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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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|--------------------------|---|----------------|
| * * * * *                | ) |                |
| JANE DOE 2, et al.,      | ) | Civil Action   |
|                          | ) | No. 17-CV-1597 |
| Plaintiffs,              | ) |                |
|                          | ) |                |
| vs.                      | ) |                |
|                          | ) |                |
| DONALD J. TRUMP, et al., | ) | Washington, DC |
|                          | ) | April 9, 2019  |
| Defendants.              | ) | 9:59 a.m.      |
|                          | ) |                |
| * * * * *                | ) |                |

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

APPEARANCES:

|                        |                                    |
|------------------------|------------------------------------|
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| <i>(Appearing</i>      | ASHLEY CHEUNG, ESQ.                |
| <i>Telephonically)</i> | U.S. DEPARTMENT OF JUSTICE         |
|                        | Civil Division, Federal Programs   |
|                        | Branch                             |
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REPORTED BY: LISA EDWARDS, RDR, CRR  
Official Court Reporter  
United States District Court for the  
District of Columbia  
333 Constitution Avenue, NW  
Room 6706  
Washington, DC 20001  
(202) 354-3269

1 THE COURT: This is Judge Kotelly. Let me call  
2 the case, then. I have a court reporter.

3 17-CV-1597, Jane Doe 2, et al., versus Donald  
4 Trump, et al.

5 So let me ask you to identify yourselves again,  
6 because we didn't do it on the record at that point. We  
7 were just writing your names down because we had different  
8 names here, other than Mr. Carmichael.

9 So I have Plaintiff. If Plaintiffs' counsel could  
10 identify themselves again, please.

11 MR. MILLER: Good morning, your Honor. This is  
12 Matthew Miller from Foley Hoag for the Plaintiffs. With me  
13 is my co-counsel, Jennifer Levi from GLBTQ and Shannon  
14 Minter from NCLR.

15 THE COURT: Okay. And we have Mr. Drew Carmichael  
16 for the Defendant. Is that correct?

17 MR. CARMICHAEL: Yes, your Honor. And Ashley  
18 Cheung, also from the Department of Justice.

19 THE COURT: I'm sorry. I missed the last name.  
20 Ashley...?

21 MR. CARMICHAEL: Cheung. It's C-H-E-U-N-G.

22 THE COURT: Okay. Great.

23 I'm going to set out what I view as the issues and  
24 I'll call on you. I may ask questions of Plaintiffs'  
25 counsel or defense counsel. And whoever is responding to my

1 questions or making comments, I'd ask that you give your  
2 last name so that the court reporter ascribes the comments  
3 to the correct people.

4 You will all get an opportunity to say something,  
5 so I would ask that you not interrupt.

6 It may be that I stop you from going down --  
7 discussing something because I want to move to something  
8 else. Please listen if I interrupt you, if I want to move  
9 on to another topic.

10 This is relating to the discovery dispute, or I  
11 guess disputes. And I did receive a joint report, and I  
12 appreciate the fact that you went to some trouble to set out  
13 categories of discovery documents that are at issue as well  
14 as the clawback issues, which is something that's additional  
15 here.

16 And you indicated a summary, basically, a timeline  
17 as to what you'd agreed to, what you hadn't and what were  
18 new requests, et cetera.

19 So let me go through the categories that I believe  
20 that you have agreed to. Let me start with those.

21 Category I: It sounds as if the parties agree  
22 that Plaintiffs would first review the supplemental data  
23 involving military personnel diagnosed with gender dysphoria  
24 that was used to provide testimony to the House Armed  
25 Services Subcommittee on Military Personnel in February of

1 2019, and then determine once you got that material if a  
2 dispute remained.

3 So, Plaintiffs' counsel, is that correct?

4 MR. MILLER: Your Honor, this is Matthew Miller.

5 I believe that's what we had agreed to initially,  
6 although I'm not sure the Government is still offering to  
7 provide that information at this point, given that we didn't  
8 reach agreement on other areas that we've been discussing.

