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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

THE HON. MUSTAFA T. KASUBHAI, JUDGE PRESIDING

UNITED STATES OF AMERICA,	)	
	)	
Government,	)	
	)	
v.	)	No. 6:18-mj-00236-MK-1
	)	
TODD MICHAEL GIFFEN,	)	
	)	
Defendant.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EUGENE, OREGON

WEDNESDAY, DECEMBER 5, 2018

PAGES 1 - 24

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## 1 PROCEEDINGS

2 WEDNESDAY, DECEMBER 5, 2018

3 THE CLERK: Magistrate Case No. 18-236, United  
4 States of America versus Todd Michael Giffen for preliminary  
5 examination and detention hearing.6 THE COURT: Good afternoon, counsel. And if you  
7 would be kind enough to introduce yourself.8 MR. BOFFERDING: Good afternoon, Your Honor. My  
9 name is Todd Bofferding. I am a member of the CJA panel of  
10 the Portland division. I have been asked to represent  
11 Mr. Giffen in this case. I believe he does not have funds  
12 to hire his own counsel and he is indigent and I do request  
13 to be appointed on this matter.

14 THE COURT: So appointed.

15 MR. BOFFERDING: Thank you, Your Honor.

16 If I may have just a moment.

17 THE COURT: Of course.

18 (Counsel conferred with the defendant.)

19 THE COURT: And I do want to make sure just that  
20 we are all apprised of the posture of the case.

21 If I am not mistaken, did he appear in Chicago?

22 MR. HUYNH: He was arrested in Chicago and  
23 appeared for a removal proceeding and was removed.24 He then subsequently appeared a couple weeks later  
25 in Portland. I believe that was last week where he had an

14:18:58 1 initial appearance, and then it was set for a status here  
2 for the preliminary examination and detention hearing.

3 I can -- I have spoken to defense counsel, so I  
4 can give the court a little bit more information because we  
5 inquired how we were going to proceed today.

6 There is a threshold issue, Your Honor, that may  
7 impact how we proceed. The government is requesting a  
8 competency evaluation of Mr. Giffen.

9 That does overlap also with our request for  
10 detention based on risk of flight and danger to the  
11 community.

12 If the court so deems a competency evaluation is  
13 appropriate, then I don't believe a preliminary hearing  
14 should happen today, as the defendant won't be able to  
15 assist in his own defense and won't -- possibly won't  
16 appreciate the proceedings as well.

17 And thus, it may make some sense to stay this  
18 matter and continue it pursuant to Rule 5.1(d) given the  
19 extraordinary circumstances and the interest of justice so  
20 we can have that hearing when he can appreciate and assist  
21 at the appropriate time after the competency matter is  
22 resolved.

23 That was our discussions. I am happy to give the  
24 basis for our request, Your Honor, if you'd like.

25 THE COURT: Please go ahead.

14:20:10 1 MR. HUYNH: We learned about the communications  
2 between Mr. Giffen and Congressman DeFazio back in July of  
3 this year. At that time we were concerned about nature of  
4 the communication, the threats to the staff, but we were  
5 also very concerned more about the mental issues that may  
6 be -- from the defendant that may be causing those  
7 statements.

8 We proceeded to send a target letter to the  
9 defendant in the hopes of getting him counsel to help,  
10 hopefully, stop those communications and get him some  
11 assistance. He did get counsel, Craig Weinerman of the  
12 federal defenders office. We spoke with him throughout.  
13 Unfortunately, Mr. Giffen continued to send those  
14 communications, and, thus, the government had to file  
15 charges again him.

16 The concerns the government have continue to  
17 exist, which is given nature of his correspondence, which  
18 escalated in the nature of threats which also included some  
19 unusual discussions about various conspiracy theories, we  
20 are concerned that that reflects upon his mental state.

21 Additionally, I did speak with Congressman  
22 DeFazio's office this morning, and they wanted to relate to  
23 the court that Mr. Giffen's threats were taken seriously and  
24 had implications to them. They had to take extra security  
25 measures, including hiring security at events as well as at

14:21:34 1 the office. This is during a time of an election, so  
2 there's even more concern over their staff and volunteers  
3 and also required law enforcement to be present and  
4 potentially respond as well. So there were significant  
5 consequences to the community resources also. They wanted  
6 me to relay that to the court.

