

The Washington Post MAGAZINE

SUNDAY MAY 11, 2014



MOTHER &
DAUGHTER:
A BOND
FORGED IN
FASHION 24

Have we got
a reading list
for you ... 5

TAKOMA
PARK'S
SINGULAR
WORLD 4

Plate Lab:
What's cool?
Celery. Lots
of celery. 34

LARRY

KLAYMAN

V.

EVERYONE

He has sued hundreds, but his case against the NSA may be the real game changer.

BY DAVID MONTGOMERY



He has sued
al-Qaeda,
whole countries,
presidents and
his own nonprofit.

But his NSA
lawsuit could
change history.

THE CASE OF LARRY KLAYMAN

BY DAVID MONTGOMERY
PHOTOGRAPHS BY LUCIAN PERKINS



Larry Klayman attends a hearing about the U.S. Navy SEALs and others who died when a helicopter was shot down in Afghanistan. In the NSA suit, Klayman is also representing the parents of one of those killed.

Larry Klayman is back in his favorite place. The lawyer who launched hundreds of lawsuits against federal agencies, White House officials, Cabinet secretaries, judges, journalists, former colleagues, foreign governments, dictators, presidents, this newspaper and others who offended his hair-trigger sense of right and wrong, takes a seat at the long plaintiff attorney's table in the august U.S. Courthouse two blocks from the Capitol. ¶ Klayman, 62, sits alone, surreptitiously popping breath mints. A squad of Justice Department lawyers occupies the defendant advocates' table. ¶ "The government has six lawyers!" Klayman whispers cheerfully to his assistant seated a few rows back.

What occasions today's hearing is Klayman's landmark challenge of the National Security Agency's program of collecting records of domestic telephone calls. Within days of Edward Snowden's revelations last June, Klayman had rounded up five aggrieved clients (himself included), drafted complaints and filed two lawsuits. He easily beat other civil libertarians to court, including the ACLU and Sen. Rand Paul, thus securing a controlling position for his case.

Judge Richard J. Leon asks the lawyers to introduce themselves. Larry Klayman? Oh, yes, Leon is familiar with Klayman. Over the years the judge has had a handful of Klayman matters before him. Leon also wrote the 2012 opinion in response to Klayman's legal complaint against two other judges. Klayman accused them of violating his rights in how they handled previous cases — a charge Leon held was "meritless."

At least one of the Justice lawyers has been crossing swords with Klayman since the Clinton

administration. Those were Klayman's glory days, when it seemed half the most important people in Washington were shuffling into his office on School Street SW to be mercilessly deposed under oath. The other half were lawyering up so they wouldn't have to talk to Klayman and Judicial Watch, the watchdog group he founded in 1994.

Abruptly, in the early 2000s, Klayman's relevance faded. He left Judicial Watch and moved to Florida for a disastrous U.S. Senate run. Then, this past December, a judicial thunderbolt shook the nation and blasted open a path to redemption for Larry Klayman. It came in the form of a scathing 68-page preliminary opinion by Leon, who sure didn't think Klayman was meritless this time: The technology of the NSA's phone records program is "almost-Orwellian," wrote the judge, its use such an apparent violation of the Fourth Amendment protection against unreasonable search and seizure that Leon predicted Klayman would ultimately prevail. The

judge stayed his ruling so the government could appeal. If things continue to break his way, Klayman finds himself on the threshold of scoring one of the most monumental rebukes of government overreach in American history.

Today's hearing is to schedule briefs and motions. Klayman wants to get things moving. "When constitutional rights are violated for one minute, that's one minute too long," he reminds the judge.

Outside the courthouse, reporters cluster around the legal insurgent, as in old times.

"Six of them against us," Klayman says, adapting a line from "Batman." "Odds slightly in our favor."

JOSH: This is the seventh lawsuit you've brought against the White House, and the fourth time you've deposed me and demanded to see documents that don't exist. ...

CLAYPOOL: I'd like to remind you that you're under oath.

SAM: And I'd like to remind you that that's the seventh time that you've reminded *him*.

— Dialogue from "The West Wing" (2000)

The Klaymanesque caricature concocted by Hollywood was hardly flattering, but Klayman took it as a tribute to the impact he was having, not just legally and politically, but culturally. The zealous inquisitor Claypool, from an outfit called Freedom Watch, stalks the fictional president much as Judicial Watch went after Clinton. When it came time for Klayman to name the group he formed after Judicial Watch, he called it Freedom Watch.