9 THE COURT: Let me interrupt you.

10 Let me just simply say that for what agreements  
11 you did reach, I am going to assume you've reached them.  
12 You don't get to, if you did not have a final agreement,  
13 take your marbles and go home. So if there's an agreement  
14 that you did reach at one point, for the agreements I'm  
15 going to go over them and I'll tell you how I think they  
16 should be resolved.

17 But at least at some point, this is what you  
18 wanted out of Category I. Is that correct, Plaintiffs'  
19 counsel?

20 MR. MILLER: Your Honor, this is Matthew Miller.

21 Yes. That is correct.

22 THE COURT: Defense counsel, is that correct, that  
23 you were willing to provide this information?

24 MR. CARMICHAEL: Yes, your Honor.

25 THE COURT: Okay. Let me move to Category III,

1 which seemed to be the other one: emails between  
2 then-Secretary Mattis and third parties.

3 As I understand it, the Defendant offered to waive  
4 the delivery of process privilege over the emails between  
5 then-Secretary Mattis and third parties.

6 So does that take care of Category III,  
7 Plaintiffs' counsel?

8 MR. MILLER: Your Honor, this is Matthew Miller.

9 Yes. I believe we reached agreement on that  
10 aspect.

11 THE COURT: And, defense counsel, is that still  
12 correct?

13 MR. CARMICHAEL: Yes, your Honor.

14 THE COURT: So for those two, I can either set a  
15 timeline for providing them or you can agree on your own as  
16 to when they should be provided. But we should have dates  
17 as to when those two categories, Category I and III, would  
18 be provided.

19 I'll get back to that in a minute, because there's  
20 some other things we need to talk about.

21 So let me go to the ones that there is a  
22 disagreement about. This is Category II: documents related  
23 to then-secretary Mattis's decision to delay the Carter  
24 accessions policy.

25 There seems to have been through March 27 -- at

1 least Defendants seem to indicate that they had provided an  
2 unredacted version of the Deputy Secretary's memorandum to  
3 the Services requesting recommendations related to the  
4 Carter accessions policies and provided the Bates numbers.

5 Now, I realize that Plaintiff has asked for  
6 additional discovery. But let me not get to that quite yet.

7 So as I understand it, Defendant was willing to  
8 produce recommendations from the Services related to that  
9 decision. Is that correct, up to that point? What is in  
10 dispute is communications between the Secretary and his  
11 staff. So we'll leave that out for a minute, because that's  
12 out.

13 But the rest of it, I take it, Plaintiffs'  
14 counsel, is that correct that you have reached agreement  
15 with that?

16 MR. MILLER: Your Honor, this is Matthew Miller.

17 Yes. That is correct with respect to Defendants  
18 offering to provide those communications. That's correct.

19 THE COURT: And, Defendant, is that correct? It's  
20 the Secretary and then the Services that we're just talking  
21 about?

22 MR. CARMICHAEL: Yes, your Honor. It was  
23 recommendations from the Services and the Service Surgeon  
24 General to the Secretary of Defense or the Deputy Secretary  
25 of Defense that we had previously withheld.

1 THE COURT: Now, have those documents been  
2 provided in Category II, either Plaintiffs' counsel or  
3 defense counsel?

4 MR. CARMICHAEL: This is defense counsel.

5 No, they haven't. It was just the -- I did  
6 provide the Bates number of the letter from the Deputy  
7 Secretary calling for the recommendations. But that wasn't  
8 withheld.

9 THE COURT: What's not in agreement was a request  
10 that the Plaintiffs made on March 28th: additional  
11 discovery, including communications to and from the  
12 Secretary and his staff regarding the potential delay and  
13 any memos or other documents relevant to this issue.

14 So my suggestion on that would be that I think  
15 Plaintiffs should get the material from the Defendant,  
16 review it, and then make a determination based on that  
17 review as to what information you wanted in terms of these  
18 additional memoranda.

