

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JANE DOE 2 <i>et al.</i> ,)	
)	
Plaintiffs,)	Civil Action No. 17-cv-1597 (CKK)
v.)	
)	
JAMES N. MATTIS, in his official capacity as Secretary of Defense, <i>et al.</i> ,)	
)	
Defendants.)	
)	

**DECLARATION OF ALAN E. SCHOENFELD
IN SUPPORT OF PLAINTIFFS’ MEMORANDA IN OPPOSITION TO DEFENDANTS’
MOTIONS FOR PROTECTIVE ORDERS**

I, Alan E. Schoenfeld, hereby declare:

1. All facts set forth herein are based on my personal knowledge, and if called upon to testify as to the contents of this Declaration, I could and would do so.
2. I am an attorney with the law firm of Wilmer Cutler Pickering Hale and Dorr LLP, counsel for Plaintiffs in the above-captioned matter.
3. I provide this declaration in support of Plaintiffs’ Opposition to Defendants’ Motion for a Protective Order (Dkt. 171: Presidential Communications Privilege) and Plaintiffs’ Opposition to Defendants’ Motion for a Protective Order (Dkt. 170: Deposition of Vice Admiral Kriete).
4. Attached hereto as **Exhibit A** is a true and correct copy of an email from Daniel McFadden to Andrew E. Carmichael, dated May 15, 2018, attaching a Notice of Deposition of Vice Admiral David Kriete.
5. Attached hereto as **Exhibit B** is a true and correct copy of an email chain between Daniel McFadden and Andrew E. Carmichael, dated May 22-25, 2018.

6. Attached hereto as **Exhibit C** is a true and correct copy of excerpts of the transcript of the deposition of Jennifer Hay on May 11, 2018.

I declare under pains of perjury that the foregoing is true and correct.

Dated: October 30, 2018
 New York, New York

/s/ Alan E. Schoenfeld
Alan E. Schoenfeld

EXHIBIT A

Nigro, Carla

From: McFadden, Daniel L
Sent: Tuesday, May 15, 2018 7:57 PM
To: Carmichael, Andrew E. (CIV)
Cc: Laporte, Claire; Alan Schoenfeld; Enlow, Courtney D. (CIV)
Subject: Doe v. Trump
Attachments: FHBOSTON-#4834231-v1-Kriete_Depo_Notice.pdf

Drew,

Please see the attached notice of deposition of Vice Admiral David Kriete.

If the noticed date is not convenient, we are happy to work with you to find a mutually agreeable date for the deposition (including, if helpful, moving up the deposition to accomplish it before he assumes his new role at STRATCOM). Given past practice in this case, we've noticed the deposition for Washington D.C., but we are happy to discuss alternative locations if needed.

I am available to discuss the matter at your convenience.

Regards,
Dan McFadden

[Daniel McFadden](#) | Associate

FOLEY HOAG LLP
Seaport World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210-2600

617 832 1293 phone
617 832 7000 fax

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JANE DOE 2, JANE DOE 3, JANE DOE 4,
JANE DOE 5, JANE DOE 6, JANE DOE 7,
JOHN DOE 1, JOHN DOE 2, REGAN V.
KIBBY, and DYLAN KOHERE,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as
President of the United States; JAMES N.
MATTIS, in his official capacity as Secretary of
Defense; JOSEPH F. DUNFORD, JR., in his
official capacity as Chairman of the Joint Chiefs
of Staff; the UNITED STATES DEPARTMENT
OF THE ARMY; MARK T. ESPER, in his
official capacity as Secretary of the Army; the
UNITED STATES DEPARTMENT OF THE
NAVY; RICHARD V. SPENCER, in his official
capacity as Secretary of the Navy; the UNITED
STATES DEPARTMENT OF THE AIR
FORCE; HEATHER A. WILSON, in her
official capacity as Secretary of the Air Force;
the UNITED STATES COAST GUARD;
KIRSTJEN NIELSEN, in her official capacity as
Secretary of Homeland Security; the DEFENSE
HEALTH AGENCY; RAQUEL C. BONO, in
her official capacity as Director of the Defense
Health Agency; and the UNITED STATES OF
AMERICA,

Defendants.

Civil Action No. 17-cv-1597 (CKK)

NOTICE OF DEPOSITION OF VICE ADMIRAL DAVID KRIETE

Please take notice that, pursuant to Rule 30 of the Federal Rules of Civil Procedure,
Plaintiffs will take the deposition upon oral examination of Vice Admiral David M. Kriete, at
9:00 a.m. on May 30, 2018, at the offices of Foley Hoag LLP, 1717 K St. NW, Washington,
D.C., 20006, or at such other time and place as may be agreed upon by the parties in writing.

The deposition will be taken before a notary public or other officer authorized by law to administer oaths and will continue from day to day until concluded, or may be continued until completed at a future date or dates. The deposition will be recorded stenographically and may be recorded videographically. LiveNote may be used.

You are invited to attend and cross-examine.

May 15, 2018

Claire Laporte (*pro hac vice*)
Matthew E. Miller (*pro hac vice*)
Daniel McFadden (*pro hac vice*)
Kathleen M. Brill (*pro hac vice*)
Michael Licker (*pro hac vice*)
Rachel C. Hutchinson (*pro hac vice*)
Lauren Godles Milgroom (*pro hac vice*)
FOLEY HOAG LLP
155 Seaport Blvd.
Boston, Massachusetts 02210
Telephone: 617-832-1000
Fax: 617-832-7000

Theresa M. Roosevelt (D.C. Bar No. 1021853)
FOLEY HOAG LLP
1717 K Street NW
Washington, DC 20006
Telephone: 202-223-1200
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Jennifer Levi (*pro hac vice*)
Mary L. Bonauto (*pro hac vice*)
GLBTQ LEGAL ADVOCATES & DEFENDERS
18 Tremont St., Ste. 950
Boston, Massachusetts 02108
Telephone: 617-426-1350
Fax: 617-426-3594

Shannon P. Minter (*pro hac vice*)
Amy Whelan (*pro hac vice*)
Chris Stoll (*pro hac vice*)

Respectfully submitted,

/s/ Daniel L. McFadden
Paul R.Q. Wolfson (D.C. Bar No. 414759)
Kevin M. Lamb (D.C. Bar No. 1030783)
WILMER CUTLER PICKERING
HALE & DORR LLP
1875 Pennsylvania Ave. N.W.
Washington, D.C. 20006
Telephone: 202-663-6000
Fax: 202-663-6363