Those Klayman-fired imbroglios of yesteryear have faded with time — remember "Chinagate" and "Filegate"? — but his legacy is indelible. He invented a new style of Washington warfare. His innovation was to harness the devastating synergy of the document request, the lawsuit, the deposition and the cable news performance. He was like a mixed martial artist barging into a touch football game.

Now, thanks to Klayman, everyone's got an axe kick and a triangle choke. The edge and tone of partisan investigations — where the stakes are portrayed as maximal, the opponents diabolic, the conspiracies rampant — can be traced to him. Rarely raising his voice, Klayman spoke the stone extremist poetry of bloggers before there were blogs, and his attitude prefigured the tea party long before the kettle whistled.

"My colleagues all want to be part of the Senate club," he said in 2004. "I want to take a club to the Senate."

And he did get results.

"Every time he turns up another rock, he finds something," U.S. District Judge Royce Lamberth said



PHOTOS, CLOCKWISE FROM TOP LEFT: JOSHUA PREZANT; CHRIS O'MEARA/ASSOCIATED PRESS; WILFREDO LEE/ASSOCIATED PRESS; SAM MORRIS/ASSOCIATED PRESS

of Klayman during the Clinton cases.

The catch is, what Klayman found under the rocks usually didn't win lawsuits. His won-lost record in public interest cases is incalculably terrible — and mostly irrelevant, for what Klayman is up to. Victory lies not in the verdict, but in what is learned on the way to the verdict.

So what if his interminable “Filegate” case never did prove Clinton officials misused FBI files for political reasons? Along the way, he got Lamberth to rule that the president himself violated the Privacy Act in releasing Kathleen Willey's letters. Klayman thus became one of few advocates ever to win a criminal ruling against a president — though an appeals court blunted Lamberth's opinion and the issue was dropped.

In “Chinagate,” Judicial Watch won almost \$1 million in attorney fees from the Commerce Department for improperly withholding documents, but the

Clockwise, from top left: Klayman, in 2006, with client Alice Alyse, who was fired from a Broadway show. In 2003, Klayman announces his run for U.S. Senate. In 2000, with client Donato Dalrymple, who rescued Elián González from the ocean. In 2000, with Gennifer Flowers, who sued Hillary Clinton and two former presidential aides.

real prize was in the documents themselves, which suggested that Commerce officials might have consulted Democratic Party donor lists to pick guests for international trade trips.

“In a lot of cases I've had, the proof was in the making,” Klayman says. “I exposed a lot of information that way. I drove a lot of scandals so the American people got to know what's going on.”

Clinton-era veterans who have had the unpleasant experience of being deposed by Klayman say his lawsuits were a harmful distraction.

“His past suits were trying to settle political differences in the court system,” says former Clinton adviser James Carville. “It just never went anywhere, other than having to sit through endless depositions with no particular point to them.”

And yet, Klayman, an avowed conservative, delights in defying his own tribe, too, as when he separately sued Vice President Dick Cheney, George

W. Bush and Halliburton for assorted abuses of power.

“Klayman's reputation is as someone who doesn't play well with others, but that is also related to one of his strengths,” says Jonathan Turley, professor of law at George Washington University. “The only consistent element is that he tends to challenge authority. ... In a town that is often hardwired on the left or right, he's one of the few remaining moving parts.”

Klayman is like an anarchist flagpole sitter with a law degree, inclined toward the grand gesture and the bald overstatement. He called on President Obama to “put down the Koran ... and come out with your hands up.” His briefs are manifestos. He sues entire countries. (You've been served, Iran and Afghanistan.) He won a \$1.8 million judgment against Cuba — symbolic, for it will never be paid. He lobs lawsuits like tank shells at America's foes. (Take that, Taliban and al-Qaeda!) Once he journeyed to Vienna to serve papers on OPEC.

The odds are with Klayman now and then because his is a volume business. He likens his legal work to a MIRV missile, outfitted with many nuclear warheads.

“At least one will get through to accomplish the mission.”

KLAYMAN: Who is your priest in Texas?

PAUL BEGALA: Do I need to name my priest? ... I would rather have some scrap of privacy. ...

KLAYMAN: I tell you what, if you name your priest, I'll name my rabbi.

— Deposition of Begala, former Clinton adviser, April 1998

These days Klayman seeks the limelight only in discrete bursts, to help a cause, as on the day Leon's NSA ruling landed. Then he disappears again.

“Maybe early in my career I enjoyed the notoriety,” he says. “That wears thin. I want results.”

He splits his time between Florida, California and Washington, he says, but won't say where he lives or works. He won't discuss his personal life or colleagues because, he says, of past death threats. He has two teenage children from his second of three marriages and is single now.