19 So if you do want additional communications  
20 internally, you will have looked at the material they've  
21 already given you; and you may or may not be able to give a  
22 more pointed request based on what you've already received  
23 as opposed to just simply making a broad request, as I  
24 understand it, for any of these memos relating to the  
25 potential delay.

1           But the idea is to look at the material that you  
2           got and see whether that narrows it down or you have a basis  
3           to request it other than, you know, a more generalized  
4           request that you think internally that you want some of this  
5           information.

6           So, Plaintiffs' counsel, are you willing to do  
7           that? I'm not suggesting you wouldn't get something  
8           eventually. But at least the first step, it seems to me, is  
9           to look at what they are going to give you and then take a  
10          look at it and see whether that supports a further request  
11          on your part.

12          Plaintiffs' counsel?

13          MR. MILLER: Your Honor, Matthew Miller here.

14          Yes. I feel like this is an efficient way to  
15          proceed. I'm a bit skeptical that we will be satisfied with  
16          just the responses from the certain secretaries and the  
17          Surgeon General, given that really what we're trying to do  
18          is test the assertion that Defendants have made to Secretary  
19          Mattis's decision to delay the open accession policy was  
20          really the beginning of this entire process to essentially  
21          unwind the Carter policy in allowing open service of  
22          transgender service members.

23          So I do feel like we have to dig deeper, but I am  
24          willing to give this a try and review the responses first  
25          and then make a determination as to that.

1           THE COURT: Because it does seem to me that the  
2 responses, if they were sent out, Secretary Mattis sent this  
3 out and requested these recommendations. Depending on  
4 what's in the recommendations, it should indicate whether  
5 that then -- based on those, they then went forward or  
6 whether it appears that there was something that was done  
7 earlier.

8           And I think until you actually look at it, you're  
9 not going to be able to tell.

10           So, defense counsel, are you willing to provide  
11 this other material, and then we'll wait and see as to  
12 whether or not there's still a request from Plaintiffs?  
13 Then I'll deal with that if you can't agree to it.

14           One thing I would note is that they're obviously  
15 trying to get at the issue of at what point Secretary Mattis  
16 made this decision in terms of timing. So I don't know  
17 whether from your perspective, the Defendants' perspective,  
18 there was a way of answering that question or whether you  
19 think this information is already in the material that  
20 you're going to be providing.

21           Defense counsel?

22           MR. CARMICHAEL: I think that there would be one  
23 more document that at this point we weren't willing to  
24 provide. So what there really is, there would be -- right  
25 around the beginning of May, the Deputy Secretary of Defense

1 asked for these recommendations from the Services and the  
2 Surgeon General -- Services of Surgeon General, put together  
3 this packet, or the Deputy Secretary, and then the Deputy  
4 Secretary did a cover letter to the -- to Secretary Mattis.  
5 And that cover letter right now the Department of Defense is  
6 not willing to waive privilege over.

7 THE COURT: So the cover letter was what was not  
8 waived, I take it. Is that what you're saying? N-O-T?

9 MR. CARMICHAEL: Yes, your Honor.

10 THE COURT: So it seems to me, Plaintiffs, look at  
11 what you've got and then we can get back to whether the  
12 cover letter -- whether we want to litigate the cover letter  
13 or something else.

14 But I think you should at least get the earlier  
15 materials. It may provide you with a better basis -- or  
16 not -- as to making a further request.

17 So I'll get back to setting timelines for all of  
18 this.

19 The last category in the I through IV is documents  
20 that a panel of experts considered or generated related to  
21 the development of the Mattis policy from August 25th, 2017,  
22 through March 23rd, 2018.

23 As I understand it, on March 25th, Defendant  
24 offered to waive the deliberative process privilege over the  
25 final versions of the panel of experts' briefing

1 presentations to the Deputy Secretary of Defense, the Vice  
2 Chairman of the Joint Chiefs of Staff and the Secretary of  
3 Defense.

