

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

RICHARD ROE; VICTOR VOE; and	.	Civil Action No. 1:18cv1565
OUTSERVE-SLDN, INC.,	.	
	.	
Plaintiffs,	.	
	.	
vs.	.	Alexandria, Virginia
	.	February 15, 2019
	.	10:21 a.m.
PATRICK M. SHANAHAN, in his	.	
official capacity as Acting	.	
Secretary of Defense;	.	
HEATHER A. WILSON, in her	.	
official capacity as Secretary	.	
of the Air Force; and the	.	
UNITED STATES DEPARTMENT OF	.	
DEFENSE,	.	
	.	
Defendants.	.	
	.	
.	

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:	LAURA J. COOLEY, ESQ. Winston & Strawn LLP 1700 K Street, N.W. Washington, D.C. 20006 and SCOTT A. SCHOETTES, ESQ. Lambda Legal Defense and Education Fund, Inc. 105 West Adams Street, Suite 2600 Chicago, IL 60603 and PETER E. PERKOWSKI, ESQ. OutServe-SLDN, Inc. P.O. Box 65301 Washington, D.C. 20035-5301
---------------------	--

(APPEARANCES CONT'D. ON PAGE 2)

COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 APPEARANCES: (Cont'd.)

2 FOR THE DEFENDANTS:

R. TRENT McCOTTER, AUSA
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314

3

and

4

ROBERT M. NORWAY, ESQ.
U.S. Department of Justice
Civil Division
Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20530

5

6

7

8

ALSO PRESENT:

VICTOR VOE

9

10 OFFICIAL COURT REPORTER:

ANNELIESE J. THOMSON, RDR, CRR
U.S. District Court, Third Floor
401 Courthouse Square
Alexandria, VA 22314
(703)299-8595

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2 THE CLERK: Civil Action 18-1565, Richard Roe, et al.
3 v. United States Department of Defense, et al. Would counsel
4 please note their appearances for the record.

5 MR. McCOTTER: Good morning, Your Honor. Trent
6 McCotter, Assistant United States Attorney, on behalf of
7 defendants, and with me is Robert Norway from the Federal
8 Programs Branch, and Mr. Norway will be arguing.

9 THE COURT: And, Mr. Norway, is it like the country,
10 your last name?

11 MR. NORWAY: Yes, Your Honor.

12 THE COURT: Very good. Good morning.

13 And for the plaintiffs?

14 MS. COOLEY: Good morning, Your Honor. Laura Cooley
15 for the plaintiffs. I'll be introducing several people today.
16 Scott Schoettes of Lambda Legal will be presenting our
17 argument. We have one of our plaintiffs with us today, Victor
18 Voe, as well as Peter Perkowski on behalf of OutServe-SLDN.

19 MR. PERKOWSKI: Good morning, Your Honor.

20 THE COURT: Good morning.

21 All right. Well, we have before us two motions. We
22 have the defendants' motion to dismiss the complaint, and we
23 have the plaintiffs' motion for a preliminary injunction.
24 You-all have submitted extensive paperwork, which we have read
25 very carefully in chambers.

1 I did want to make sure that we are 100 percent clear
2 on certain things, and so, Mr. Norway, let me ask you a couple
3 of questions. In your brief, you refer to the, I'm going to
4 call it the large black volume, as the administrative record --

5 MR. NORWAY: Yes, Your Honor.

6 THE COURT: -- but that's really not an accurate
7 description of that volume, is it?

8 I mean, traditionally, when I look at an
9 administrative record, my understanding is those are the actual
10 materials that were before the administrative body when it made
11 whatever decisions are at issue. For example, a Social
12 Security case, when I get the administrative record, what I'm
13 getting are all the documents which the Social Security
14 Administration looked at in reaching its decision to, let's
15 say, deny disability, right?

16 MR. NORWAY: (Nodding head.)

17 THE COURT: And then if there are additional --
18 normally there wouldn't be anything additional that the Court
19 would be looking at in that kind of an administrative review,
20 all right?

21 MR. NORWAY: (Nodding head.)

22 THE COURT: As I looked at the black volume, it has
23 things other than the administrative, what I would call the
24 administrative record that you are nevertheless calling
25 administrative record items.