Alan E. Schoenfeld (*pro hac vice*)
WILMER CUTLER PICKERING
HALE & DORR LLP
7 World Trade Center
250 Greenwich St.
New York, New York 10007
Telephone: 212-230-8800
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Christopher R. Looney (*pro hac vice*)
Harriet Hoder (*pro hac vice*)
Adam M. Cambier (*pro hac vice*)
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Nancy Lynn Schroeder (*pro hac vice*)
WILMER CUTLER PICKERING
HALE & DORR LLP
350 S. Grand Ave., Ste. 2100

NATIONAL CENTER FOR LESBIAN RIGHTS
870 Market St., Ste. 370
San Francisco, California 94102
Telephone: 415-392-6257
Fax: 415-392-8442

Los Angeles, California 90071
Telephone: 213-443-5300
Fax: 213-443-5400

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing document was served on May 15, 2018 by email upon the following:

ANDREW E. CARMICHAEL
United States Department of Justice
Telephone: (202) 514-3346
Email: Andrew.E.Carmichael@usdoj.gov
Counsel for Defendants

/s/ Daniel L. McFadden

EXHIBIT B

Nigro, Carla

From: Carmichael, Andrew E. (CIV) <Andrew.E.Carmichael@usdoj.gov>
Sent: Friday, May 25, 2018 11:37 AM
To: McFadden, Daniel L
Cc: Enlow, Courtney D. (CIV); Laporte, Claire; Alan Schoenfeld; Norway, Robert M. (CIV)
Subject: RE: Doe v. Trump

Dan,

Thank you. I am sure we can arrange a printer at either of those locations. We will work on setting up the logistics for the 27th and be in touch going forward.

Best regards,

Drew

Drew Carmichael
Trial Attorney
Federal Programs Branch, Civil Division
U.S. Department of Justice
20 Massachusetts Avenue, NW, Rm. 7218
Washington, D.C. 20530
(202) 514-3346

From: McFadden, Daniel L [mailto:DMcFadden@foleyhoag.com]
Sent: Friday, May 25, 2018 11:25 AM
To: Carmichael, Andrew E. (CIV) <ancarmic@CIV.USDOJ.GOV>
Cc: Enlow, Courtney D. (CIV) <cenlow@CIV.USDOJ.GOV>; Laporte, Claire <CLL@foleyhoag.com>; Alan Schoenfeld <Alan.Schoenfeld@wilmerhale.com>; Norway, Robert M. (CIV) <rnorway@CIV.USDOJ.GOV>
Subject: RE: Doe v. Trump

Drew,

Thank you for this information. We can do June 27th in Omaha. I would be fine with either on the base or at the USAO, as long as we can agree that a printer will be reasonably available in case we unexpectedly have to print a document that comes up in the course of the questioning. Please let us know the location, and I'll issue a revised notice for the 27th. In the meantime, we agree the deposition will not go forward on May 30th, as originally noticed.

Best regards,
Dan

Daniel McFadden | Associate

FOLEY HOAG LLP
Seaport World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210-2600

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617 832 7000 fax

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From: Carmichael, Andrew E. (CIV) <Andrew.E.Carmichael@usdoj.gov>
Sent: Thursday, May 24, 2018 4:10 PM
To: McFadden, Daniel L <DMcFadden@foleyhoag.com>
Cc: Enlow, Courtney D. (CIV) <Courtney.D.Enlow@usdoj.gov>; Laporte, Claire <CLL@foleyhoag.com>; Alan Schoenfeld <Alan.Schoenfeld@wilmerhale.com>; Norway, Robert M. (CIV) <Robert.M.Norway@usdoj.gov>
Subject: RE: Doe v. Trump

Dan,

Thank you. Also, we checked with VADM Kriete and he is not available on May 30th because he is transitioning to his new position as the Deputy Commander of US Strategic Command. He is available on the 27th and 28th of June in Omaha, NE. If either of those dates work I can look into securing a location for the deposition on either Offutt Air Force Base or the USAO in Omaha. I am happy to discuss further on the phone.

Best regards,

Drew

Drew Carmichael
Trial Attorney
Federal Programs Branch, Civil Division
U.S. Department of Justice
20 Massachusetts Avenue, NW, Rm. 7218
Washington, D.C. 20530
(202) 514-3346

From: McFadden, Daniel L [<mailto:DMcFadden@foleyhoag.com>]
Sent: Thursday, May 24, 2018 9:48 AM
To: Carmichael, Andrew E. (CIV) <ancarmic@CIV.USDOJ.GOV>
Cc: Enlow, Courtney D. (CIV) <cenlow@CIV.USDOJ.GOV>; Laporte, Claire <CLL@foleyhoag.com>; Alan Schoenfeld <Alan.Schoenfeld@wilmerhale.com>; Norway, Robert M. (CIV) <rnorway@CIV.USDOJ.GOV>
Subject: RE: Doe v. Trump

Drew,

Thank you for the privilege log.

As requested, here is an updated copy of the spreadsheet from my May 22 email, now including the service bates numbers in addition to the USDOE numbers.

Best regards,
Dan

Daniel McFadden | Associate

FOLEY HOAG LLP
Seaport World Trade Center West
155 Seaport Boulevard

Boston, Massachusetts 02210-2600

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617 832 7000 fax

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From: Carmichael, Andrew E. (CIV) <Andrew.E.Carmichael@usdoj.gov>
Sent: Wednesday, May 23, 2018 4:38 PM
To: McFadden, Daniel L <DMcFadden@foleyhoag.com>
Cc: Enlow, Courtney D. (CIV) <Courtney.D.Enlow@usdoj.gov>; Laporte, Claire <CLL@foleyhoag.com>; Alan Schoenfeld <Alan.Schoenfeld@wilmerhale.com>; Norway, Robert M. (CIV) <Robert.M.Norway@usdoj.gov>
Subject: RE: Doe v. Trump

Dan,

Attached please find the privilege log for production 9.

Also, would you be able to provide me with the Service Bates stamp for the emails you want us to review. It is much easier for us to look up if we have the Service Bates stamp. Thanks.