7           Additionally, the government is concerned about  
8 the proceedings in Chicago. I believe the court has seen  
9 the minute orders of what occurred there. Both his comments  
10 about conspiracies as well as his comments to the court are  
11 very concerning to us.

12           And that also, I do believe, reflects both on  
13 danger to the community as well as to himself as well as his  
14 need for a competency evaluation.

15           Additionally, Your Honor, his prior criminal  
16 history does include assaults. It does also include a  
17 guilty by reason of insanity. We also understand his prior  
18 medical condition has included a paranoid schizophrenia  
19 diagnosis, and he has been hospitalized numerous times.

20           Given all of this, we believe that there is a  
21 question of whether or not he is competent at this time to  
22 assist with his own defense as well as to understand the  
23 proceedings.

24           I also understand he's filed numerous civil cases  
25 in court that also suggest that he may not understand how

14:22:51 1 the legal system works. He's filed against individuals as  
2 well as cities and counties. Most of those cases have been  
3 dismissed.

4 But under the circumstances, we think it's prudent  
5 to continue the preliminary hearing until after his  
6 competency matter is resolved, he get the competency  
7 evaluation.

8 We suggest a setout of at least 90 days since it's  
9 45 days in custody. And I believe the marshals need some  
10 time to transport him both there and back. So 90 days at a  
11 minimum would be appropriate.

12 And then if deemed competent, we can then set it  
13 for a preliminary hearing if that's what the defendant  
14 wants. That way he can in fact appreciate that proceeding  
15 and assist in his defense and give meaning to that  
16 proceeding.

17 And I believe that's called for under Rule 5.1(d)  
18 that if he does not agree to this, the court can find under  
19 the extraordinary circumstances and in the interest of  
20 justice that it be warranted.

21 THE COURT: I'm sorry. That what would be  
22 warranted?

23 MR. HUYNH: That this delay of the preliminary  
24 hearing be warranted as well as any exclusion of time under  
25 the Speedy Trial Act to indict him.

14:24:03

1 THE COURT: Counsel.

2 MR. BOFFERDING: In response to a couple of  
3 things, one is my client informs me and from what I have  
4 been able to read on the pretrial services report that  
5 Mr. Giffen has never been convicted of any charge except for  
6 unauthorized use of a weapon, and that was guilty by  
7 insanity back in 2003, I believe.

8 Two is that Mr. Giffen does want to stand by his  
9 due process rights for a preliminary hearing today, and we  
10 request the matter of detention be set aside so I can  
11 develop more of a plan.

12 There are a few doctors, one particular in New  
13 York, that I have been trying to get ahold of last night and  
14 today. My client informs me that's a critical person for me  
15 to contact. So I am still trying to do that as far as his  
16 release issues go.

17 And --

18 THE COURT: And these are medical doctors?

19 Doctors --

20 MR. BOFFERDING: Psychiatric based.

21 THE COURT: Doesn't that raise some initial  
22 question, then, of exploring this notion of competency a  
23 little further, then, today as well?

24 MR. BOFFERDING: That has merit.

25 THE COURT: All right.

14:25:26 1 MR. BOFFERDING: However, I do want to make it  
2 clear that I have known Mr. Giffen for about two and a half  
3 hours now. So I am really not in a position to make a  
4 representation as to the competency as an officer of the  
5 court at this time.

6 But what I can say is that if the court does grant  
7 the motion, I think probably the proper place for an  
8 evaluation or competency motion -- evaluation would be an  
9 FMC so that they would be able to judge not only competency  
10 but also insanity at the time of the offense; that if the  
11 court does order that, the competency evaluation, I would  
12 suggest that that also be done at the same time to avoid my  
13 client being shuffled around from institution to  
14 institution.

15 If I may just have a moment.

16 (Counsel conferred with the defendant.)

17 MR. BOFFERDING: Okay. My client informs me that  
18 Mr. Farber, Dr. Farber has opined to him, my client, as far  
19 as his level of competency, which makes it more necessary  
20 that I contact Mr. Farber to be able to go forward from our  
21 position.