A Washington address, 2020 Pennsylvania Ave. NW, does appear on his NSA briefs and Freedom Watch's Web site. It turns out to be a UPS store where he has a mailbox.

Klayman materializes when he needs to. One recent morning, he and half a dozen clients attend a hearing in the Rayburn Building. His clients are parents of servicemen who were killed when a helicopter with the call sign Extortion 17 was shot down in Afghanistan on Aug. 6, 2011. Thirty Americans were killed, including some members of the Navy SEALs

“ I drove a lot of scandals so the American people got to know what's going on.”

LARRY KLAYMAN
Lawyer

unit that had killed Osama bin Laden. The crash was the deadliest incident for U.S. forces in the war.

The Pentagon maintains that the tragedy was caused by a lucky shot with a rocket-propelled grenade. But these parents, and Klayman, think their sons may have been sold out by Afghan turncoats for a Taliban ambush. They base their suspicions on anomalies in the official explanation and partial evidence they have unearthed.

It's a Klayman classic: obscure victims with a long-shot theory challenging entrenched power, against a backdrop of supreme national interest.

Rep. Jason Chaffetz (R-Utah) opens the hearing to look into the matter. He introduces a panel from the Department of Defense and says the witnesses will help “dispel potential myths.”

Klayman flinches in his seat. The testimony and the committee's questions skirt issues the parents consider crucial.

Afterward, at lunch in an Italian wine bar, Klayman still seethes.

“What my clients are talking about aren't ‘myths,’” he says. “They are raising legitimate questions. This is the kind of thing that's gotten under my skin for so long.”

That Chaffetz is a conservative Republican aligned with the tea party only reinforces a conviction of Klayman's.

“What you saw today is what government has become. They don't represent the people; they represent themselves. It's this new American nobility that thinks they call the shots for everybody else.

“This is Washington in action. This is the problem with Washington. This is why I do what I do.”

KLAYMAN: As a result of all that, you hate my guts, correct?

PAUL ORFANEDES: No, I don't hate your guts, Larry. ...

KLAYMAN: Okay. You dislike me?

ORFANEDES: I think you're a very troubled soul, Larry.

— Deposition of Orfanedes, director of litigation at Judicial Watch, in *Klayman v. Judicial Watch*, January 2014

As a boy growing up in Philadelphia, if too much change came out of a vending machine, Klayman would cry until his mother put the coins back, he recounted in his 2009 memoir, titled with his usual subtlety: “Whores: Why and How I Came to Fight the Establishment.”

He worked summers on the cutting floor of his family's pork packing plant. After graduating from Duke University, he studied law at Emory University, his way to fulfill his generation's mandate to “change the world.”

Following a stint at the Justice Department in the early 1980s, he became a trade lawyer, where he hit on the lawsuit as a tool to make public officials in trade disputes do what he considered was their job.

"If you don't follow the law, I'll sue you," he says. "It worked. I then converted that concept to taking on the government."

That aggressive style, coupled with a tendency to question the motives of judges who ruled against him, occasionally led to official sanctions. Upon losing a trade case in New York in 1997, Klayman asked federal Judge Denny Chin, an Asian American appointed by Clinton, to disclose if he knew other Asian Americans whom Klayman was pursuing in a Judicial Watch case. Such a connection could be a "subjective influence," Klayman said. Outraged at the implication of racial bias, the judge ruled that Klayman "degraded the legal profession." He ordered that Klayman never appear before him again, and that the episode be reported to other courts where Klayman is admitted.

"I had a duty to ask the question," Klayman says even now.

He also gained a reputation for making surprising assertions.

"I think some of the criticism he has endured has been self-inflicted," Judge Lamberth says. "He made some fairly serious allegations about the circumstances of [Commerce] Secretary [Ron] Brown's death that I thought were very uncalled-for and I thought hurt his credibility."

Klayman was seeking to depose Brown when the secretary died in a plane crash in Croatia in 1996. Klayman suspected something sinister. He said then that a hole found in Brown's head matched the size of a .45-caliber bullet.

Such episodes cost Klayman, but friends aren't surprised.

"Of all the people I know in the world, Larry is the one who thinks least about his own best interest," says journalist Joseph Farah. "You can take issue with something Larry says or does, but he's not doing it for any other reason than his determined fight for justice as he sees it."

Farah, co-founder of the conservative news site WND.com, met Klayman when a previous news venture was hit with an IRS audit that Farah suspected was political.