Best regards,

Drew

Drew Carmichael
Trial Attorney
Federal Programs Branch, Civil Division
U.S. Department of Justice
20 Massachusetts Avenue, NW, Rm. 7218
Washington, D.C. 20530
(202) 514-3346

From: McFadden, Daniel L [<mailto:DMcFadden@foleyhoag.com>]
Sent: Tuesday, May 22, 2018 6:54 PM
To: Carmichael, Andrew E. (CIV) <ancarmic@CIV.USDOJ.GOV>
Cc: Enlow, Courtney D. (CIV) <cenlow@CIV.USDOJ.GOV>; Laporte, Claire <CLL@foleyhoag.com>; Alan Schoenfeld <Alan.Schoenfeld@wilmerhale.com>
Subject: Doe v. Trump

Drew,

In reviewing the Defendants' recent productions, we've identified emails between the address [REDACTED] and certain non-government third parties that appear to have been withheld. A list is attached (subject to supplementation as we continue our review). We are not aware of any privilege that would shield the government's external communications from discovery, and we therefore ask that these documents be produced.

Regards,
Dan McFadden

Daniel McFadden | Associate

FOLEY HOAG LLP

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Any tax advice included in this document and its attachments was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

This email message and any attachments are confidential and may be privileged. If you are not the intended recipient, please notify Foley Hoag LLP immediately -- by replying to this message or by sending an email to postmaster@foleyhoag.com -- and destroy all copies of this message and any attachments without reading or disclosing their contents. Thank you.

For more information about Foley Hoag LLP, please visit us at www.foleyhoag.com.

Exhibit C

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UNITED STATES DISTRICT COURT
DISTRICT COURT OF COLUMBIA
Civil Action No. 17-cv-1597(CKK)

- - - - - x
JANE DOE 2, JANE DOE 3, JANE DOE 4,
JANE DOE 5, JANE DOE 6, JANE DOE 7,
JOHN DOE 1, JOHN DOE 2, REGAN V. KIBBY,
and DYLAN KOHERE,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity
as President of the United States; JAMES N.
MATTIS, in his official capacity as
Secretary of Defense; JOSEPH F. DUNFORD,
JR., in his official capacity as Chairman of
the Joint Chiefs of Staff; the UNITED STATES
DEPARTMENT OF THE ARMY; MARK T. ESPER, in
his official capacity as Secretary of the
Army; the UNITED STATES DEPARTMENT OF THE
NAVY; RICHARD V. SPENCER, in his official
capacity as Secretary of the Navy; the
UNITED STATES DEPARTMENT OF THE AIR FORCE;
HEATHER A. WILSON, in her official capacity
as Secretary of the Air Force; the UNITED
STATES COAST GUARD; KIRSTJEN NIELSEN, in her
official capacity as Secretary of Homeland
Security; the DEFENSE HEALTH AGENCY; RAQUEL
C. BONO, in her official capacity as
Director of the Defense Health Agency; and
the UNITED STATES OF AMERICA,

Defendants.

- - - - - x

DEPOSITION of JENNIFER K. HAY
May 11, 2018
Boston, Massachusetts

Reporter: Michael D. O'Connor, RMR, CRR, CRC

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Friday, May 11, 2018

9:00 a.m.

DEPOSITION of JENNIFER HAY, held at
Foley Hoag, LLP, 155 Seaport Lane, Boston,
Massachusetts, pursuant to notice, before
Michael D. O'Connor, Registered Merit
Reporter, Certified Realtime Reporter,
Certified Realtime Captioner, and Notary
Public in and for the Commonwealth of
Massachusetts.

1 APPEARANCES :

2

3 ATTORNEYS FOR PLAINTIFFS :

4 FOLEY HOAG LLP

5 155 Seaport Boulevard

6 Boston, Massachusetts 02210

7 (617) 832-1000

8 BY: DANIEL McFADDEN, ESQ.

9 dmcfadden@foleyhoag.com

10

11 ATTORNEYS FOR PLAINTIFFS :

12 WILMER CUTLER PICKERING HALE & DORR LLP

13 60 State Street

14 Boston, Massachusetts 02109

15 (617) 526-6000

16 BY: ADAM M. CAMBIER, ESQ. - via

17 speakerphone

18

19

20

21

22

23

24

25

1 APPEARANCES (Cont'd):

2

3 ATTORNEYS FOR DEFENDANTS:

4 U.S. DEPARTMENT OF JUSTICE

5 20 Massachusetts Avenue, N.W., Room 7111

6 Washington, D.C. 20530

7 (202) 616-8267

8 BY: ASHLEY A. CHEUNG, ESQ.

9 ashley.cheung@usdoj.gov

10 COURTNEY ENLOW, ESQ.

11 courtney.d.enlow@usdoj.gov

12

13 Also Present: Carolyn M. Wald, Esq.,

14 Latham & Watkins LLP

15

16

17

18

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1 National Security Council staff?

2 A. January of 2016.

3 Q. And how long did you stay at the
4 National Security Council staff?

5 A. About a year and a half.

6 Q. Do you remember when was your last
7 day at the National Security Council staff?

8 A. July 5, 2017.

9 Q. Do you know how you were selected
10 to go to the staff of the National Security
11 Council?

12 A. Yes.

13 Q. How was that?

14 A. The senior director at the time
15 asked the people in the Department of Defense
16 for recommendations. My name was on the list
17 of recommendations. So I interviewed with him,
18 as well as the team, and then through that
19 process was selected.

20 Q. Having worked at the National
21 Security Council staff for about a year and a
22 half, are you generally familiar with the
23 policies and procedures that were in place at
24 the NSC during that time?

25 A. Yes.

1 policy and strategy, there's more than one
2 director for defense policy and strategy?

3 A. Yes, you heard correct.

4 Q. How many directors of defense
5 policy and strategy are there?

6 A. I don't think that information is
7 public.

8 MS. CHEUNG: So I object. The
9 question calls for information that is
10 subject to the Presidential
11 communications privilege, and I instruct
12 the witness not to answer.

13 Q. Will you follow your attorney's
14 instruction?

15 A. Yes.

16 Q. Apart from the number of directors
17 of defense policy and strategy who work under
18 the senior director for defense policy and
19 strategy, are you able to tell me how
20 responsibilities are divided between the
21 different directors?

22 A. We each have our own portfolio.

23 Q. And what was your portfolio when
24 you were a director of defense policy and
25 strategy at the NSC?

1 A. I focused on defense intelligence
2 issues, primarily airborne intelligence
3 surveillance and reconnaissance, as well as
4 readiness issues. Sometimes they are referred
5 to as health of the force.

6 I also supported the cyber
7 directorate and the Middle East directorate
8 when it pertained to military operations.

9 Q. When you refer to readiness
10 issues, does that refer to military personnel
11 and readiness?

12 A. Correct.

13 Q. Did any of the other directors of
14 defense policy and strategy have within their
15 portfolio military personnel and readiness?