22 THE COURT: On the issue of competency?

23 MR. BOFFERDING: Competency and detention.

24 THE COURT: So before I -- and I know you wanted  
25 to bifurcate the issues of the preliminary examination and

14:27:02 1 the --

2 MR. BOFFERDING: Detention.

3 THE COURT: -- the detention hearing. But if I  
4 have a concern about competency, then a preliminary  
5 examination itself is also not appropriate to proceed.

6 MR. BOFFERDING: That would be correct legally.

7 THE COURT: Would it be correct in any other way  
8 or incorrect in any other way other than legally?

9 MR. BOFFERDING: From the wishes of my client, you  
10 never know. But I am here to advocate strongly for my  
11 client, and that's my job today and that's what I am doing.

12 THE COURT: I appreciate that you are doing that.

13 (Counsel conferred with the defendant.)

14 THE COURT: If your client is asking to proceed  
15 with the preliminary examination today and a question has  
16 been raised with respect to competency, the only way that  
17 I -- and I think there is at least some very compelling  
18 information in the reports that I have that suggest  
19 competency is a question, one of the ways that I am aware of  
20 exploring whether to proceed and determine if competency is  
21 sufficient here is to engage in some dialogue with the  
22 defendant. My concern about doing that right now is what  
23 might be said on the record. And so I am in a bit of a  
24 pickle here.

25 Do you have any suggestions, either counsel, about

14:28:23 1 how that can be resolved?

2 MR. HUYNH: The recommendation from the government  
3 is that the court not engage in that. I think his issues  
4 are a little bit more complicated than this as reflected by  
5 his actions and words throughout this case.

6 I do respect and appreciate his desire to have a  
7 preliminary examination. He would still continue to have  
8 that right after competency is determined in this case. I  
9 also do -- have heard of this doctor. My understanding is  
10 that the defendant may have been trying to go see this  
11 doctor in New York at the time he was being arrested in  
12 Chicago, and they have a personal relationship.

13 I do know if he is being evaluated by the Bureau  
14 of Prisons, we can provide the information of the doctor so  
15 that the physician or psychiatrist that evaluates him can  
16 consult with that doctor and get his appropriate files, if  
17 necessary and appropriate.

18 THE COURT: And counsel also suggests that if I do  
19 order the competency evaluation that it might be prudent to  
20 also order an evaluation, a psychological evaluation with  
21 respect to the defendant's capacity.

22 MR. HUYNH: And we have no objection to that,  
23 although that often doesn't occur because the initial stage  
24 is a competency determination, and then, based on that,  
25 there might be a restoration process.

14:29:48 1           So while it may be requested, it doesn't always  
2 happen at that time. But we have no objection to it being  
3 requested.

4           THE COURT: Would the order need to be modified to  
5 include both?

6           MR. HUYNH: We can do so. I have such language in  
7 other orders. I can provide a new order to the court.

8           THE COURT: Anything else, counsel, that you want  
9 me to be aware of?

10          MR. BOFFERDING: Just that my client really wants  
11 the court to know that if his doctor in New York could  
12 somehow testify or provide a letter or an evaluation or  
13 something to me to assist the court or to assist FMC, I  
14 definitely will comply with my client's request to do that.

15           I am just not sure right now, because I haven't  
16 personally spoken to the man, how soon that information can  
17 be brought to my attention.

18          MR. HUYNH: It typically requires about three  
19 weeks for the individual to be transported by the marshals  
20 to the location. At that point the physician there reaches  
21 out to the parties to get any information that could assist  
22 them. And I think at that point that can be provided timely  
23 by defense counsel.

24           So we'll make sure to relay the fact that he has  
25 another physician too, that evaluating psychiatrist, to

14:31:08 1 comply with defense counsel -- the defendant's concern.

2 THE COURT: Counsel, is there something else that  
3 I needed to be apprised of?

4 MR. BOFFERDING: I am sorry, Your Honor. I didn't  
5 get the last colloquy.

6 MR. HUYNH: In sum, that once the physician  
7 reaches out to the parties for additional information, we  
8 can provide that, whatever you get from the New York doctor.