4 What the Defendant would not agree to was to  
5 provide an unredacted AR or an unredacted panel expert  
6 meeting minutes, but did agree to go back through the AR  
7 meeting minutes to determine segregability.

8 Does that set out what the -- what's to be  
9 provided and what is at issue, Plaintiff?

10 MR. MILLER: Your Honor, Matthew Miller here.

11 Yes, it does. I mean, the Plaintiffs never agreed  
12 to accept some limited subset of the AR or the documents  
13 identified by Defendants' counsel as being ones that they  
14 were willing to waive the deliberative process privilege  
15 over.

16 I think the Defendants have always focused on  
17 particular documents they'd be willing to provide to the  
18 Plaintiffs as it relates to this category and really talking  
19 about a subject matter that they'd want further discovery  
20 on.

21 But I think, given that, your description is  
22 accurate.

23 THE COURT: So if there are any dissenting  
24 opinions, would the Plaintiffs be getting that, defense  
25 counsel?

1 MR. CARMICHAEL: No. No, your Honor.

2 I mean, there is one dissenting opinion. The  
3 Department of Defense has not waived privilege over that  
4 dissenting opinion. So I thought that would -- our thought  
5 was that we had identified at least specific documents that  
6 went to their question of what the panel of experts  
7 considered and generated.

8 We agree that some we would just waive privilege  
9 over and the other ones we would actually litigate; and  
10 hopefully, it would be a pretty straightforward litigation.  
11 We identified all the documents in that category.

12 And that was one of the documents in that category  
13 the Department of Defense did not want to waive privilege  
14 over.

15 THE COURT: So I believe that the Plaintiffs  
16 expanded the request to communications to or from members of  
17 the panel regarding their work, drafts of the report,  
18 communications to any third party, and the communications  
19 that followed the submission of the panel's report but  
20 predated the publication of the implementation plan.

21 So that's an additional request on your part,  
22 Plaintiffs?

23 MR. MILLER: Yes. Matthew Miller here, your  
24 Honor.

25 Yes. That's included with what we're asking for.

1 So those communications as well as documents considered or  
2 generated by the panel.

3 THE COURT: Okay. So this one, it doesn't seem as  
4 if it's going to work as it would with Category II, where  
5 you'd look at the materials you've got and then decide what  
6 memos, if any, you can support in requesting.

7 Is this ripe for a briefing or would it be useful  
8 to look at what you've got and then -- the only reason I'm  
9 suggesting looking at what you've got is sometimes either it  
10 leaves you feeling you don't need anything more or it gives  
11 you basically a grounds to ask for something additional,  
12 because it's in the report.

13 If this doesn't work for Category IV and you're at  
14 the point where we should litigate it, then I'm perfectly  
15 willing to set a schedule.

16 Plaintiffs' counsel, what did you want to do on  
17 this one?

18 MR. MILLER: Your Honor, I think we do need to  
19 litigate it. I mean, we've certainly gone over what we've  
20 received from Defendants, the current version of the AR  
21 that's been provided that's redacted.

22 And it's not adequate for our purposes, given the  
23 stance that the Government has taken here with respect to  
24 the document of the Mattis plan and the plan itself and the  
25 assertions that it has made about it being a product of an

1 independent military expertise, an independent process that  
2 wasn't prejudged from the outset, but not letting us  
3 actually discover information that could allow us to test  
4 those assertions.

5 You know, I think we do need to litigate it. I  
6 would suggest that we do set up a briefing schedule.

7 THE COURT: Okay. So let's go back to timing  
8 issues.

9 In terms of Category I, which you're going to  
10 be -- defense counsel, you're going to be providing  
11 documents. When will you provide those? I'll let you do a  
12 more formal schedule; but roughly, I'm trying to figure out  
13 a briefing schedule in conjunction with having the materials  
14 provided. I don't know how voluminous this stuff is.

