

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

RYAN KARNOSKI, et al.,)	C17-01297-MJP
)	
Plaintiffs, and)	SEATTLE, WASHINGTON
)	
STATE OF WASHINGTON,)	December 10, 2019
)	
Plaintiff-Intervenor,)	
)	
v.)	Status Hearing
)	
DONALD J. TRUMP, in his)	
official capacity as)	
President of the United)	
States, et al.,)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE MARSHA J. PECHMAN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff	Jordan Heinz
Karnoski:	Sam Ikard
	Daniel I. Siegfried
	Kirkland & Ellis
	300 North LaSalle
	Chicago, IL 60654
	Jason Sykes
	Rachel Horvitz
	Newman & DuWors LLP
	2101 Fourth Avenue
	Suite 1500

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

For the Plaintiff
Intervenor, State of
Washington,
Seattle, WA 98121
Chalia Stallings-Ala'ilima
Attorney General's Office
800 5th Avenue
Suite 2000
Seattle, WA 98104

For the Defendants:
Andrew Carmichael
Matthew Skurnik
US Department of Justice
1100 L. Street NW
Suite 12108
Washington, DC 20530

1 THE CLERK: This is in the matter of Ryan Karnoski
2 versus Donald Trump, C17-1297. Counsel, please make your
3 appearance for the record.

4 MR. HEINZ: Jordan Heinz for the plaintiffs.

5 MR. SIEGFRIED: Dan Siegfried for the plaintiffs.

6 MR. IKARD: Sam Ikard for the plaintiffs.

7 THE COURT: Can you speak up, please?

8 MR. IKARD: Sam Ikard for the plaintiffs.

9 MR. SYKES: This is my colleague, Rachel Horvitz, for
10 the plaintiffs. She is battling a cold and has lost her
11 voice.

12 THE COURT: So she's way at the other end.

13 MR. SYKES: And I'm Jason Sykes for the plaintiffs.

14 MS. ALA'ILIMA: I'm Chalia Stallings Ala'ilima for
15 plaintiff intervenors, Washington State.

16 MR. SKURNIK: Matthew Skurnik for the defendants.

17 MR. CARMICHAEL: Drew Carmichael, Department of
18 Justice, for the defendants.

19 THE COURT: Counsel, thank you very much for the
20 materials you sent me on your joint status report. And I've
21 taken a look at them and gone back through what you told me
22 and tried to review, in my mind, where we were the last time
23 we were here. So what I would like to do is go through each
24 of the items that were identified by the plaintiff as their
25 priority. And I intend this to be an informational session

1 to help me understand what the problems might be that hold up
2 or where it is you have sticking points.

3 And so I'd like to start out, please, if we could, I want
4 to start with the Request for Production No. 29. And I think
5 what I need here -- I think what I need is some understanding
6 about how these meetings work. Because there were issues
7 concerning those people who had a vote. That now has been
8 resolved with the materials being turned over. Now, as I
9 understand it, plaintiff wants those people who were at the
10 table but who did not vote.

11 And so can anybody explain to me how these things work?
12 If the people are at the table but do not vote, do they
13 engage in dialogue? Do they offer their opinion? Do they
14 write documents for others to absorb? Or are they simply
15 there to absorb and report back to their various agencies?
16 Does anybody know?

17 MR. CARMICHAEL: I do, Your Honor.

18 THE COURT: Okay.

19 MR. CARMICHAEL: From the defendants.

20 And I guess the answer is various, depending on who they
21 are. So there is a few people that presented and we
22 identified them specifically who presented to the panel. A
23 few that -- I think there was one or two that sat in the
24 final deliberations. And that's why we presented the meeting
25 minutes ahead of time, so they could see who was there during

1 the most important meetings.

2 So you can see who was there. And if plaintiffs want to
3 know who these individuals are, I'm happy to explain who they
4 are and what their role was. But they have varying roles.
5 That's why we did voting panel members and non-voting panel
6 members, because voting members all have the same role, the
7 same exact one. And it varies depending on whether you
8 showed up or didn't show up.

9 THE COURT: Well, I'm assuming you can tell from the
10 transcript who spoke or who presented.

11 MR. CARMICHAEL: Yes. You can tell who presented.

12 THE COURT: Okay. And presumably, since you've been
13 through all of this data, you know who was communicating by
14 writing back and forth.