1 MR. NORWAY: So, Your Honor, I'm trying to
2 understand --

3 THE COURT: Yeah.

4 MR. NORWAY: -- what you're referring to when you say
5 the "black volume."

6 We had -- we filed a public appendix with our
7 combined motion and an appendix -- or, I'm sorry, combined
8 motion in opposition and then also a sealed portion, and that
9 sealed portion contained two what we were calling the
10 administrative records for the two --

11 THE COURT: Individual plaintiffs.

12 MR. NORWAY: -- Disability Evaluation System
13 proceedings, one for Roe and one for Voe.

14 That's what we're referring to when we call it the
15 administrative record.

16 THE COURT: Okay. All right. Then I think we are
17 clear about that, all right.

18 I want to know then in terms of motion to dismiss, if
19 there's anything that you want to add to the papers you've
20 submitted to the Court.

21 MR. NORWAY: No, Your Honor.

22 THE COURT: All right, let me hear from the
23 plaintiffs then. Is there anything that you feel was not
24 adequately focused on in your responses that you want to
25 highlight for the Court?

1 MR. SCHOETTES: No, Your Honor.

2 THE COURT: Okay. So you're relying on your briefs
3 on that, okay.

4 Then in terms of the motion for preliminary
5 injunction, let me ask the plaintiffs on this, you've really
6 asked for two sets of relief. You first of all have asked for
7 an injunction that basically keeps the status quo as to Mr. Voe
8 and Mr. Roe and also as to the four, at least the four
9 individuals within OutServe, if not others, but you've also
10 asked that the Court also enjoin any denial of training or
11 assignments or whatever, and I want you to talk to me a little
12 bit more about that aspect.

13 Is there any concern that you have that if the Court
14 were to grant the preliminary injunction, that there might be
15 some problems in that respect for any of the plaintiffs?

16 MR. SCHOETTES: Our concern, Your Honor, is that
17 during the pendency of the case, that the plaintiffs will not
18 be permitted to engage in the activities that they would have
19 been allowed to engage in had they simply not been separated or
20 engaged in the process of separation based on their HIV status.

21 THE COURT: Can you give me an example of what you
22 think one of the plaintiffs might be on the verge of getting,
23 like training in, you know, I don't know, some sort of computer
24 system or some sort of whatever?

25 MR. SCHOETTES: Yes. So there are things that, as

1 you are noting, kind of are held in limbo. One of those things
2 has been their -- the process of reenlistment. They have not
3 been permitted to engage in that process during -- since
4 they've been placed in the DES, the Disability Evaluation
5 System.

6 So -- and then as a part of that, at least one of
7 them has agreed to -- has requested retraining into a different
8 position, so that's the type of thing that we would be
9 concerned would not be allowed to proceed in the process.

10 THE COURT: Now, if -- is that Mr. Roe or Mr. Voe who
11 wants the retraining?

12 MR. SCHOETTES: I'm sorry, I have misstated. So both
13 of them --

14 THE COURT: Both of them.

15 MR. SCHOETTES: -- are seeking retraining.

16 THE COURT: And the positions for which they would be
17 retrained, would they become less likely to be deployed to
18 CENTCOM?

19 MR. SCHOETTES: Yes, Your Honor.

20 THE COURT: That's my understanding. I thought there
21 was just one, but now it's both plaintiffs.

22 Now, I know we're talking about the Air Force, and my
23 understanding from some of the defendants' papers is that there
24 are some HIV-positive members of the Air Force, and make sure
25 I'm correct about this, who have been found to be in positions

1 that are so unlikely to be deployed to CENTCOM that they have
2 not been put in a position of being directed to be removed from
3 the service.

4 Is that a correct understanding of the record?

5 MR. SCHOETTES: That is my understanding as well,
6 Your Honor.

7 THE COURT: Okay.

8 MR. SCHOETTES: And I think that our claim in part is
9 based on that difference in the way that they are treating --
10 this inconsistent way in which they are treating people who
11 have the same limitations on their deployment who just happen
12 to be in a position that is more likely to deploy versus a
13 position that is less likely to deploy, but it has nothing
14 actually to do with that person's abilities to perform their
15 duties. It's just completely contingent on which position they
16 happen to be in.