15 MR. CARMICHAEL: We had originally planned on  
16 doing it by the end of April. I would have to go back and  
17 check if the DOD is still on track for that, but I think  
18 they would be. I think they still would be done by the end  
19 of April.

20 THE COURT: All right. Category II: When would  
21 you be providing what was agreed to?

22 MR. CARMICHAEL: I think we could provide Category  
23 II and III and I all by the end of April. The same time.

24 THE COURT: Okay. Category IV: Can you provide  
25 what you did agree to by the end of April as well?

1 MR. CARMICHAEL: That one I think would take -- if  
2 we're going to go back -- oh, the specific slides? Yes. I  
3 think that can be done. Going back through the AR and  
4 trying to segregate out more factual information, I think  
5 that'd take a little time. And if we're going to litigate  
6 that anyway, we may do it in conjunction with actually  
7 litigating it.

8 THE COURT: So it seems to me that the litigating  
9 aspect of it will be Category IV, at least at this point,  
10 Category IV. And it looks as if the other area is the  
11 clawback area relating to deliberative privilege as well as  
12 the presidential communications privilege, which I think are  
13 at issue.

14 Am I correct, Plaintiffs' counsel?

15 MR. MILLER: Yes, your Honor.

16 I think the clawback is kind of -- there are two  
17 subcategories. One is whether the Defendants waived any  
18 privilege over a particular document in an October 2017  
19 presentation that was used during a deposition in the case.

20 And then the other subissue that relates to the  
21 clawback is the deliberative process privilege and whether  
22 there was a proper assertion of that privilege over the  
23 documents or certain of the documents that the Government is  
24 attempting to claw back.

25 I actually think the issue on the -- of waiver of

1 the documents used as an exhibit at the deposition, I  
2 believe the parties had essentially fully briefed that to  
3 the Court some time ago. I'm forgetting when, because it  
4 was a long time ago.

5 THE COURT: In which context was it done? I'd  
6 have to go back. Was it done separately or as part of  
7 another motion?

8 MR. MILLER: I believe the Court asked for --  
9 Mr. Carmichael can correct me if I'm wrong -- but I believe  
10 the Court asked for letter briefs on the issue.

11 THE COURT: Okay.

12 MR. MILLER: And we exchanged those. Again, I'm  
13 sorry. I just don't have the time on it. But I could get  
14 that to the Court.

15 THE COURT: If you did a letter brief, I still  
16 would ask you to convert that into -- what I'll do is, let  
17 me go back and take a look at it. But my assumption is in  
18 terms of -- you know, the letter briefs I have you do so I  
19 can discuss it orally. If we're going to do a written  
20 opinion, which presumably I would need to do, then I'd have  
21 you more formally turn that into a motion.

22 I have the letter briefs, so you don't have to  
23 worry about the language. It's basically to tell me what's  
24 going on so we can have an intelligent discussion. But let  
25 me go back and look at the letter briefs.

1           What I'm trying to do is to figure out sort of --  
2           do you want to brief this all at the same time? Do you want  
3           to do it in steps?

4           The category for all of these -- and I think I  
5           have a feeling the Defendants are not going to be pleased --  
6           but I think you have to do some sort of a *Vaughn* index.  
7           Otherwise, there's really no way of figuring it out in terms  
8           of just having an assertion over deliberative process  
9           without giving some information. If you need to do it  
10          *ex parte* under seal, fine. But I do need some information  
11          about the documents that are at issue.

12          So I would require not just sort of an affidavit  
13          with a general description, but something more specific as  
14          to the documents.

15          So for the Category IV, I would want a *Vaughn*  
16          index.

17          For the clawback stuff, we would need to do, I  
18          guess -- do you want me to -- do you want to brief the  
19          waiver first and see whether if it's waived it resolves the  
20          issue before going on to doing the deliberative process?