16 A. No.

17 Q. If I could direct your attention,
18 please, to Exhibit 2, which is the LinkedIn
19 profile. If you look at your entry for
20 director of defense policy strategy, I think
21 the second paragraph says, "Led the interagency
22 process on personnel and readiness and ISR."

23 Did I read that correctly?

24 A. Yes.

25 Q. Is ISR intelligence surveillance

1 and reconnaissance?

2 A. Yes.

3 Q. When you write here "interagency
4 process on personnel and readiness," what are
5 you referring to?

6 MS. CHEUNG: I'm going to object.
7 The question calls for information that
8 is subject to the Presidential
9 communications privilege. I'm going to
10 instruct the witness not to answer.

11 MR. McFADDEN: I'm sorry, I want
12 to be clear. It's your contention that
13 the interagency process on personnel and
14 readiness is privileged under the
15 Presidential communications privilege;
16 is that what you're saying?

17 MS. CHEUNG: As the witness has
18 testified, her work on the National
19 Security Council staff was done to
20 advise the national security advisor and
21 the President.

22 Our position is that any
23 information about the deliberative
24 process within the White House and the
25 details of what the witness worked on

1 are subject to the Presidential
2 communications privilege.

3 Q. Ms. Hay, are you going to follow
4 your counsel's instruction?

5 A. Yes.

6 Q. Is there an interagency process on
7 personnel and readiness?

8 A. There is a White House interagency
9 process that we use for personnel and readiness
10 issues.

11 Q. And the term "interagency," does
12 that denote a process where more than one
13 agency's interests are implicated?

14 A. Yes.

15 Q. And so, for example, if there was
16 an issue that related to both Department of
17 Defense and Department of Homeland Security,
18 would that be an interagency issue?

19 MS. CHEUNG: Objection. Calls for
20 a hypothetical.

21 Q. Did you ever work on any issues
22 that involved both the Department of Defense
23 and Department of Homeland Security?

24 MS. CHEUNG: Objection. The
25 question calls for information that's

1 subject to the Presidential
2 communications privilege, and I'm going
3 to instruct the witness not to answer.

4 Q. Ms. Hay, what does the word
5 "interagency" mean to you?

6 A. It is the process outlined in --
7 originally in President Obama's Presidential
8 Policy Directive-1 and President Trump's
9 National Security Policy Memorandum-4.

10 Q. Is that what you were referring to
11 in your LinkedIn profile?

12 A. Yes.

13 Q. Ms. Hay, looking at your LinkedIn
14 profile that is Exhibit 2, marked previously,
15 it mentions that you facilitated the
16 Presidential transition. Are you able to
17 describe any activities you took to facilitate
18 the Presidential transition?

19 MS. CHEUNG: I'm going to object
20 to the extent the question calls for
21 details about Ms. Hay's work on the
22 National Security Council staff as that
23 work is subject to the Presidential
24 communications privilege.

25 To the extent there's any public

1 Security Council system.

2 Q. Do you see it's dated February 13,
3 2009?

4 A. Yes.

5 Q. And does this appear to be a true
6 and accurate copy of this document?

7 A. Yes.

8 Q. As I think we already discussed,
9 President Trump was inaugurated on January 20,
10 2017; is that right?

11 A. Yes.

12 Q. Directing your attention to what
13 was marked Exhibit 4, do you recognize this
14 document, Exhibit 4?

15 A. Yes.

16 Q. And what is Exhibit 4?

17 A. It is National Security
18 Presidential Memorandum to the organization of
19 the National Security Council and the Homeland
20 Security Council.

21 Q. Do you see it's dated January 28,
22 2017?

23 A. Yes.

24 Q. Does this appear to be a true and
25 accurate copy of this document?

1 A. Yes.

2 Q. And do you understand Exhibit 4,
3 National Security Presidential Memorandum-2, to
4 replace Exhibit 3, which was Presidential
5 Policy Directive-1?

6 A. Yes.

7 Q. Directing your attention to
8 Exhibit 5, do you recognize the document that
9 is Exhibit 5?

10 A. Yes.

11 Q. And what is Exhibit 5?

12 A. National Security Presidential
13 Memorandum-4, the organization of the National
14 Security Council, the Homeland Security Council
15 and subcommittees.

16 Q. Do you see this document is dated
17 April 4th of 2017?

18 A. Yes.

19 Q. Does this appear to be a true and
20 accurate copy of this document?

21 A. Yes.

22 Q. And this document, Exhibit 4,
23 which is National Security Presidential
24 Memorandum-4, do you understand that it
25 replaced the document marked Exhibit 4, which

1 was National Security Presidential
2 Memorandum-2?

3 A. Yes.

4 Q. I think I misstated my question
5 just then. Let me just ask that question
6 again, because I think I got the exhibit number
7 wrong.

8 This document that is Exhibit 5,
9 which is National Security Presidential
10 Memorandum-4, do you understand that it
11 replaced Exhibit 4, which was National Security
12 Presidential Memorandum-2?

13 A. Yes.

14 Q. Okay. Thank you. I appreciate
15 your patience.

16 If we're going to refer to these,
17 could we refer to Presidential Policy
18 Directive-1 as PPD-1?

19 A. Yes.

20 Q. And could we refer to National
21 Security Presidential Memorandum-2 as NSPM-2?

22 A. Yes.

23 Q. And could we refer to National
24 Security Presidential Memorandum-4 as NSPM-4?

25 A. Yes.

1 Q. Was NSPM-4 in effect until the
2 time you left the National Security Council?

3 A. Yes.

4 MR. McFADDEN: Do you want to take
5 our first break?

6 MS. CHEUNG: Sure.

7 (Recess taken at 9:55 a.m. and
8 reconvening at 10:10 a.m.)

9 BY MR. McFADDEN:

10 Q. We're back on the record. Ms.
11 Hay, we just took a break. Did you have a
12 chance to think about your testimony during
13 that break?

14 A. Yes.

15 Q. Having thought about it, is there
16 anything you'd like to change our correct from
17 your testimony this morning?

18 A. No.

19 Q. Before we took our break, we
20 marked three documents, Exhibits 3, 4 and 5.
21 I'd like to direct your attention first to
22 Exhibit 3, which we previously discussed is
23 PPD-1?