15 MR. CARMICHAEL: We would know the primary people
16 that did, yes.

17 THE COURT: So if the primary people were writing
18 back and forth offering opinions, why wouldn't this fall into
19 the same category and under the same analysis as the analysis
20 done in *Doe*? In other words, why make this distinction if
21 they were speaking or if they were writing and if they were
22 offering up their counsel, why isn't this the same as those
23 who were voting?

24 MR. CARMICHAEL: So I think the problem is that it's
25 such a large swath of individuals. Like if they wanted -- I

1 identified three specific people that I thought could be on
2 that level. And if plaintiffs wanted to narrow it to those
3 three individuals, I think I can probably go back to the
4 client and get them to agree to waive it for those three
5 individuals.

6 THE COURT: How many people are we talking about?

7 MR. CARMICHAEL: There's 156 custodians.

8 THE COURT: I'm not talking about custodians, I'm
9 talking about how many people were at the table?

10 MR. CARMICHAEL: For the final deliberations? So the
11 final deliberations, there's only one extra person that was
12 there.

13 THE COURT: Okay. And how about for the non-final
14 negotiations?

15 MR. CARMICHAEL: It depends on which particular
16 meeting. There's nine meetings. So that's why we need the
17 meeting minutes. So it depends. That's why we gave the
18 meeting minutes so you can see --

19 THE COURT: If there's nine meetings and there's a
20 finite number of people in the room for each meeting, what
21 are we talking about? Fifty people? Forty people? Thirty
22 people?

23 MR. CARMICHAEL: This is actually the negotiations
24 we're having in the *Doe* case. I believe it was 41. And then
25 they agreed to narrow down to 13 extra. And then we

1 presented that to the *Doe* court to say: What did you mean by
2 that? Did you mean that you -- we took it because we only
3 made these Vaughan indexes for voting panel members, if
4 that's all you wanted. However, we're not in the best
5 position to explain to you what your order meant. So, you
6 know, could we have a call in and discuss that? And the
7 court asked us for additional information on November 22nd
8 but hasn't responded yet.

9 THE COURT: So in the *Doe* court, you've turned over
10 these documents?

11 MR. CARMICHAEL: No. We've turned over information
12 from the -- all the voting panel members. But we identified
13 it. We narrowed the dispute down to 13 additional
14 custodians.

15 THE COURT: Okay. We're not communicating here.
16 You're talking custodians, I'm talking people in the room.

17 MR. CARMICHAEL: But 13 individual people -- 13 new
18 people that they wanted information from.

19 THE COURT: Okay. So when you say "custodian,"
20 you're talking about an individual who may have information
21 who either spoke, wrote about something, or had some form of
22 input into the committee?

23 MR. CARMICHAEL: Yes. Yes, Your Honor.

24 THE COURT: So you have not turned that over to the
25 *Doe* court --

1 MR. CARMICHAEL: No, we haven't.

2 THE COURT: -- litigants?

3 MR. CARMICHAEL: No.

4 THE COURT: Why not?

5 MR. CARMICHAEL: Because they all have varying
6 different levels of involvement.

7 THE COURT: And what makes a difference as to what
8 level of involvement you think you should have to turn over?

9 MR. CARMICHAEL: I think it's a different analysis
10 for each one.

11 THE COURT: Explain that to me. In other words,
12 explain to me the types of people that were there and why it
13 would make a difference as to whether you turned it over.

14 MR. CARMICHAEL: I think one they had was -- you
15 know, just an example of two separate ones. One was the sort
16 of the number two person behind the -- so Mr. Curtin
17 (phonetic), who I think we've discussed before, was sort of
18 the lead for the DoD portion of the panel. His documents are
19 in there. His deputy was in there for most of the meetings
20 as well. So he's maybe the very next tier down.

21 And then the other end of those 13 individuals, I think
22 there was a doctor that presented on endocrinology. And his
23 presentation is on there. But his documents wouldn't have
24 any importance. His deliberative documents on his own
25 wouldn't have the same level of involvement as maybe the

1 Deputy Undersecretary.

2 THE COURT: How do you know? I'm assuming he used
3 his documents to make his presentation.

4 MR. CARMICHAEL: So, we've already turned over all
5 the documents. This would just be communications of things
6 that weren't protected.