9 MR. BOFFERDING: Okay. All right. And one thing  
10 that my client was telling me was that, again, that  
11 Dr. Farber was willing and ready to testify on the phone  
12 today at 1:30, which is, you know -- but that's -- that's  
13 what I understand.

14 THE COURT: All right.

15 MR. BOFFERDING: But once again, that's the only  
16 thing I could really offer.

17 Mr. Giffen would really like to talk to the court.  
18 I just want it on the record it's against my advice.

19 THE COURT: Mr. Giffen, I would strongly recommend  
20 that you follow your attorney's counsel on this. It isn't a  
21 good idea for you to make statements on the record that  
22 could be used as evidence against you in future hearings.

23 THE DEFENDANT: Yes, I am aware of that, and I  
24 would like to speak anyway because this attorney,  
25 unfortunately, he was just appointed yesterday, and I have

14:32:19 1 not been allowed to speak to him. And I have been prepping  
2 all week long for Dr. Seth Farber to be here. He told my  
3 grandparents, who are in the audience now, that he would be  
4 here at this time.

5           Unfortunately, the attorney was appointed so late  
6 in the game, you know, he should have been appointed Monday  
7 or Friday. They had all week to do it. So he was not able  
8 to prepare for this release hearing or this motion at all  
9 that has been filed by the prosecutor's office.

10           So what -- Dr. Seth Farber is prepared to testify  
11 and he's written reports, and I have actually been in court  
12 before where Dr. Seth Farber testified to Donna Mills in New  
13 York City that I am not mentally ill, I am not a danger to  
14 myself or others and have no need for psychiatric treatment.

15           So the judge ruled I had no need for treatment,  
16 was not a danger to myself or others and all that. And you  
17 can actually Google Todd Giffen, New York Court of Appeals,  
18 and you will find an order that says there was no reason for  
19 Todd to have been held in a hospital last year.

20           Dr. Seth Farber is prepared to testified that I am  
21 a victim of a government mind control program, and we have  
22 substantial formerly classified documents on this program  
23 and numerous witnesses, including William Binney of the NSA.  
24 I have e-mails from him on a civil case right now. William  
25 Binney is vetting all my information that is legitimate it

14:33:38 1 in an e-mail. He is say, Todd Giffen, wow, this is the  
2 stuff that convinces juries.

3 And Curt Levey of the NSA says, Todd Giffen, we  
4 are so lucky we have you. Thank God. Because I am out  
5 there working with the NSA whistleblowers on government  
6 crime and stuff like that.

7 Seth Farber will testify that I have PTSD and  
8 brain damage from a military mind control program. These  
9 are programs that are extensively discussed in the  
10 government's own documents on my civil case, which is filed  
11 at 6:18-cv-01846-MC.

12 And you will be able to find actual CIA and NSA  
13 and DI documents that discuss a program where they  
14 experimented even on citizens here in Eugene, Oregon between  
15 1976 and 1978 pumping radiation into citizens' homes without  
16 their knowledge or consent. And this was in *The*  
17 *Register-Guard*. We have copies of the original  
18 *Register-Guard*, which were obtained from Google because they  
19 have *The Register-Guard* archives.

20 THE COURT: Mr. Giffen, I --

21 THE DEFENDANT: Seth Farber is just going to say  
22 everything I needed --

23 THE COURT: Hold on. Hold on. Hold on.

24 THE DEFENDANT: -- that I don't need to go three  
25 weeks at some place halfway across the country and that I am

14:34:55 1 also scheduled to be getting medical care in Portland, an  
2 MRI, hydrotherapy, and massage, and so I should not be held  
3 in custody and all this stuff. We will be able to clarify  
4 this with Seth and my witnesses here.

5 THE COURT: I want to respect both your time and I  
6 need to respect mine as well in that I want to be able to  
7 give you the opportunity to present all relevant evidence at  
8 whatever future proceedings that we may have, but today  
9 isn't the day.

10 It sounds to me from what you have just described  
11 that there may be a volume of evidence that would need to be  
12 at your command in order to be able to present what you  
13 think might be important. And you need to work with your  
14 attorneys on figuring out the best way to deal with those  
15 claims.