24 A. Yes.

25 Q. And I think we previously

1 discussed this, but it's correct that PPD-1 was
2 in place from February 13, 2009 until it was
3 replaced by NSPM-2 on January 28 of 2017; is
4 that right?

5 A. This one may have been rescinded.
6 I'm not sure, but the President did rescind a
7 series of PPDs of President Obama upon leaving
8 office. This one may have been one of them.
9 I'm not sure. I'm not sure when it ended.

10 Q. I see. So what you're saying is
11 that PPD-1 may have been rescinded on January
12 20 of 2017 when President Obama left office; is
13 that right?

14 A. Yes.

15 Q. And then I suppose if that had
16 happened, there would have been an eight-day
17 day gap before the NSPM-2 came in to play; is
18 that right?

19 A. Yes.

20 Q. Looking at Exhibit 3, which is
21 PPD-1, if I could direct your attention to Part
22 A entitled "The National Security Council." Do
23 you see that?

24 A. Yes.

25 Q. And do you see that the first

1 MS. CHEUNG: I'm going to object.
2 The question calls for information that
3 is subject to the Presidential
4 communications privilege, and I will
5 instruct the witness not to answer.

6 Q. Will you follow that advice?

7 A. Yes.

8 Q. Ms. Hay, are you aware of whether
9 during the time you were at the NSC written
10 agendas were prepared for NSC meetings?

11 MS. CHEUNG: I'm going to object.
12 The question calls for information that
13 is subject to the Presidential
14 communications privilege, and I'm going
15 to instruct the witness not to answer.

16 Q. Ms. Hay, will you follow that
17 instruction?

18 A. Yes.

19 Q. Ms. Hay, without telling me
20 whether agendas were prepared or were not in
21 reality, do you in your own mind at least know
22 the information whether or not agendas were
23 prepared for NSC meetings during your time at
24 the NSC?

25 MS. CHEUNG: I'm going to object.

1 The question calls for information that
2 Ms. Hay may have obtained during her
3 time on the NSC staff, and that
4 information is subject to the
5 Presidential communications privilege.
6 I will instruct the witness not to
7 answer.

8 Q. Will you follow your counsel's
9 instruction?

10 A. Yes.

11 Q. Ms. Hay, in that same paragraph we
12 just looked at, it talks about ensuring that
13 necessary papers are prepared. Do you see
14 that?

15 A. Yes.

16 Q. Do you know what necessary papers
17 are being referred to in that paragraph?

18 MS. CHEUNG: I'm going to object.

19 The question calls for information that
20 is subject to the Presidential
21 communications privilege, and I will
22 instruct the witness not to answer.

23 Q. Ms. Hay, will you follow that
24 instruction?

25 A. Yes.

1 asking whether or not the witness is
2 aware, the witness may answer.

3 A. I am aware.

4 Q. Okay. And while PPD-1 was in
5 effect and you were at the NSC, did the strict
6 guidelines referred to on Page 5 exist?

7 MS. CHEUNG: Objection. The
8 question calls for information that is
9 subject to the Presidential
10 communications privilege. I instruct
11 the witness not to answer.

12 Q. And, Ms. Hay, will you follow that
13 instruction?

14 A. Yes.

15 Q. Okay. Ms. Hay, I'm going to ask
16 that you please direct your attention to
17 Exhibit 4, which is NSPM-2.

18 Now, Ms. Hay, is it correct that
19 NSPM-2 is dated January 28, 2017?

20 A. Yes.

21 Q. And is it correct that NSPM-2
22 replaced PPD-1?

23 A. Yes, in actuality de facto.

24 Q. So just to make sure I understand
25 that last answer, in terms of your practices at

1 the NSC while you were there, NSPM-2 replaced
2 PPD-1; is that right?

3 A. Yes.

4 Q. If I could just direct your
5 attention, please, to the first paragraph of
6 NSPM-2, which is Exhibit 4, it says that, "I
7 hereby direct that my system for national
8 security policy development and decision-making
9 shall be organized as follows."

10 Do you see that?

11 A. Yes.

12 Q. And would national security policy
13 include military personnel and readiness?

14 A. Yes.

15 Q. Ms. Hay, are you aware of who
16 drafted NSPM-2?

17 MS. CHEUNG: I object. To the
18 extent the question is calling for the
19 identity of someone who worked on drafts
20 of this document, that information is
21 subject to the Presidential
22 communications privilege, and I instruct
23 the witness not to answer.

24 To the extent the question is
25 asking yes or no whether the witness is

1 that?

2 A. Yes.

3 Q. And is that referring to the staff
4 on which you served at the NSC?

5 A. Yes.

6 Q. And it refers to "The staff being
7 composed of regional, issue-focused, and
8 functional directorates and headed by a single
9 civilian executive secretary."

10 Did I read that correctly?

11 A. Yes.

12 Q. Could you just remind me, what was
13 your directorate while you were at the NSC?

14 A. Defense policy and strategy.

15 Q. And could you just remind me,
16 because my notes are kind of a mess, who was
17 the executive secretary from January 2017 until
18 the time you left the NSC?

19 A. Lieutenant General Retired
20 Kellogg. I don't remember his first name.

21 Q. Ms. Hay, I think you said within
22 the directorate of policy and strategy, you
23 were the person who had responsibility for
24 personnel and readiness as an issue; is that
25 correct?

1 A. Yes, in the defense policy and
2 strategy office.

3 Q. Outside of the defense policy and
4 strategy directorate, were there other
5 personnel at the NSC who had responsibility for
6 military personnel and readiness?

7 A. No, other than the senior
8 director, who is my boss.

9 Q. Ms. Hay, I'm going to ask you a
10 series of questions now, and I think I know how
11 they are going to go, and I'll try to make them
12 go as quickly as possible. I'm apologizing in
13 advance, but I have to make the record.

14 I want to direct your attention to
15 the third full paragraph on Page 2 of Exhibit
16 4. This is NSPM-2 again. It says, "The
17 assistant to the President for National
18 Security Affairs (National Security Advisor),
19 and the assistant to the President for Homeland
20 Security and Counterterrorism (Homeland
21 Security Advisor) shall be responsible, as
22 appropriate and at the president's direction,
23 for determining the agenda for the NSC or HSC
24 respectively, ensuring that the necessary
25 papers are prepared, and recording counsel

1 actions and Presidential decisions in a timely
2 manner."

3 Did I read that correctly?

4 A. Yes.

5 Q. Ms. Hay, are you aware of whether,
6 while NSPM-2 was in effect, there was an
7 agenda, necessary papers and recordings of
8 counsel actions and Presidential decisions for
9 NSC activities?