7 THE COURT: All right. So apparently there was some
8 presenters and there was somebody who was a point person for
9 one of the agencies. What distinguishes the other people as
10 to why it is you couldn't turn the material over?

11 MR. CARMICHAEL: They're just people in the room, you
12 know, other people that they -- so -- and if you're just in
13 the room for one particular meeting, it doesn't have the same
14 level of involvement.

15 THE COURT: Well, then, why not? If they're just in
16 the room, why don't you satisfy their inquiry and give it to
17 them?

18 MR. CARMICHAEL: One, I would say that they haven't
19 ever -- they haven't come back and said -- they haven't done
20 what the *Doe* plaintiffs have done and said: Okay, now we're
21 only interested in these people. So that's never come back
22 to us.

23 THE COURT: Well, guess what? I'm asking you now.
24 Whether or not they ask you, I'm asking you, why don't you
25 just give it to them? Because you're telling me these are

1 people who are merely observers. Why don't -- if it doesn't
2 hurt you, why don't you turn it over?

3 MR. CARMICHAEL: You have to tell us who you want,
4 that's the thing.

5 THE COURT: They can't tell you who they want until
6 they know who's there.

7 MR. CARMICHAEL: We gave that on November 1st. We
8 gave them, on November 1st, who was there at what meeting.
9 So first, you have to tell us who you want from --

10 THE COURT: What if they say, "We want it all"?

11 MR. CARMICHAEL: Then I think it's not a granular
12 analysis. It's very broad. If you want it all, it's about
13 15,000 documents.

14 THE COURT: Okay.

15 MR. CARMICHAEL: Which is different than the 800 or
16 so.

17 THE COURT: But the people still fall into the same
18 category, don't they? That they were in the room, some of
19 them had roles to play in presenting material. Presumably
20 some of them had roles to play in communicating with people
21 who were voting or amongst each other. And some were there
22 simply as perhaps scribes or people carrying back the
23 information, correct?

24 MR. CARMICHAEL: Of --

25 THE COURT: Is there any other category?

1 MR. CARMICHAEL: There are some people that didn't
2 attend any meetings at all.

3 THE COURT: Okay. Well, I'm not worried about the
4 ones who didn't attend any meetings, unless they wrote
5 documents that were used at the meetings. But if you look at
6 what the analysis is, is that the only way you're going to
7 get this information is through you. And the other point to
8 analyze is, if that information is turned over, how does it
9 chill the deliberative dialogue? And if you're telling me
10 they're nobodies, it doesn't chill the dialogue. So why not
11 turn it over?

12 MR. CARMICHAEL: I think it does -- it would chill
13 the dialogue if they are -- I also think it's less relevant
14 if they're nobodies.

15 THE COURT: Relevance is not something that we're
16 debating now.

17 MR. CARMICHAEL: Well, when you're looking at the
18 four factors, relevance was one of those.

19 THE COURT: Right. And the Ninth Circuit has already
20 told me that the relevance is not one of the issues.

21 MR. CARMICHAEL: Well, they specifically had the line
22 that the relevance would be different depending on the person
23 that was involved.

24 THE COURT: Okay.

25 MR. CARMICHAEL: And that it would be more relevant

1 if it's a senior person, less relevant if it was a non-senior
2 person. But the chilling effect may be higher.

3 THE COURT: So maybe we ought to start this way. Why
4 don't you tell them if there are 41 people that are in and
5 out of this room, why don't you tell them who they are, what
6 their role is, so that they can then say: We want one,
7 three, five, seven.

8 MR. CARMICHAEL: I'd be happy to explain the roles of
9 the individuals.

10 THE COURT: Okay. My question is, why haven't you
11 done that already?

12 MR. CARMICHAEL: We've been trying. I've been -- I
13 suggested individual people at the last one. I think at the
14 end of the day, they just want everything.

15 THE COURT: Yeah.

16 MR. CARMICHAEL: And we're willing to narrow to
17 individual people.

18 THE COURT: How can they narrow unless they know what
19 the scope of what you've got is? In other words, how can
20 they ask: I want Admiral so-and-so if they don't know that
21 Admiral so-and-so is there. They don't know what role
22 Admiral so-and-so played.