17 THE COURT: All right. Mr. Norway, it's rather clear
18 from the -- some of the exhibits you've actually included in
19 your, in your filings, including what appear to be
20 communications with members of Congress about how HIV-positive
21 service people are being treated by the military, first of all,
22 is that an annual report that has to be made, or is it made
23 every couple of years? I know there was one in 2014, and I
24 think there's a 2018 one that I saw in the record as well.

25 MR. NORWAY: Yes, Your Honor. My understanding is,

1 is that one of the National Defense Authorization Acts required
2 the submission of the 2014 report, and then subsequently,
3 Congress asked for an additional report, and that resulted in
4 the 2018 report. So it is not an annual report. It was a part
5 of the, the NDAAAs.

6 THE COURT: All right. And is it correct, have I
7 adequately looked at this record in this respect, it looks to
8 the Court as though the plaintiffs submitted a fair amount of
9 relatively current medical evidence in the form of declarations
10 from at least two very, very experienced doctors from Johns
11 Hopkins specializing in the area of infectious diseases, and
12 HIV in particular, and I didn't see any type of medical
13 evidence in the record that you-all submitted.

14 Did you -- did I miss something? I mean, there were
15 a couple of articles, but they were first of all just articles,
16 and they were fairly old compared to what the current
17 declarations were, but did you have any declarations from
18 medical people in your record?

19 MR. NORWAY: Yes, Your Honor. There were two
20 declarations in our record. One was from a Ms. Martie Soper,
21 who is not a medical doctor.

22 THE COURT: That's right.

23 MR. NORWAY: And then immediately after that, and I
24 think it's at about 420, maybe 421 in the record, there is a
25 declaration from Dr. Cron.

1 THE COURT: Yeah, but, I mean, neither of those
2 people are what we would call, you know, current practitioners
3 specializing in infectious medicine or HIV.

4 MR. NORWAY: No, but Dr. Cron is the waiver
5 authority, so he is the medical doctor who, who makes the
6 decision about who can --

7 THE COURT: What's his background? I don't think
8 that was in -- I didn't, I didn't recall seeing a CV for him.
9 Is that in the record?

10 MR. NORWAY: That is not in the record, Your Honor,
11 and I don't recall off the top of my head.

12 THE COURT: All right. You know, I mean, obviously,
13 in this record, there's a significant amount of information
14 from the plaintiffs that would seem to throw doubt on the
15 medical and scientific accuracy of many of the statements in
16 Mr. Cron's affidavit -- in Dr. Cron's affidavit.

17 MR. NORWAY: The, the key point, Your Honor, is that
18 the military, when it makes its decisions, don't -- they don't
19 make -- they make a risk decision that is based on, on what
20 would happen in the worst case scenario, and the worst case
21 scenario with these individuals is if those individuals are not
22 compliant with their medications.

23 So if they don't have their medications, if they lose
24 them, if they're destroyed, or if they're separated from their
25 medications, then as the Mr. -- as the Dr. Fauci article that

1 you referred to states, that if somebody who has -- who is
2 taking therapy who ceases the therapy will, will have HIV come
3 back.

4 THE COURT: But it takes -- but I think that evidence
5 was it doesn't happen overnight. It takes at least a couple of
6 weeks before the viral load begins to become a bit more
7 noticeable, and it's apparently several weeks if not a couple
8 of months before there's actually any symptoms that might start
9 to arise.

10 MR. NORWAY: So that's, that's, I think -- it varies
11 individually. It varies depending on the medication that's
12 used. That article itself, I think the earliest had nine days.
13 The article mentioned that it was -- that some of the, some of
14 the individual patients had a much longer time period before
15 viremia came back, but the point is is that viremia comes back,
16 and that is the concern and the risk that the military is
17 taking into account.

18 THE COURT: And certainly, I mean, people who have
19 chronic medical conditions being put in a battlefield situation
20 in the most extreme forms of, you know, military service,
21 there's no question the military has genuine -- it's absolutely
22 correct that they can -- should be concerned about that.

23 The problem in this case, though, is whether there's
24 special treatment being done with HIV people different from any
25 other group of medically impaired folks, for example,

1 asthmatics. Now, my understanding is asthmatics can serve in
2 CENTCOM regions. Is that correct?