10 MS. CHEUNG: I object. To the
11 extent the question is calling for
12 substantive details about the NSC
13 process, that information is subject to
14 the Presidential communications
15 privilege, and I instruct the witness
16 not to answer.

17 However, to the extent the
18 question is only asking about the
19 witness' awareness, the witness may
20 answer.

21 A. Yes, I am aware.

22 Q. And will you otherwise follow your
23 counsel's advice?

24 A. Yes.

25 Q. Ms. Hay, while you were at the NSC

1 A. Yes.

2 Q. Turning your attention to Section
3 C, which is on the next page of Exhibit 4, do
4 you see that that's entitled "The Deputies
5 Committee"?

6 A. Yes.

7 Q. If you look at both Section B,
8 recording the Principals Committee, and Section
9 C, regarding the Deputies Committee, do you see
10 it makes reference to an agenda, necessary
11 papers and conclusions and decisions?

12 A. Yes.

13 Q. While NSPM-2 was in effect, and
14 you were at the NSC, are you aware of whether
15 agendas, necessary papers and records of
16 conclusions and decisions were prepared for the
17 Principals Committee and the Deputies Committee
18 of the NSC?

19 MS. CHEUNG: I object to the
20 extent the question is calling for
21 substantive information about the
22 process at the NSC, that information is
23 subject to the Presidential
24 communications privilege, and I will
25 instruct the witness not to answer.

1 However, to the extent the
2 question is only asking about the
3 witness' awareness, the witness may
4 answer.

5 A. I am aware.

6 Q. And are you otherwise going to
7 follow your counsel's instruction?

8 A. Yes.

9 Q. While NSPM-2 was in effect, were
10 written agendas, necessary papers and written
11 records of conclusions and decisions prepared
12 for the Principals Committee and the Deputies
13 Committee of the NSC?

14 MS. CHEUNG: Objection. The
15 question calls for information that is
16 subject to the Presidential
17 communications privilege. I will
18 instruct the witness not to answer.

19 Q. And, Ms. Hay, will you follow your
20 attorney's advice?

21 A. Yes.

22 Q. Looking down at the bottom of the
23 Deputies Committee section, the final paragraph
24 before D in Exhibit 4, it says, "The DC,"
25 referring to the Deputies Committee, "shall

1 review and monitor the work of the interagency
2 national security process."

3 Did I read that correctly?

4 A. Yes.

5 Q. Is that the interagency process
6 you referred to before?

7 A. To me, the interagency process is
8 everything that's outlined in this document, up
9 to and including the NSC meetings.

10 Q. Okay. Thank you, Ms. Hay.

11 The next section of this document,
12 Exhibit 4, Part D, "Policy Coordination
13 Committees."

14 Do you see that?

15 A. Yes.

16 Q. And do you see it says at the end
17 of the first paragraph of Part D, "As the main
18 day-to-day fora for interagency coordination of
19 national security policies, the PCCs shall
20 provide policy analysis for consideration by
21 the more senior committees of the national
22 security system and ensure timely responses to
23 the President's decisions."

24 Did I read that correctly?

25 A. Yes.

1 extent the question is asking for
2 substantive information about the
3 drafting of this document, that
4 information is subject to the
5 Presidential communications privilege
6 and the deliberative process privilege,
7 and I instruct the witness not to
8 answer.

9 To the extent the question is only
10 asking about the witness' awareness, the
11 witness may answer.

12 A. I am not aware.

13 Q. Okay. Did you have a chance to
14 review a copy of NSPM-4 before it was signed?

15 MS. CHEUNG: Objection. The
16 question calls for information that is
17 subject to the Presidential
18 communications privilege and the
19 deliberative process privilege, and I
20 instruct the witness not to answer.

21 Q. Ms. Hay, will you follow that
22 advice?

23 A. Yes.

24 Q. So looking at the dates, it
25 appears that NSPM-4 was signed just a little

1 over two months after NSPM-2; is that right?

2 A. Yes.

3 Q. Is it correct NSPM-4 replaces
4 NSPM-2?

5 A. Yes.

6 Q. Are you aware of why NSPM-2 was
7 replaced just a little more than two months
8 after it was issued?

9 MS. CHEUNG: Objection. To the
10 extent that the question is asking for
11 substantive information about a
12 decision, that information is subject to
13 the Presidential communications
14 privilege and the deliberative process
15 privilege, and I instruct the witness
16 not to answer.

17 To the extent the question is only
18 asking about the witness' awareness, the
19 witness may answer.

20 A. I am not aware. I don't have
21 firsthand knowledge.

22 Q. Well, do you have knowledge from
23 any other source?

24 MS. CHEUNG: I object to the
25 extent the question is asking for

1 A. Yes.

2 Q. In NSPM-4, in Section A, about the
3 National Security Council, it again talks about
4 the agenda, necessary papers and recording
5 council actions and Presidential decisions. Do
6 you see that? It would be the second full
7 paragraph.

8 A. Yes.

9 Q. Are you aware of whether after
10 NSPM-4 was issued, written agendas, necessary
11 papers and recordings of NSC actions and
12 Presidential decisions were made?

13 MS. CHEUNG: Objection. To the
14 extent the question calls for
15 substantive information about the NSC's
16 process, that information is subject to
17 the Presidential communications
18 privilege, and I instruct the witness
19 not to answer.

20 To the extent the question is only
21 asking about the witness' awareness, the
22 witness may answer.

23 A. Yes, I am aware.

24 Q. Okay. And after NSPM-4 was
25 issued, were written agendas for NSC meetings,

1 activities of the Principals Committee or the
2 Deputies Committee of the National Security
3 Council?

4 MS. CHEUNG: Objection. The
5 question calls for information that is
6 subject to the Presidential
7 communications privilege, and I instruct
8 the witness not to answer.

9 Q. Will you follow your counsel's
10 instruction?

11 A. Yes.

12 Q. Ms. Hay, turning to the end of
13 NSPM-4, Section D, I see that it refers to
14 "Policy Coordination Committees"?

15 A. Yes.

16 Q. And again, it says in the first
17 paragraph, "As the main day-to-day fora for
18 interagency coordination of national security
19 policies, the PCCs shall provide policy
20 analysis for consideration by the more senior
21 committees of the national security system and
22 ensure timely responses to the President's
23 decisions.

24 Did I read that correctly?

25 A. Yes.

1 left the NSC; is that correct?