23 MR. CARMICHAEL: Well, they do, because of the
24 meeting minutes. That's why we made sure we got the meeting
25 minutes.

1 THE COURT: But they don't know about the
2 non-speakers.

3 MR. CARMICHAEL: At the end of the meeting minutes,
4 it says who attended each meeting.

5 THE COURT: Okay. And do they know who attended, by
6 the list of who attended each meeting, what their respective
7 roles are?

8 MR. CARMICHAEL: It has their title at the end.

9 THE COURT: I'm assuming that these people have all
10 sorts of alphabet titles. How are they supposed to know what
11 role they played, unless somebody identifies for them: This
12 was an aide to so-and-so who provided documentation and did
13 the research on X, Y and Z?

14 MR. CARMICHAEL: It does sort of have that. I don't
15 have the meeting minutes with me, but one of them has at the
16 end, looking at the last one, I just remember it, so it would
17 have -- you know, one of them is Special Assistant to the
18 Secretary, Deputy Undersecretary of Personnel and Readiness,
19 documentarian, historian. So I think there was a couple
20 additional people. And that's the last meeting minute. So
21 it does tell you a little bit of what their role was.

22 THE COURT: Tell me why the obligation on them is to
23 identify. As opposed to the obligation on you to identify?
24 Because if you're at an impasse as to what categories of
25 material here, the only option I have is to order it all.

1 But if they don't know what you've got, it's your
2 obligation to lay out what it is. So I can see, yes, those
3 people are important and those people aren't. You need to
4 lay that out for me, if not for them.

5 And I'm wondering why that hasn't been done.

6 MR. CARMICHAEL: Well, we don't want to lose sight of
7 what actually -- what the Ninth Circuit -- what actually
8 we're looking at is, is the -- was the -- was DoD's
9 determination of the policy reasonable, that it significantly
10 furthers the military goals? So that -- we think we've
11 already identified that with the voting members of the panel.
12 There may be some other voting members.

13 But they have a theory that there was -- that this whole
14 thing is a sham and that there was really, I think, that
15 there is -- it was written up by some Evangelical counsel.
16 This theory. I can't help them identify those documents
17 because they don't exist.

18 THE COURT: No, you don't have to identify the
19 documents. But they ask questions and you have to answer
20 questions. And if one of the ways that you answer their
21 question is to give them the information -- you keep saying,
22 "Cut it down," but I don't know how they're supposed to do
23 that unless you lay it out. You told me the same thing the
24 last time when you said, "Oh, we can't give them who all the
25 custodians are." And I found that pretty incredible that you

1 couldn't do that, because I think you can do that with the
2 press of a button, if you've got the right program.

3 So let me turn to the other side. And am I understanding
4 what it is you're looking for? Or am I off track here?

5 MR. HEINZ: I think we're on the right track for
6 sure, Your Honor. I think what we struggle with is, as I
7 look at RFP 29, it asks for documents related to the
8 development of the Mattis plan, of the current policy. All
9 of that falls within Your Honor's order, which adopted the
10 *Doe* holding, that the deliberative-process privilege does not
11 apply to documents that were used or considered in the
12 development of the Mattis plan. That's co-extensive with 29.

13 So what I'm hesitant to get into with counsel is a debate
14 over which custodians we're kind of picking and choosing,
15 because we don't know who has the most relevant documents
16 here. And I have an example for Your Honor.

17 A recently produced document was this PowerPoint
18 presentation titled, "Transgender personnel policy working
19 group." So this is a working group. It's not the panel of
20 experts. This is one of the working groups that fed into the
21 panel of experts, I think, based on the limited information
22 that we have. And so this wouldn't be encompassed within the
23 panel documents.

24 But on here, buried within this document, is an incredibly
25 important piece of information which says that, "Proposed

1 courses of action, or options to pursue, address POTUS's
2 expressed end-state." Well, we know what the President's
3 expressed end-state was here. And this shows that the
4 assumption here of the panel was to address his expressed
5 end-state. This is a really important document, but it's not
6 a panel of experts' document, it's from one of these working
7 groups.