16 THE DEFENDANT: Yes.

17 THE COURT: And hold on, Mr. Giffen. This isn't  
18 the time right now for you to continue speaking.

19 Given what I have heard in both the report as well  
20 as from the proceedings in Chicago, I do have a concern  
21 about your ability, your competency to be able to assist in  
22 your defense and assist with any other legal proceedings.

23 It's clear to me that you have a very broad  
24 command of quite a few facts that you have just described  
25 and I think quite a bit more. But it also suggests to me

14:36:14 1 that it goes beyond the scope of the charges that we are  
2 specifically dealing with today.

3 THE DEFENDANT: Well, if you remember, my charges  
4 are just complaints to the congressman that he helped  
5 authorize this program --

6 THE COURT: Mr. Giffen, you are talking about  
7 things that I really do not want you to speak about only  
8 because those statements can be used against you in future  
9 proceedings on these charges.

10 It's important for me that the process safeguards  
11 your rights as well as provides an opportunity for the  
12 government to carry its burden of proof.

13 THE DEFENDANT: Well, I agree with all that, but  
14 let my attorney -- just give him a chance to work with me  
15 and my doctor, and I have a list here of over 30 experts and  
16 my actual physicians who are going to say that I don't need  
17 a competency hearing. And once my attorney gets to working  
18 with these people, everything is fine.

19 So the prosecutors have filed this motion not  
20 knowing who I am. They have never worked with me. They  
21 don't know anything about -- they are ignoring volumes of  
22 evidence on my website. All my doctors' evaluations are  
23 publicly posted there, deliberately withheld from their  
24 affidavits and complaint. So my attorney needs to be  
25 familiar with that.

14:37:24 1           And if he says, okay, I worked with him and he's  
2 crazy, he's having problems, then let there be a competency  
3 hearing come up later. That's all I am requesting because  
4 this is a delay and stall tactic. And my friend, William  
5 Binney, NSA whistleblower, has a hundred million dollar  
6 lawsuit against the FBI and NSA for filing malicious  
7 prosecutions against them as well, knowing they were  
8 innocent and a victim and not leaking classified  
9 information. They filed a complaint that they were leaking  
10 classified information even though they knew they weren't  
11 doing so. And, of course, the charges fell apart and they  
12 now have a hundred million dollar lawsuit, right?

13           So I don't need to be -- I think my lawyer needs  
14 to have time to assess this because the prosecutors have a  
15 history of misconduct, including bringing false charges  
16 against people they victimize, like the NSA whistleblowers.

17           There's an article --

18           THE COURT: Mr. Giffen, I have given you a great  
19 deal of leeway in addressing the court, and that leeway has  
20 extended beyond the normal parameters of appropriate  
21 conversation here today.

22           Based on the conversations that I have been  
23 engaged in with you and what I have heard from counsel and  
24 what was communicated to me by way of affidavit from the  
25 magistrate judge in Chicago, it is -- it raises enough of a

14:38:41 1 question for this court --

2 THE DEFENDANT: I was very angry at that judge  
3 because he told me to my face I cannot look up PACER to  
4 review your case. I would need my wife here. I am too old  
5 and frail. And he disregarded the fact that I told my  
6 attorney there, Elizabeth -- Kimberly something, I said, can  
7 you call Seth Farber and have him here for my hearing  
8 because I am completely capable of walking back to Oregon  
9 and going to the court myself. She refused to talk to me  
10 all weekend. Showed up and said, okay, I recommend you  
11 don't ask --

12 THE COURT: Mr. Giffen.

13 THE DEFENDANT: Yeah. So that's what that was  
14 about, and I apologize for that.

15 THE COURT: Mr. Giffen, not another interruption.  
16 I have given you quite a few opportunities for you to test  
17 my patience, and I am not going to accept another one. If  
18 you interrupt me again, then I will have you removed from  
19 the courtroom.

20 Based on what I have heard, I am going to order  
21 the competency evaluation. And --

22 THE DEFENDANT: And here's another reason I  
23 object --

24 THE COURT: So Mr. Giffen --

25 THE DEFENDANT: Your doctors are all DI agents. I

14:39:40 1 have my own doctors. Seven psychiatrists that can do this.