21          Plaintiffs' counsel?

22          MR. CARMICHAEL: Your Honor, this is -- oh, I'm  
23          sorry. You said Plaintiffs' counsel?

24          THE COURT: Well, I'm going to call on each of  
25          you. I thought I'd start with --

1 MR. CARMICHAEL: Oh, okay.

2 MR. MILLER: Yes, your Honor. Matthew Miller  
3 here.

4 I mean, I think the deliberative process issue and  
5 the clawback can be briefed together at the same time. If  
6 your Honor would prefer a separate --

7 THE COURT: No. That's okay.

8 MR. MILLER: I think we could submit them at the  
9 same time.

10 THE COURT: The deliberative process, you're  
11 talking about Category IV?

12 MR. MILLER: Yes, your Honor. Yes.

13 THE COURT: Defense counsel, do you have a  
14 differing view?

15 MR. CARMICHAEL: For just the procedures? I think  
16 the two documents that did the clawback actually, I think  
17 Plaintiffs have to -- 502(d), Plaintiffs have to identify  
18 which ones they still want to pursue. And I guess if they  
19 want to do that quickly, we can -- or if they want to do  
20 that in the motion, we can decide which ones we still want  
21 to claw back.

22 I don't remember the status of the presentations  
23 from 2017. So I actually don't remember if that's still at  
24 issue. But I do know the documents we accidentally released,  
25 those ones were still at issue.

1 THE COURT: Let me make a suggestion. You've more  
2 or less indicated the end of April. I'll let defense  
3 counsel go back -- about the things you have agreed to  
4 produce -- to go back and make sure they can get it done by  
5 the end of April.

6 And then what I would ask is that the two of you,  
7 Plaintiffs' counsel and defense counsel, sit down and come  
8 up with a briefing schedule. It would be -- you know,  
9 sometimes it's useful to have one index before you do the  
10 briefing, because sometimes you can -- assuming that the  
11 *Vaughn* index is something Plaintiffs' counsel gets to look  
12 at, sometimes it narrows it down.

13 But at any rate, for you to sit down and come up  
14 with dates for doing Category IV, which would include  
15 motions and a *Vaughn* index.

16 And then I'd have you go back and look at the  
17 clawback and talk to them about what's actually at issue and  
18 then include that in your motion.

19 I don't see having to file a whole series of  
20 different motions. You could do it all in one. It's all  
21 around the same set of issues.

22 But I'll give you enough time to go back and make  
23 sure the end of April is going to work for some of this and  
24 also to figure out a timing for it.

25 Obviously, it'll be -- Plaintiffs will be pushing

1 for Category IV. I assume the Defendants would be the ones  
2 filing on the clawback, unless I'm incorrect about that.

3 Defense counsel?

4 MR. CARMICHAEL: Just under the 502(d) order, the  
5 Plaintiffs actually have to reply to that one. We've laid  
6 out --

7 THE COURT: That's fine. I didn't have them in  
8 front of me.

9 So go back. Figure out what the -- making sure  
10 what you've said by the end of April is actually going to  
11 happen. And then talk to each other about setting out a  
12 schedule.

13 Category IV needs a *Vaughn* index. The clawback  
14 may as well in terms of being able to figure out what you're  
15 talking about. And then set out a briefing schedule.

16 I'll ask for you to provide me with a joint status  
17 report indicating these time frames and then I'll convert it  
18 into an order.

19 If you don't agree, I'll make decisions on it or  
20 I'll talk to you again.

21 When do you think you could have this report  
22 setting out these dates?

23 MR. MILLER: Your Honor, Matthew Miller for the  
24 Plaintiffs here.

25 I'll address that momentarily, but I also want to

1 make sure, because it's going to affect scheduling in the  
2 case, that -- we wanted to notify the Court and the  
3 Defendants that Plaintiffs will be filing a renewed motion  
4 for preliminary injunction that we hope will supplement the  
5 record to address the areas of concern that were identified  
6 by the Court of Appeals.