8 But this is just an example of what -- we don't know what
9 we don't have. And that's why we believe that we're entitled
10 to all of the documents responsive to 29, because asking us
11 to pick and choose from what we don't have is an unfair game.

12 THE COURT: Okay. Well, as I understand my role,
13 you're supposed to sort through this concept of granular.
14 We're going to have to pick out a discrete grouping of
15 documents that I can say: These are just like the voting
16 members and that's why you get them. So if I tell them that
17 -- it's a very long Request for Production. Honestly, it's
18 got many, many moving parts. So let's concentrate on what
19 the most important is. Do you want the people in the room
20 for these meetings? Do you want to have whatever
21 presentations they made? Do you want to know what documents
22 they passed out or distributed to the voting members?

23 MR. HEINZ: Yes.

24 THE COURT: Okay.

25 MR. HEINZ: We do want that. But what I'm hesitant

1 to agree to is limiting this request to, for example, just
2 the panel of experts' material, when we know that after the
3 panel of experts completed their work, that the Department of
4 Defense did additional work in creating the report.

5 THE COURT: Okay. Let's take this a slice at a time.
6 Okay? Because I have to be able to do that analysis on each
7 grouping, as I understand that the court wants me to do.

8 Now, have I identified a group that you want and you think
9 the documents would be important to you?

10 MR. HEINZ: You have.

11 THE COURT: Okay. So if I'm looking at this and
12 saying: The folks, the non-voting members in the room, their
13 material is very much the same as the voting members who were
14 there, and I order them to give it to you, am I within what
15 you believe is the proper analysis that the *Doe* court did?

16 MR. HEINZ: Yes. We believe that there is no
17 difference between those two.

18 THE COURT: Okay.

19 This is what you have to do. For each person that you
20 identified that you just told me, I think it was 41, of
21 people who attended meetings, you have to identify them, you
22 have to give them what -- any presentations that they made.
23 You have to give them any documents that they generated that
24 were put forward to the voting members of the group.

25 MR. CARMICHAEL: We've already done that. That's in

1 the November 22nd production. So anything that was actually
2 presented to the panel should be there. I would assume that
3 that was something that was presented to the panel at some
4 point, and that's why you have it. So we've already given
5 everything that was presented to the panel.

6 What we haven't given is things that would be
7 communications between non-panel members that a panel member
8 never saw, except for the fact that right now in response to
9 44, and with negotiations with the *Doe* plaintiffs, we're
10 going back and getting the presentations on the medical data,
11 the employability, limited duty, work-related, so we're going
12 back and getting that.

13 THE COURT: So did you get everything that I just
14 outlined?

15 MR. HEINZ: Well, we don't have communications
16 between the non-voting members.

17 MR. CARMICHAEL: Yes, between non-voting members. If
18 a voting member is not on the communication, they don't have
19 that. It would be voting-member communications.

20 THE COURT: Okay. But you're looking for non-voting
21 to non-voting communication.

22 MR. HEINZ: Correct. Because a significant amount of
23 work was done in these working groups that were comprised of
24 non-voting members. Maybe there was a voting member also on
25 the working group, I don't know. But there was a lot of work

1 done in these working groups.

2 THE COURT: Are these non-voting people the people
3 who are doing the work group, or you don't know?

4 MR. HEINZ: We're going off of very limited
5 information here. But from what we can tell, there was a lot
6 of work done in these working groups. And then these working
7 groups, like just in this presentation, reported up to the
8 panel.

9 THE COURT: So you don't know who was on the working
10 groups?

11 MR. HEINZ: I think we actually do know who was on
12 the working groups. That's in an interrogatory response.

13 THE COURT: Okay. But you haven't received what the
14 working groups produced?

15 MR. HEINZ: Correct. Only their presentations made
16 to the final panel.

17 THE COURT: Okay. But not the data and not the
18 information that they synthesized in order to make their
19 final recommendation.

20 MR. HEINZ: Correct. We don't have the work.

21 THE COURT: Okay. So what's the problem with that
22 grouping of materials?

23 MR. CARMICHAEL: So, I think that they'd have to --
24 so, for medical deployability and limited duty, we're
25 actually producing the work. We're working on it right now.

