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BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE 1, et al.,	.	
	.	Case Number 17-cv-1597
Plaintiffs,	.	
	.	
vs.	.	Washington, D.C.
	.	Friday, February 16, 2018
DONALD J. TRUMP, in his official	.	2:42 p.m.
capacity as President of the	.	
United States, et al.,	.	
	.	
Defendants.	.	
- - - - -	.	

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by stenotype shorthand.
Transcript produced by computer-aided transcription.

1 P R O C E E D I N G S

2 THE COURT: Good afternoon. This is Judge Kotelly.
3 Let me call the case. This is the case of Jane Doe, et al.,
4 versus Donald Trump, 17-cv-1597. I am sorry about being late
5 for the phone call, but I was still in court with a criminal
6 case.

7 So if we could have plaintiffs' counsel identify
8 themselves.

9 MR. WOLFSON: Good afternoon, your Honor. This is
10 Paul Wolfson with the plaintiffs. With me on the line are
11 Daniel McFadden and Kevin Lamb. There's a little bit of static
12 on the line. I apologize for that. I hope it will be okay.

13 THE COURT: It's fine on my end, but it may be a
14 problem on yours. Let me know if it is a problem. We can have
15 you call in again.

16 MR. WOLFSON: Okay.

17 THE COURT: And who is on for the defense?

18 MR. PARKER: Your Honor, this is Ryan Parker for the
19 defense, and with me is my colleague, Drew Carmichael.

20 THE COURT: Okay. So we are resuming our discussion
21 that we had on Tuesday, and we left two issues to be discussed
22 initially here.

23 And you were, Mr. Parker, going back to your clients to see
24 whether there was a proposal that could be made for the Court to
25 review in camera the documents or some way in terms of deciding

1 on the presidential communications privilege that would not
2 leave the posture of the case in it being, in essence, an
3 absolute privilege, but to set something up so that the Court
4 could make an independent decision.

5 They also were to -- the parties were to meet and confer to
6 resolve or narrow about the deliberative process privilege. If
7 you weren't able to resolve it, then I requested plaintiffs
8 identify documents that they would request that I review in
9 camera to make some decisions.

10 So let me start with you, Mr. Parker. Where are we?

11 MR. PARKER: Thank you, your Honor.

12 Let me start with the deliberative process privilege.
13 Plaintiffs provided us with a list of the documents that they
14 allege contain information that has been inappropriately
15 withheld under the deliberative process privilege. There were
16 approximately 300 documents.

17 We have provided the lists to the different services,
18 offices, and components that have produced documents. We've
19 asked them to look at the documents and specifically the
20 withholdings, and we intend to get back to the plaintiffs next
21 week with our decision regarding the documents and the
22 withholdings at issue.

23 We have also, before this call, had a call with plaintiffs'
24 counsel to discuss how we wanted to proceed with the
25 deliberative process privilege, and I think our plan is to call

1 them next week and let them know the results of our review of
2 the documents that they've identified.

3 We would then like to discuss with them whether providing
4 additional information about the documents themselves might be a
5 pathway to resolving some of the documents that remain at issue
6 so that we can try to narrow the issue as much as possible
7 before bringing it back to the Court, if necessary.

8 And I would propose that that's the way that we proceed,
9 but I'm happy to let plaintiffs' counsel interject and confirm
10 that that is consistent with our discussion.

11 THE COURT: Okay. So why don't we deal with this
12 issue first.

13 Mr. Wolfson, I assume you're the spokesperson.

14 MR. WOLFSON: Yes. Thank you, your Honor.

15 That's right. We did speak about that, and we are willing
16 to -- we are, you know, appreciative that Mr. Parker and his
17 clients are taking another look at these documents, and we're
18 happy to talk to them next week after they've done a further
19 review.

20 We are hopeful that they will be able to provide us with, I
21 will say, more robust information about the documents beyond
22 what we've received so that we will be in a better position to
23 test whether -- to evaluate whether we think we should test
24 whether they really are predecisional. And we're willing to
25 sort of do, you know, a couple of more steps on those lines but

1 reserving the right to go back to the Court, obviously, and ask
2 the Court to review in camera if we can't reach a resolution.