3 MR. NORWAY: I am not sure about asthma, Your Honor.
4 There's another example that I can think of: sleep apnea. If
5 an individual has sleep apnea to the extent where they actually
6 need a machine at night, because CENTCOM can't guarantee a
7 constant supply of electricity to that machine, those
8 individuals wouldn't be granted a waiver, so they might be able
9 to stay in the military even though they have sleep apnea, and
10 that can be resolved using that particular device. They
11 wouldn't be allowed to go to CENTCOM area of operations.

12 THE COURT: But you just said they could be allowed
13 to stay in the military. I mean, isn't the problem again that
14 our plaintiffs are facing is that because of the deployability
15 restrictions, they have been told they cannot stay in the
16 military?

17 That's the only reason from this record that I have
18 before me why either Roe or Voe or the four individuals who've
19 been -- who I understand are in the exact same position from
20 OutServe are facing being removed from the military.

21 MR. NORWAY: Your Honor, the, the Air Force has
22 consistently treated the individuals with HIV just as any other
23 individual with a chronic medical condition. In those
24 circumstances, those individuals are directed to the DES
25 system, the Disability Evaluation System.

1 That system looks at four particular standards. One
2 of them is military tasks. Another one would be the ability to
3 take the physical examination -- or the physical test. The
4 third is deployability, and the fourth is whether or not there
5 are any special requirements to their jobs.

6 And as the declaration -- as Martie Soper, Ms. Soper
7 says in her declaration, for individuals who have asymptomatic
8 HIV infections, generally that DES system will -- looks at the
9 deployability aspect of them, of that individual, or whether
10 they have any special duties, so whether their job has special
11 duties that would be -- they would be disqualified from
12 performing.

13 THE COURT: All right. But in the case of the people
14 we're talking about, the actual individuals anyway, I didn't
15 see any discussion about their job duties being a problem.

16 MR. NORWAY: And that is correct. So the --

17 THE COURT: The only issue for these plaintiffs is
18 deployability.

19 MR. NORWAY: For Roe and Voe, their decisions were
20 based on the deployability.

21 THE COURT: Wasn't it for the other four, who I'm
22 told are in exactly the same position from OutServe?

23 MR. NORWAY: So there were -- there were, I believe,
24 six individuals who went all the way through the process,
25 through the Secretary of the Air Force Personnel Committee --

1 sorry, ten. Four of them were returned to duty. One
2 individual had, had an uncontrolled medical condition, so he
3 was released for that reason; one individual had special
4 duties; and then four individuals are sort of in this bucket.

5 THE COURT: From, from OutServe?

6 MR. NORWAY: Correct. That they were, they were --
7 there was a decision to discharge them based on their inability
8 to deploy to CENTCOM and their particular job duties. And I
9 think that's the point that's, that's worth focusing on here,
10 Your Honor. It's not just that they can't deploy. It's where
11 are the individuals, what does the individual do, what is their
12 job description, is that job likely to require a deployment
13 into a CENTCOM area of operations, and where are they in their
14 career progression. Because as -- and this is in the
15 declaration of Martie Soper as well -- the airmen who are
16 earlier in their career are more likely to deploy than airmen
17 who are later in their careers.

18 So there were -- I think there's more consideration
19 and analysis other than just they're HIV-positive; they can't
20 deploy. There are other factors that boards consider.

21 THE COURT: All right. Does the plaintiff --
22 counsel, do you want to respond to any of that argument?

23 MR. SCHOETTES: I would, Your Honor. So I want to
24 make clear on this last point that when you cannot deploy only
25 because you have HIV and you are being separated because you

1 can't deploy, you are being separated solely because you have
2 HIV. That is the point that we are making. That is what is
3 squarely against the Air Force regulations, and whatever
4 semantic jumps we want to do around that, it's the piece that
5 the government really can't get around.

6 I want to let the Court know that what the government
7 is representing is the way that they're handling people living
8 with HIV today, treating it the same as any other chronic or
9 manageable condition, as they say, is actually different and
10 changed, and this is in the declaration of Martha Soper, as of
11 2016, and there has been a progression of the way that the
12 government is handling people living with HIV.

13 As it also says in that declaration, under these
14 exact same policies, all people living with asymptomatic HIV
15 have been returned to duty up until this change in their
16 policy.

