something else earlier today, but I'll plan to do this. I don't think it will take long.

From: JMP (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 11:54 PM

To: JIP (JSPT) <[REDACTED]>

Subject: Re: Chief Judge

That's great if you have time, but I'm also available to do it if you're jammed up — I'll be thinking about the speech or debate clause anyway.

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From: JIP (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 8:25:40 PM

To: JMP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I would likely do this tomorrow evening or Sunday morning. Let me know if there's some reason you are particularly eager to do it instead. I can't imagine that is the case but also don't want to grab this if you are keen on it.

From: JMP (JSPT) [REDACTED]

Sent: Friday, January 6, 2023 6:05 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: Re: Chief Judge

Sure, no problem. Will do.

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From: RNH (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:00:34 PM

To: JIP (JSPT) [REDACTED]; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

Jack will be meeting with the Chief Judge on Tuesday. We hope that she does not want to get into a legal discussion about SoD, but Jack could use a one-pager that gives a very high-level summary of the issues we're dealing with in the Perry litigation. Let me know if you can put something together for Monday.

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Ray

Raymond Hulser
Special Counsel's Office

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Metadata

Custodian	Pellettieri John SCO-S	[REDACTED]
Date Sent	01/07/2023 7:33 am EST	[REDACTED]
From	"JIP (JSPT)" <[REDACTED]>	[REDACTED]
Subject	RE: Chief Judge	[REDACTED]
To	"JMP (JSPT)" <[REDACTED]>	[REDACTED]

[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JIP (JSPT)" <[REDACTED]>

To: "JMP (JSPT)" <[REDACTED]>

Subject: RE: Chief Judge

Date: Sun, 08 Jan 2023 10:36:57 -0500

Importance: Normal

Well—thanks. And I'm reviewing the draft now. It's great.

From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 10:36 AM

To: JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I'll take care of it. Least I can do if you're taking the time to read my draft. Thanks.

From: JIP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 9:58 AM

To: JMP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I was just about to start when your draft came in. If you want to do it, I won't stop you. But I'm happy to do it later today if you want a breather. Your call—let me know your preference.

From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 9:56 AM

To: JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I can bang out this one-pager no problem right now if you haven't had a chance to turn to it. Let me know.

From: JIP (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 8:26 PM

To: JMP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I would likely do this tomorrow evening or Sunday morning. Let me know if there's some reason you are particularly eager to do it instead. I can't imagine that is the case but also don't want to grab this if you are keen on it.

From: JMP (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:05 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: Re: Chief Judge

Sure, no problem. Will do.

Get [Outlook for iOS](#)

From: RNH (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:00:34 PM

[REDACTED]

To: JIP (JSPT) [REDACTED] >; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

Jack will be meeting with the Chief Judge on Tuesday. We hope that she does not want to get into a legal discussion about SoD, but Jack could use a one-pager that gives a very high-level summary of the issues we're dealing with in the Perry litigation. Let me know if you can put something together for Monday.

Thank you both for all you're doing.

Ray

Raymond Hulser
Special Counsel's Office
[REDACTED]

Metadata

Custodian	Pellettieri John SCO-S	[REDACTED]
Date Sent	01/08/2023 10:36 am EST	[REDACTED]
From	"JIP (JSPT)" <[REDACTED]>	[REDACTED]
Subject	RE: Chief Judge	[REDACTED]
To	"JMP (JSPT)" <[REDACTED]>	[REDACTED]

[REDACTED]

AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

From: "JMP (JSPT)" <[REDACTED]>

To: "JIP (JSPT)" <[REDACTED]>

Subject: RE: Chief Judge

Date: Sun, 08 Jan 2023 10:35:58 -0500

Importance: Normal

I'll take care of it. Least I can do if you're taking the time to read my draft. Thanks.

From: JIP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 9:58 AM

To: JMP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I was just about to start when your draft came in. If you want to do it, I won't stop you. But I'm happy to do it later today if you want a breather. Your call—let me know your preference.

From: JMP (JSPT) <[REDACTED]>

Sent: Sunday, January 8, 2023 9:56 AM

To: JIP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I can bang out this one-pager no problem right now if you haven't had a chance to turn to it. Let me know.

From: JIP (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 8:26 PM

To: JMP (JSPT) <[REDACTED]>

Subject: RE: Chief Judge

I would likely do this tomorrow evening or Sunday morning. Let me know if there's some reason you are particularly eager to do it instead. I can't imagine that is the case but also don't want to grab this if you are keen on it.

From: JMP (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:05 PM

To: RNH (JSPT) <[REDACTED]>; JIP (JSPT) <[REDACTED]>

Subject: Re: Chief Judge

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From: RNH (JSPT) <[REDACTED]>

Sent: Friday, January 6, 2023 6:00:34 PM

To: JIP (JSPT) <[REDACTED]>; JMP (JSPT) <[REDACTED]>

Subject: Chief Judge

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Thank you both for all you're doing.

[REDACTED]

[REDACTED]
AUTHORIZED FOR PUBLIC RELEASE BY CHAIRMAN GRASSLEY

Ray

Raymond Hulser
Special Counsel's Office
[REDACTED]

[REDACTED]

[REDACTED]

Metadata

Custodian	Pellettieri John SCO-S	[REDACTED]
Date Sent	01/08/2023 10:35 am EST	[REDACTED]
From	"JMP (JSPT)" <[REDACTED]>	[REDACTED]
Subject	RE: Chief Judge	[REDACTED]
To	"JIP (JSPT)" <[REDACTED]>	[REDACTED]