"Larry and Judicial Watch took it to the limit," Farah says, and proved the Clinton White House forwarded to the IRS a citizen's complaint about the outfit's tax-exempt status.

Now Klayman writes a weekly column for WND. He is always working, even when he's not.

"You can have any kind of conversation with Larry," Farah says. "But you know that ultimately the topic is going to get back to something that's really

“
It's his job to shine the light in the dark places, as he sees it. It's kind of a scary world that Larry lives in.”

JOSEPH FARAH
Co-founder,
WND.com

bothering him, and this worldview that he has. ... There are no shades of gray.

"There are good guys and bad guys, and they are everywhere, and it's his job to shine the light in the dark places, as he sees it. It's kind of a scary world that Larry lives in."

THOMAS FITTON: I don't know, specifically. ...

KLAYMAN: Do you remember during the Clinton years, they always used to say, "I have no specific recollection"?... You don't want to do the same thing, do you?

— Deposition of Fitton,
president of Judicial Watch, January 2014

Klayman brought Fitton and Orfanedes into Judicial Watch as trusted younger comrades. They became the Three Musketeers, crusading through Washington.

In 2003, Klayman left with a \$600,000 severance to run for a Florida Senate seat. "I wanted to take the concept of Judicial Watch *inside* the Senate," he says.

He got 1 percent of the vote in the 2004 GOP primary. Mel Martinez won the seat. Lawsuits ensued, between Klayman and his pollster.

In 2006, he sued Judicial Watch for allegedly misusing funds and other deeds. Judicial Watch filed counter-claims alleging breach of the severance terms. Eight years later, the lawsuits have multiplied, but little has been resolved.

The personally painful war with Judicial Watch coincided with the end of Klayman's marriage to the mother of his children, followed by a custody battle that he lost. And, the MIRVs weren't landing the way they used to.

"I went through a period of my life where I was a wandering soul," he says one day after arguments in the Court of Appeals, where he goes to save lost causes. This time it was the dismissal of his suit against Facebook for allowing the posting of a death threat against Jews.

"I had to regain who I was," he says. "It brought me closer to God, it brought me closer to myself, and I think I benefited from it." He identifies as a Jewish Christian, and wears a Star of David superimposed with a cross.

By last fall, his NSA case was just another long shot among several he was tending. The judicial watcher's faith in the last branch of government he trusted was being tested, at a time when he said tyranny was worse than any time since 1776.

So, on a blustery November day, he resorted to a new tactic. Inspired by Occupy Wall Street, he led a rally in Lafayette Park to announce a "second American Revolution." Several B-list conservatives spoke



from a small stage. A man dressed as George Washington read an updated Declaration of Independence.

"We have to take matters into our own peaceful and legal hands," Klayman told the assembly of scarcely 300. He announced an upcoming convention in Philadelphia to "elect a government-in-waiting."

A month after the rally, Judge Leon delivered his NSA opinion, invoking the same hallowed charters of rights that Klayman upheld at the rally.

Suddenly Klayman was back in the eye of a wonderful Washington legal hurricane — one for the history books. He might have to put the revolution on hold.

JUDGE LEON: Is it really that simple?

KLAYMAN: It is that simple.

— Oral arguments, NSA case, November 2013

After Leon's ruling, a federal judge in New York reached the opposite conclusion in the case filed by the ACLU, holding that the NSA program is constitutional. The ACLU has appealed. In Washington, Leon stayed his decision to immediately block the NSA from collecting the records of Klayman and one of his

Klayman, in the brown coat, before a news conference with some parents of servicemen killed in Afghanistan. They have sued leaders of that country and Iran for allegedly betraying the servicemen.

clients, so the government could appeal. Klayman recently filed a parallel class action on behalf of all Americans. The Electronic Frontier Foundation also has cases pending. In the end, the several suits could reach the Supreme Court.

Meanwhile, Obama has signaled his resolve to curb the NSA program, a sentiment embraced by many in Congress and the public.

Klayman says the leader's reform effort is driven, in part, by his court victory.

"You know what the moral of this story is?" he says. "You've just got to keep pounding. You can't give up."

As often with a Klayman case, the glory is the journey, not the destination.

"I'm confident the Supreme Court will agree [with Leon]," he says. "But even if it doesn't, a federal judge has spoken. And the American people are smart enough to know that the Supreme Court doesn't always make the right decisions."

David Montgomery is a Washington Post staff writer. Staff researchers Alice Crites, Magda Jean-Louis, Jennifer Jenkins and Eddy Palanzo contributed to this report. To comment on this story, e-mail wpmagazine@washpost.com or visit washingtonpost.com/magazine.