2 A. Yes.

3 Q. What were the issues under
4 consideration by those Policy Coordination
5 Committees to which you were assigned?

6 MS. CHEUNG: Objection. The
7 question calls for information that is
8 subject to the Presidential
9 communications privilege and the
10 deliberative process privilege, and I
11 will instruct the witness not to answer.

12 Q. Will you follow your counsel's
13 instruction?

14 A. Yes.

15 Q. About how often did those Policy
16 Coordination Committees meet?

17 MS. CHEUNG: Objection. The
18 question calls for information that is
19 subject to the Presidential
20 communications privilege, and I will
21 instruct the witness not to answer.

22 Q. Will you follow your counsel's
23 advice?

24 A. Yes.

25 Q. Where did those Policy

1 Coordination Committees meet?

2 MS. CHEUNG: Objection. The
3 question is calling for information that
4 is subject to the Presidential
5 communications privilege, and I instruct
6 the witness not to answer.

7 MR. McFADDEN: Just so I'm clear,
8 the location of the meetings of the
9 Policy Coordination Committees, you
10 believe that's privileged?

11 MS. CHEUNG: Yes. As the witness
12 has previously testified, her work at
13 the National Security Council staff,
14 leading her work with the PCCs, was done
15 to advise the national security advisor
16 and the President.

17 Our position is that any
18 information about the deliberative
19 process in the White House is subject to
20 the Presidential communications
21 privilege.

22 Q. Are you going to be following your
23 attorney's instructions with regard to that
24 last question?

25 A. Yes.

1 Q. Did you ever do work on
2 transgender military service while you were at
3 the NSC?

4 A. Yes, I did.

5 Q. So, Ms. Hay, before we take our
6 lunch -- actually, let me ask you this. Let's
7 go off the record for a second.

8 (Off the record at 11:50 a.m. and
9 reconvening at 11:51 a.m.)

10 Q. Ms. Hay, have you ever met
11 President Trump?

12 A. Yes, I have.

13 Q. When was that?

14 A. I don't remember the exact dates,
15 but I escorted two military groups visiting the
16 President before I left. I don't remember the
17 dates.

18 Q. Other than escorting those two
19 military groups, had you ever met with the
20 President in any other context?

21 A. No, I have not.

22 Q. I assume during that meeting you
23 just mentioned with the two military groups you
24 did not discuss transgender military service
25 with the President at that time?

1 MS. CHEUNG: Objection. The
2 question calls for information that is
3 subject to the Presidential
4 communications privilege. I instruct
5 the witness not to answer.

6 Q. Will you follow that instruction,
7 Ms. Hay?

8 A. Yes.

9 Q. Did you ever communicate with
10 President Trump in any fashion regarding
11 transgender military service?

12 MS. CHEUNG: Objection. The
13 question calls for information that is
14 subject to the Presidential
15 communications privilege. I instruct
16 the witness not to answer.

17 Q. Will you follow that instruction?

18 A. Yes.

19 Q. Did you ever prepare any briefs or
20 memoranda or other written documents for
21 President Trump regarding transgender military
22 service?

23 MS. CHEUNG: Objection. The
24 question calls for information that is
25 subject to the Presidential

1 transgender military service?

2 A. Yes.

3 Q. And while you were at the NSC,
4 were there any meetings of the National
5 Security Council concerning the subject of
6 transgender military service?

7 MS. CHEUNG: Objection. The
8 question calls for information that is
9 subject to the Presidential
10 communications privilege and the
11 deliberative process privilege, and I
12 instruct the witness not to answer.

13 Q. Will you follow that advice?

14 A. Yes.

15 Q. And did the NSC ever take any
16 council actions with respect to the subject of
17 transgender military service while you were at
18 the NSC?

19 MS. CHEUNG: Objection. The
20 question calls for information that is
21 subject to the Presidential
22 communications privilege. I instruct
23 the witness not to answer.

24 Q. Will you follow that instruction?

25 A. Yes.

1 left?

2 A. Not in its entirety right away.
3 My actual position was gapped for a little
4 while.

5 Q. Okay. And do you know how long it
6 was gapped for after you left?

7 A. I do not.

8 Q. You mentioned nobody replaced you
9 in terms of your entire position. Were
10 portions of your portfolio temporarily assigned
11 to other people when you left the National
12 Security Council?

13 MS. CHEUNG: I object to the
14 extent the question is asking for the
15 details of who worked on what of the
16 National Security Council, as that
17 information is subject to the
18 Presidential communications privilege,
19 and I instruct the witness not to
20 answer.

21 However, to the extent that the
22 question is asking for a yes or no
23 answer, the witness may answer.

24 A. Yes.

25 Q. And will you otherwise follow your

1 attorney's advice?

2 A. Yes.

3 Q. Who are the people at the National
4 Security Council who temporarily took over
5 parts of your portfolio when you left?

6 MS. CHEUNG: I'd like to withdraw
7 my last objection and permit the witness
8 to answer in general terms if you'd like
9 to reask it.

10 MR. McFADDEN: Could we go off the
11 record for one second?

12 (Off the record at 12:51 p.m. and
13 reconvening at 12:52 p.m.)

14 Q. When you left the National
15 Security Council, were portions of your
16 portfolio responsibilities assigned temporarily
17 to other people who were there?

18 A. Yes.

19 Q. And who were they?

20 A. So some of the routine tasks
21 related to general officer nominations, were
22 given to Joe Wawro, W-a-w-r-o. I also
23 sponsored visits of the Department of Defense
24 to the National Security Council, and those
25 duties were given to Brian McCullough, as that

1 was also routine.

2 And then I'm aware that Dave
3 Kriete worked on the transgender issue after I
4 left.

5 Q. Correct me if I'm wrong, but is
6 Dave Kriete a naval officer?

7 A. Yes. He's a rear admiral.

8 Q. Do you know if Rear Admiral Kriete
9 is still at the National Security Council?

10 A. He is not.

11 Q. Do you know where he is now?

12 A. I do not.

13 Q. Are you aware of when Rear Admiral
14 Kriete left the National Security Council?

15 A. Approximately.

16 Q. When was that?

17 A. A couple weeks ago.

18 Q. Do you know if Rear Admiral Kriete
19 is still in the Navy?

20 A. Yes, he is.

21 Q. Do you know if anyone ultimately
22 took over your full position at the NSC after
23 you left?

24 A. Yes.

25 Q. And who was that?

1 A. Leonard Litton, L-i-t-t-o-n.

2 Q. Do you know when Mr. Litton took
3 over that position?

4 A. Not exactly. It was around August
5 or September.

6 Q. Of 2017?

7 A. Yes.

8 Q. Do you still keep in touch with
9 people at the National Security Council?

10 MS. CHEUNG: I object to the
11 extent the question is asking about
12 conversations that Ms. Hay may have had
13 with members of the National Security
14 Council and the National Security
15 Council staff, as that information is
16 subject to the Presidential
17 communications privilege.