3 THE COURT: All right. So it sounds like you are both
4 on the same page, and that seems to me to be a perfectly
5 sensible way of trying to resolve it or, if nothing else, trying
6 to narrow it so what, if anything, is brought back to me will be
7 a much more limited issue.

8 Where are we on the presidential communication privilege?

9 MR. PARKER: Thank you, your Honor. This is
10 Mr. Parker.

11 We have conferred with our clients about the prospect of
12 providing information regarding who the president and his
13 advisors met with regarding transgender -- military service by
14 transgender individuals and when those meetings occurred. And
15 we are not willing to submit that information to the Court for
16 in camera review.

17 Because this is an issue of great importance, we would
18 respectfully request that the Court allow us to fully and
19 adequately brief it before the Court issues a decision, and if
20 your Honor would like, I would be happy to lay out sort of the
21 reasoning behind our decision, or we could put that in briefing,
22 if that would be better for the Court.

23 THE COURT: Okay. I think you should just put it in
24 briefing. We had a discussion -- you know my position. It
25 sounds as if it's tantamount to being an absolute privilege, and

1 it's not, and therefore, if you don't want to do this -- I mean,
2 I felt that this was one prospect. I left it to you as to
3 whether there is something else that could be provided to the
4 Court that would give me some idea of how it's actually being
5 applied in terms of the documents at issue. It sounds as if
6 you've decided that there's nothing that can be given to the
7 Court in camera.

8 Is that correct?

9 MR. PARKER: Your Honor, that is correct.

10 THE COURT: Okay.

11 MR. PARKER: And we would like an opportunity --
12 excuse me. I'm sorry.

13 THE COURT: That's okay. That's why I think it's
14 useless to have further discussion. You need to file it. I
15 think you need to figure out how to get around the fact that
16 what you're saying is that it's an absolute privilege, and it's
17 not.

18 So if you want to have briefing and the Court to decide in
19 that posture, give careful thought. I, of course, will as well.
20 But this is something that, however it comes out, will go to the
21 Court of Appeals and the Supreme Court, and you will have case
22 law, good or bad.

23 So let me set out a briefing schedule for you. When can
24 you -- it seems to me, since you're asserting it, that you
25 should go first.

1 MR. PARKER: Okay, your Honor. That works for us. We
2 would ask for 10 business days. Could we have until March 5th
3 to brief this issue for the Court?

4 THE COURT: Okay. Mr. Wolfson, it seems to me that
5 this is an important enough issue that we should get a full
6 briefing. Do you have a problem?

7 MR. WOLFSON: I think that's a little slow, your
8 Honor. Let me just look at the calendar a minute.

9 THE COURT: Sure. You said, what, March 5th?

10 MR. PARKER: Yes, your Honor. I asked just for 10
11 business days, until March 5th.

12 MR. WOLFSON: Your Honor, I think we would prefer to
13 compress that a little bit, just because we have depositions
14 that are coming up, and, you know, we're going to need this
15 information to be able to take at least some of those
16 depositions. Maybe 10 calendar days instead of 10 business
17 days, you know, something like have the defendants file their
18 brief on the 26th or 27th of February. That's more like 11 or
19 12. But otherwise, I think this won't get -- we won't be fully
20 briefed until the end of March.

21 THE COURT: Well, if you propose to do it
22 February 26th, when would you respond? Obviously, you need to
23 respond quickly, too.

24 MR. WOLFSON: All right. So I would say also 10
25 calendar days. So March 9th. I think that's 11 and 11. Sorry.

1 Go ahead, Ryan.

2 MR. PARKER: I was just going to say, because we are
3 working with a federal holiday on Monday, could we have until
4 the 27th, which would be Tuesday, the 27th of February?