17 At first, that policy stated that people were living
18 with HIV who were asymptomatic or people living with HIV who
19 are servicemembers would only be referred to the DES,
20 Disability Evaluation System, if it was medically necessary.
21 Now, under the policy that they recently iterated in September
22 of this past year, they're actually encouraging the evaluators
23 to use other criteria other than the medical necessity to refer
24 these people to DES and to therefore end up discharging them
25 from the military service.

1 THE COURT: So part of your argument has also been
2 that just referring asymptomatic HIV-positive servicemembers to
3 the DES process is itself possibly arbitrary and capricious.

4 MR. SCHOETTES: That is correct, Your Honor. Because
5 there's nothing in the regulations that calls for that kind of
6 evaluation to be made for someone who has no disability. And
7 it really throws us into this very strange space where we have
8 boards that are designed to assess medical situations and a
9 person's health are then apparently assessing this, this piece
10 about deployability, which was never articulated as a separate
11 reason why people living with HIV could be separated.

12 And as I said, those are one and the same thing.
13 Every airman living with HIV has limited deployability.
14 They're all the same in that regard.

15 So applying this criteria that they call upon from
16 1332.18, DoDI 1332.18, actually if you were evaluating airmen
17 using that criteria, which is you either have limited
18 deployment or you do not, they would all fall into the same
19 boat. So it doesn't justify the differential treatment that
20 was just described that they are imposing on these ten
21 individuals that were before the board deciding that.

22 And then I just want to also point out that I think
23 you've hit on an important point, that the government is not,
24 as far as we know, discharging people with sleep apnea or other
25 conditions that make it difficult to deploy to the CENTCOM

1 region. As far as we know, this is -- has solely been all of
2 these individuals living with HIV who are being separated
3 because they have limited deployment, and the CENTCOM area,
4 while it may also be difficult for people with sleep apnea or
5 asthma to deploy to that area, they may have to get a waiver,
6 they're not being separated based on that.

7 THE COURT: And this is the type of evidence that
8 down the road through the discovery process would give us the
9 full record to see whether or not, you know, ultimately there
10 is a basis to grant final judgment in your favor or not.

11 MR. SCHOETTES: Yes, Your Honor.

12 THE COURT: All right. All right, I did want to ask
13 the government -- Mr. Norway, you're back in the hot seat --
14 what changed from 2016? Why was there this change in approach
15 to asymptomatic HIV-positive servicemembers?

16 MR. NORWAY: So the -- I think the change itself only
17 occurred in the Air Force, Your Honor, and that's the only
18 information that I have.

19 THE COURT: All right. Well, we're only dealing with
20 the Air Force right now, yeah.

21 MR. NORWAY: The, the short answer is I don't know.
22 There was a, an evaluation of how -- and this is in Ms. Soper's
23 declaration -- beginning about -- and I could have the dates
24 slightly off -- 2016 or 2017, there was an evaluation of how
25 the DES system, how the Air Force was processing these

1 individuals.

2 There are thousands and thousands of DES cases each
3 year, and I think Ms. Soper refers to those in her, in her
4 declaration. So this is not just something that happens just
5 for this one medical condition. It happens for many medical
6 conditions.

7 THE COURT: All right. Well, we'll obviously look at
8 this case with some care, but I -- I mean, I have been looking
9 at it for some time. I'm going to tell you that I'm going to
10 deny the motion to dismiss the complaint. The Court is going
11 to be issuing an injunction that will protect the plaintiffs
12 from any imminent change in their status because, in fact, this
13 is a situation, as I understand it, Mr. Voe faces a February 25
14 deadline and Mr. Roe faces a March 29 deadline.

15 When a party asks for, you know, injunctive relief,
16 one of the things you look at is, you know, the likelihood of
17 success on the merits. I think that the plaintiffs have at
18 this point with the evidence that's in the record, in my view,
19 satisfied me that there is sufficient evidence at this point
20 that there is a likelihood of success on the merits as to the
21 fact that this could be a violation of the APA in terms of an
22 arbitrary and irrational policy that is not soundly based on
23 medical findings.

24 One of the things that concerns me about -- and I'll
25 go into detail on this in my opinion -- but I looked at the

1 Cron affidavit, which I think is very significant since he is
2 the decision-maker, he's the man who gives the waivers, and he
3 says in paragraph -- I mean, he makes various statements
4 characterizing, you know, complex medical needs and all this
5 sort of thing, and then I've got counterevidence from the
6 plaintiffs that, you know, HIV-positive people who have their
7 conditions under control as these plaintiffs do take one pill a
8 day.