18 MR. McFADDEN: Are you instructing
19 her not to answer that last question?

20 MS. CHEUNG: Yes, I instruct the
21 witness not to answer.

22 Q. Are you going to follow that
23 instruction?

24 A. Yes.

25 MS. CHEUNG: I'd like to modify my

1 serve in any capacity in the U.S. military.

2 Do you see that?

3 A. Yes, I do.

4 Q. Do you know when the President
5 made that decision?

6 MS. CHEUNG: I object to the
7 extent the information calls for
8 substantive information, as that
9 information is subject to the
10 Presidential communications privilege,
11 and I instruct the witness not to
12 answer.

13 To the extent the question is
14 asking yes or no whether or not the
15 witness has knowledge, the witness may
16 answer.

17 A. No, I do not have any knowledge.

18 Q. Okay. As far as you know,
19 President Trump had not decided that the United
20 States government will not accept or allow
21 transgender individuals to serve in any
22 capacity in the U.S. military before July 5th
23 of 2017?

24 MS. CHEUNG: Objection.

25 Mischaracterizes prior testimony. I

1 However, to the extent the
2 question is asking yes or no about the
3 witness' awareness, the witness may
4 answer.

5 A. No, I do not know.

6 Q. When was the first time that you
7 saw these tweets?

8 A. The afternoon of July 26th.

9 Q. And where were you at that time?

10 A. In my apartment.

11 Q. How did you feel when you saw
12 these tweets?

13 A. I was disappointed.

14 Q. Are you able to explain why you
15 felt disappointed when you saw the tweets?

16 A. My personal opinion, why I was
17 disappointed, was that President Trump was
18 rolling back the previous policy on transgender
19 military service.

20 MR. McFADDEN: I'd like to mark
21 another exhibit.

22 (Document marked as Exhibit 6
23 for identification)

24 Q. This document has been marked as
25 Exhibit 6. Ms. Hay, I'm going to represent to

1 asking whether or not the witness may
2 have knowledge, the witness may answer.

3 A. Again, I don't have enough
4 information here to be able to confidently say
5 whether or not I know who the outside parties
6 are.

7 Q. While you were at the NSC during
8 the Trump administration, did you ever
9 communicate with outside third parties
10 regarding transgender military service?

11 MS. CHEUNG: Objection. The
12 question calls for information that is
13 subject to the Presidential
14 communications privilege, and I'm going
15 to instruct the witness not to answer.

16 Q. Are you going to follow that
17 instruction?

18 A. Yes.

19 Q. While you were at the NSC during
20 the Trump administration, did you ever receive
21 communications from outside third parties
22 concerning transgender military service?

23 MS. CHEUNG: Objection. The
24 question calls for information that is
25 subject to the Presidential

1 communications privilege. I'm going to
2 instruct the witness not to answer.

3 Q. Are you going to follow that
4 instruction?

5 A. Yes.

6 MR. McFADDEN: Just so I
7 understand, is it your position that
8 communications between a member of the
9 NSC staff and a person outside of the
10 government regarding transgender
11 military service is going to be covered
12 by the Presidential communications
13 privilege?

14 MS. CHEUNG: We would like to take
15 a break?

16 MR. McFADDEN: Okay. Do you want
17 to take ten minutes?

18 MS. CHEUNG: Yes.

19 (Recess taken at 1:23 p.m. and
20 reconvening at 1:43 p.m.)

21 MR. McFADDEN: We're back on the
22 record. I understand you wanted to
23 modify your objection?

24 MS. CHEUNG: Yes. The witness may
25 answer the question about while she was

1 A. Yes.

2 MR. McFADDEN: So I understand,
3 the position is that communications
4 between NSC and members of Congress or
5 their staff, those are going to be
6 covered by the privilege, in your view?

7 MS. CHEUNG: Yes, that's our
8 position.

9 MR. McFADDEN: Okay.

10 Q. Ms. Hay, are you aware of whether
11 anyone at the NSC, the Executive Office of the
12 President or the Office of the Vice-President
13 ever had communications with the Family
14 Research Council regarding transgender military
15 service?

16 MS. CHEUNG: I object to the
17 extent the question is calling for a
18 substantive answer. That information is
19 subject to the Presidential
20 communications privilege, and I instruct
21 the witness not to answer.

22 To the extent the question is only
23 asking yes or no whether the witness is
24 aware, the witness may answer.

25 A. No, I'm not aware.

1 Q. You don't know one way or the
2 other?

3 A. Correct.

4 Q. And are you otherwise going to
5 follow your counsel's instructions?

6 A. Yes.

7 Q. Are you aware of whether anyone at
8 the National Security Council, Executive Office
9 of the President or Office of the
10 Vice-President ever had communications with the
11 Heritage Foundation regarding transgender
12 military service?

13 MS. CHEUNG: Objection. The
14 question calls for speculation. To the
15 extent the question calls for
16 information that is subject to the
17 Presidential communications privilege, I
18 instruct the witness not to answer.

19 To the extent the question is
20 asking only about the witness'
21 awareness, the witness may answer.

22 A. I am not aware.

23 Q. You don't know one way or the
24 other?

25 A. Correct.

1 Q. And then the same question for the
2 Center for Military Readiness and the Liberty
3 Council?

4 MR. McFADDEN: Same objection, I
5 assume?

6 MS. CHEUNG: Same objection.

7 A. I am not aware.

8 Q. So again, you don't know one way
9 or the other?

10 A. Correct.

11 Q. Do you know a person named Paul
12 Teller?

13 A. I do not.

14 Q. So it's safe to say you never
15 communicated with Paul Teller regarding the
16 subject of transgender military service?

17 A. No. Right. Yes, it is safe to
18 say I never talked to him.

19 Q. Just a quick question about
20 classification of documents at the NSC.

21 It's my understanding that under
22 the executive orders governing classification,
23 a part of a document can be classified, but a
24 different part of the same document can be
25 unclassified; is that correct?