2 THE COURT: You will now need to be removed from  
3 the courtroom.

4 MR. BOFFERDING: I will be in touch.

5 (Defendant removed from courtroom.)

6 THE COURT: The government will submit an order  
7 providing for both the competency evaluation and a  
8 psychological examination, evaluation.

9 MR. HUYNH: For the defense of the defendant, yes,  
10 we have that.

11 MR. BOFFERDING: For the defense of insanity at  
12 the time of the offense.

13 THE COURT: Yes.

14 Status hearing at all at this point, or are we  
15 needing to wait until after the examination is completed?

16 MR. HUYNH: I believe you still have to set a  
17 status hearing so that we can keep this on track.

18 What do you think? Four months? Three months?

19 Our experience has been four months is a safe bet  
20 so we don't have to come back in because of transport,  
21 priorities of evaluation. So four months.

22 MR. BOFFERDING: Yeah. In my experience, it's  
23 going to take probably, oh, about a month and a half, two  
24 months for the marshals to transport him to wherever he is  
25 going, Springfield or Butner or wherever, and then, you

14:40:52 1 know, he's there for 45 days and then turnaround time.

2 Yeah, I think about four months is probably about  
3 right.

4 MR. HUYNH: Set it for four months, and if there's  
5 a request for more time from the physician, we can go ahead  
6 and inform the court.

7 THE COURT: And do I need to make findings  
8 regarding extraordinary circumstances?

9 MR. HUYNH: Yes, and the interest of justice to  
10 delay the preliminary hearing.

11 THE COURT: I do find that given these particulars  
12 circumstances, there are extraordinary circumstances that  
13 exist and in the interest of justice for an extended amount  
14 of time to set this status conference out to four months and  
15 get a date for that.

16 And then in the meantime, if you can get that  
17 order --

18 MR. HUYNH: Yes.

19 THE COURT: -- prepared, I will go ahead and sign  
20 that.

21 MR. HUYNH: And just to be clear, that's to delay  
22 both the preliminary hearing as well as the presentment of  
23 the case to the grand jury. So that's also a delay in the  
24 speedy.

25 THE COURT: Thank you for the clarification. Yes

14:41:45 1 with respect to both of those.

2 THE CLERK: Status conference is set for  
3 March 27th, 2019, at 1:30 p.m., before Judge Kasubhai.

4 MR. BOFFERDING: Actually, I will be in Sunriver  
5 grading bar exams that week.

6 THE CLERK: Are you available March 20th?

7 MR. BOFFERDING: Let me see. What day is  
8 March 20th?

9 THE CLERK: It's a Wednesday.

10 MR. BOFFERDING: It's a Wednesday. That will  
11 work.

12 THE CLERK: Status conference is set for  
13 March 20th, 2019, at 1:30 p.m. before Judge Kasubhai.

14 THE COURT: Counsel, we all know that the  
15 examination completion is done well before Wednesday. You  
16 can make it back in time.

17 MR. BOFFERDING: Thank you, Your Honor.

18 THE CLERK: His appearance for the status  
19 conference?

20 THE COURT: Say that again.

21 THE CLERK: The client's appearance for the status  
22 conference?

23 MR. BOFFERDING: I think he is not in a position  
24 to waive it.

25 THE COURT: It would be seem to me as well. Also,

14:42:40 1 given that he isn't present right now, I am not inclined to  
2 do anything but require that he appear. If there is any  
3 other communications that the two of you might have that  
4 suggests otherwise, you can let us know so we can advise the  
5 Marshals Service that he may not be need to be transported  
6 for the status hearing.

7 MR. BOFFERDING: Thank you, Your Honor.

8 MR. HUYNH: Thank you, Your Honor.

9 THE COURT: Thank you.

10 THE CLERK: This court is adjourned.

11 *(The proceedings were concluded this*  
12 *5th day of December, 2018.)*

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14:43:04 1 I hereby certify that the foregoing is a true and  
2 correct transcript of the oral proceedings had in the  
3 above-entitled matter, to the best of my skill and ability,  
4 dated this 11th day of April, 2019.

5  
6 /s/Kristi L. Anderson

7 Kristi L. Anderson, Certified Realtime Reporter  
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