9 There are all kinds of chronic diseases that take one
10 pill a day: high blood pressure, diabetes actually probably
11 takes a lot more, so we're not talking about highly specialized
12 medical personnel. Again, the evidence from the plaintiffs --
13 and again, down the road, there may be evidence that
14 contradicts that, but I don't have that in this record -- talk
15 about the fact that it's just a simple blood test to keep
16 monitoring the, the viral loads of these folks. So we're not
17 talking about anything complicated, in fact, probably less
18 complicated than the sleep apnea business.

19 But what concerned me the most was paragraph 11 of
20 the Cron affidavit, where he says in his tenure, "I have not
21 granted a deployment waiver for an HIV-positive servicemember."
22 I mean, that's a very categorical statement. And again, my
23 understanding if you read the regulations that everyone's
24 supposed to be operating under, these are supposed to be
25 individualized assessments.

1 You know, servicepeople are valuable assets. Both of
2 the named plaintiffs, because they're the only two I really
3 know a lot about from the papers, are men who want to make
4 their careers out of the military. They've already served
5 honorably, and there's no other, from what I've got in the
6 record before me, no other problems with their status. Their
7 commanders both recommended that they be retained. One of the
8 plaintiffs actually has served in the Middle East and
9 volunteered to go back there. These are the kind of people
10 that the military, it seems to me, you know, do want to keep in
11 the service.

12 And so my job is not, of course, to make military
13 decisions. My job as a judge is to make sure that in making
14 their decisions, the military has complied with the law, that
15 the Armed Forces are still part of the U.S. government, and
16 there are still, although they get special treatment, you know,
17 certain principles, including, you know, the APA rules do
18 apply, and at least on the record that's before me, I'm
19 satisfied that the plaintiffs have made a sufficient showing of
20 likelihood of success on the merits.

21 In terms of irreparable injury to the plaintiffs,
22 it's very significant. They would lose their careers, and they
23 would also have, as they've pointed out, because society still
24 looks upon people who are HIV-positive with a certain degree of
25 negativity, that they would have that on their records because

1 part of the findings by the military is that they're unfit for
2 medical -- for military service.

3 I don't see any real harm to the government or to the
4 defendants in a preliminary injunction, which is just a status
5 quo. It holds these people in the position that they're
6 currently in, and certainly public policy is well served by
7 keeping qualified people in the service and also by ensuring
8 that all branches of government function appropriately and in
9 compliance with the law.

10 So I'm going to grant that relief. We're going to
11 try to get this out today because time is a little bit tight
12 for you-all, but that's my ruling.

13 So with that being the case now, we're going to move
14 into the discovery phase of this case. I also always even in a
15 complex case like this recommend that wise counsel see if
16 there's any way of resolving the case, and that's something
17 that everybody ought to think about as well, but especially if
18 the class of individuals we're talking about is that small. I
19 mean, I've heard the number ten. I don't know how many are
20 actually in OutServe, and there may be a larger group there,
21 and that's an issue that down the road we're going to have to
22 address, I suspect, but if it's only a group of ten, then it
23 might be much easier to work it out; I don't know.

24 But in any case, I don't think -- have we issued a
25 discovery order in this case yet?

1 MR. SCHOETTES: We have, Your Honor.

2 THE COURT: All right. Have you started discovery?

3 MR. SCHOETTES: We combined it with the Harrison
4 case, and so --

5 THE COURT: That's right. That's right.

6 MR. SCHOETTES: -- we're proceeding through discovery
7 in both cases.

8 THE COURT: All right, that's fine. And I have the
9 same counsel on both cases; is that correct?

10 MR. NORWAY: Yes, Your Honor.

11 THE COURT: All right. Well, maybe -- again, that's
12 right, we want to try to keep that as economical as possible.
13 All right. That's the Court's ruling, all right? Very good,
14 we'll recess court for the day.

15 MR. NORWAY: Thank you, Your Honor.

16 (Which were all the proceedings
17 had at this time.)

18

19 CERTIFICATE OF THE REPORTER

20 I certify that the foregoing is a correct transcript of
21 the record of proceedings in the above-entitled matter.

22

23

24

25

/s/

Anneliese J. Thomson