5 THE COURT: Yes; that's fine.

6 MR. WOLFSON: Your Honor, if we could have, let's say,
7 March 12th.

8 THE COURT: All right. And when do you want to file
9 your reply?

10 MR. PARKER: Can we say March 23rd, your Honor?

11 MR. WOLFSON: Your Honor, that seems like --

12 THE COURT: That's too long; that's too long. This is
13 an issue that you are pushing in terms of coming up with it, and
14 you're going to have to figure out how this is not an absolute
15 privilege and how, by not letting me look at anything, somehow
16 this is not an absolute privilege.

17 So I assume you've thought it through and, therefore, had a
18 consultation and that you figured out a strategy of how you're
19 going to do that. It seems to me it's a fairly narrow issue.
20 The documents are broader, but the issue of the Court not being
21 able to look at anything -- I mean, I'm open to any proposal,
22 whether it's the president or, I had mentioned, some of the
23 other people that would -- are asserting it that are not the
24 president, such as Mattis or some of the other people. I was
25 open to considering that. But if it's a blanket no to all of

1 it, it seems to me you need to move a little faster.

2 I think by March 19th, we get the reply, so that we can --
3 this is not going to -- so that the Court has enough time to get
4 an opinion out without dragging everything else. Obviously,
5 even with the schedule, it's going to affect how you proceed
6 with the rest of the discovery.

7 MR. PARKER: Thank you, your Honor.

8 THE COURT: All right. Hang on one second. Let me
9 just look at my notes for a minute and see if there's anything
10 else I want to bring up. Hold on.

11 (Pause.)

12 THE COURT: All right. I've looked over my notes, and
13 there's nothing else. So I will simply await on the
14 deliberative process privilege for you to -- and the process
15 you've laid out, which sounds reasonable. And plaintiffs, you
16 can get back to me if there's anything else for the Court to do.

17 MR. WOLFSON: Thank you very much.

18 THE COURT: I won't set a date. I will leave it to
19 you to come back to me when you need to.

20 And we will proceed -- this is going to be a motion that is
21 styled what, Mr. Parker?

22 MR. PARKER: Your Honor, I think we will style it as a
23 motion for a protective order, if that seems appropriate to the
24 Court.

25 THE COURT: I will leave it to you how you want to do

1 it.

2 Keep in mind that what I asked for was any proposal, I
3 would consider, that would allow me to see how it's being tested
4 and also that it can not necessarily be the president, it can be
5 some of the other people who are less than the president but who
6 are also asserting it, since it's being asserted across the
7 board.

8 I will say only one other thing. I sincerely hope this is
9 not just a dilatory tactic, because you're going to wind up with
10 a decision on this. I know you don't make the decision;
11 somebody else does.

12 So if there's nothing else -- Mr. Wolfson?

13 MR. WOLFSON: Your Honor, one final thing. This is
14 Paul Wolfson.

15 We had e-mailed the Court a request that the Court file in
16 docket the e-mail correspondence.

17 THE COURT: I'm sorry. I didn't mean to interrupt.

18 Yes, we are doing that. They require scanning. So it
19 takes a little bit of time to do that. But they have it, and
20 they should, hopefully, be getting it up today, including the
21 exhibits that were attached to it.

22 MR. WOLFSON: Thank you very much.

23 THE COURT: But scanning does take more time.

24 MR. PARKER: Your Honor, could I just note for the
25 Court very briefly that the documents that plaintiff provided to

1 the Court in its most recent e-mail were the documents that the
 2 parties would like to have put on the docket. There were some
 3 documents that were initially sent to the Court that contained
 4 office telephone numbers --

5 THE COURT: No, no, no, we're not doing that. This is
 6 strictly going to be the letters that set out your -- it's not
 7 going to be with any phone numbers or anything else.

8 MR. PARKER: Okay. Thank you, your Honor.

9 THE COURT: All right. If there's nothing else, the
 10 parties are excused.

11 (Proceedings adjourned at 2:56 p.m.)

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 17 CERTIFICATE OF OFFICIAL COURT REPORTER

18
 19 I, Sara A. Wick, certify that the foregoing is a
 20 correct transcript from the record of proceedings in the
 21 above-entitled matter.

22
 23
 24 /s/ Sara A. Wick

February 20, 2018

25 SIGNATURE OF COURT REPORTER

DATE