7 And I think our intention right now is to file  
8 that sometime around the end of this month as well.

9 So I wanted to note that. I didn't want it to  
10 come as a surprise, just as we get down to discussing the  
11 dates and so forth, that that motion will be coming from the  
12 Plaintiffs.

13 THE COURT: All right. Well, my suggestion would  
14 be, then, you set the dates for when you get the documents.  
15 And if you're actually going to do this, there's no reason  
16 to have that going on at the same time as you're filing  
17 other things unless you need that information for your PI.

18 MR. MILLER: Well, I think we can move to the PI  
19 based on information that we have, can demonstrate a  
20 likelihood of success on the merits now, although I don't  
21 want to necessarily -- I wouldn't want to draw out or delay  
22 discovery more than we have to in the case, given that I  
23 think it's going to take some time to resolve the issues.

24 And then eventually, hopefully, our intention is  
25 to get a fair amount of additional information. It's going

1 to take time to go through that and then prepare for the  
2 rest of the discovery phase.

3 So I'd actually hope that we could at least come  
4 up with a staggered schedule to allow us to perhaps focus on  
5 the preliminary injunction issue first but then move to --  
6 once that briefing is completed, move to address the  
7 discovery issues.

8 THE COURT: I don't have a problem if you want to  
9 structure it such that it's one after the other.

10 You did read Judge Williams's opinion?

11 MR. MILLER: Yes, your Honor.

12 THE COURT: So when can you get this joint status  
13 report to me? And it would include dates. You'd have to  
14 figure out more or less when you're filing this PI so that  
15 you could structure it so you're not all doing this at the  
16 same time.

17 MR. MILLER: I think probably a week from today  
18 makes sense, if that makes sense for Mr. Carmichael.

19 THE COURT: Mr. Carmichael?

20 MR. CARMICHAEL: I'm sorry. Was it the end -- I  
21 didn't quite hear. Was it the end of the week?

22 THE COURT: The end of next week is what you're  
23 saying, right? Or were you saying this week? This Friday?

24 MR. MILLER: One week from today is what I  
25 suggested.

1 THE COURT: So that's the 16th. That's April  
2 16th. Today's the 9th, right? Yes. So it's April 16th.

3 And this would be just the schedule. You'd be  
4 indicating when you're providing the material you've agreed  
5 to provide, a little more exact than the end of April.  
6 Also, to make sure that's actually going to happen, that  
7 those are good dates.

8 And then I'd put a schedule for this renewed PI as  
9 well as a schedule for the Category IV and the clawback  
10 material. It sounds like on the clawback material, you  
11 should both go back and take a look at it and see if there  
12 are issues that can be narrowed a little bit.

13 MR. CARMICHAEL: Yes, your Honor. I think the  
14 clawback was one we sort of lost sight of when we were doing  
15 negotiations. There may be room for compromise on that one.

16 THE COURT: Is that Mr. Miller?

17 MR. CARMICHAEL: That was Mr. Carmichael.

18 THE COURT: Carmichael. Okay. Your voice sounded  
19 different.

20 MR. CARMICHAEL: I'd actually go back and talk  
21 about that.

22 MR. MILLER: This is Mr. Miller.

23 I feel we could find compromise there as well.

24 THE COURT: I ask you then to come back with a  
25 joint status report with a briefing schedule by April 16th.

1 (Ringing noise audible through the telephone  
2 line.)

3 THE COURT: Anything else, Plaintiffs' counsel?

4 MR. MILLER: No, your Honor.

5 THE COURT: Defense counsel?

6 MR. CARMICHAEL: No, your Honor.

7 THE COURT: You'd better get out of there.

8 MR. CARMICHAEL: There is an alarm in our  
9 building.

10 THE COURT: Take care.

11 MR. CARMICHAEL: Thank you, your Honor.

12 THE COURT: Bye.

13 (Proceedings concluded.)

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