1 THE COURT: Now, you just laid out multiple
2 categories. You have to explain to me, are those the working
3 groups?

4 MR. CARMICHAEL: This is when the panel -- they sent
5 out certain data calls. They asked questions for analyzing
6 gender dysphoria, they asked a particular office.

7 THE COURT: Who is "they" when you say "they" sent
8 out?

9 MR. CARMICHAEL: The panel members in general. It
10 would be the panel members, in general, requested
11 information.

12 THE COURT: Okay.

13 MR. CARMICHAEL: So they requested information from a
14 particular health office regarding costs of -- costs and
15 usage rate of medical services. And that was one particular
16 request. That was presented to the panel on, I think, two of
17 the meetings. So we're actually going back and verifying
18 that we have all of the work done. And we found a few extra
19 things, and we're going to produce that on the 20th.

20 THE COURT: Have you produced the information when
21 somebody who is on the panel calls for information, have you
22 produced that call that they made?

23 MR. CARMICHAEL: We have produced what they presented
24 on November 22nd. We're going back and producing the work
25 that they did not present right now. So I've seen that in

1 the dataset, it's already in there. We're coding it right
2 now for production on December 20th.

3 THE COURT: So you're intending to turn that over?

4 MR. CARMICHAEL: Yes.

5 That's for one category. The other category is
6 deployability and limited duty. And that was a data call
7 they sent out to the military services. And the same thing,
8 like how they came up with that and the work on that.

9 MR. HEINZ: So I think, Your Honor, you're talking
10 about the data, correct? You're not talking about, you're
11 actually producing the communications within those working
12 groups?

13 MR. CARMICHAEL: It's the data and how they came up
14 with the data. And there's e-mails that explain the data and
15 presentations that explain the data.

16 MR. HEINZ: What we'd be interested in are the
17 communications and the work that was actually done. Like,
18 for instance, what if the deployability working group were
19 communicating and saying, you know, well, deployability sure
20 isn't a reason to keep transgender people out of the
21 military. Well, that would be very relevant evidence. And
22 so those communications could be highly relevant and we want
23 to see them.

24 THE COURT: All right. So here's another category of
25 documents: What the working group did. Who is on the

1 working group? And the data that they produced. And the
2 communications between those people on each working group.
3 What's the problem with that?

4 MR. CARMICHAEL: We'd have to look at each specific
5 one. So -- and I don't -- these ones, particularly, because
6 the *Doe* plaintiffs brought them up and they overlapped them a
7 little bit with 44, we're going ahead and doing it. But if
8 there was another specific one, again, we'd have to figure
9 out a way to identify just those specific documents. Like if
10 there was the head of a particular working group and we have
11 that person as a custodian, we may be able to isolate
12 documents in the system.

13 THE COURT: So just for the record, how many working
14 groups were there?

15 MR. CARMICHAEL: I don't know that off the top of my
16 head. I think it's in the report, the ones that worked with
17 -- the primary one is the panel of experts.

18 THE COURT: But I'm assuming that if you looked, you
19 would be able to tell me what these various working groups
20 are.

21 MR. CARMICHAEL: Yes. And their involvement on the
22 panel.

23 THE COURT: And they're a discrete number, four or
24 five?

25 MR. CARMICHAEL: Yes.

1 THE COURT: So those are people in the working groups
2 who gathered data, put it together, communicated amongst
3 themselves, and passed their reports on to those who were
4 voting, correct?

5 MR. CARMICHAEL: In some instances; I mean, I think
6 the deployability one didn't do it as much. I think they
7 didn't overlap exactly. But that's information that we can
8 provide as well, like when they started.

9 THE COURT: Okay. So if you go through the analysis,
10 all of this material is pre-decisional. All right?

11 MR. CARMICHAEL: Yes.

12 THE COURT: And it's also something that you have
13 complete control over. They can't get it without you,
14 correct?

15 MR. CARMICHAEL: Yes.

16 THE COURT: And these folks are so far down the line
17 that they're not deliberating at all. They are simply
18 providing data, offering material up to those who are
19 actually deliberating and making the decision.

20 MR. CARMICHAEL: Yeah, they wouldn't be involved in
21 the actual deliberations. I guess they deliberate amongst
22 themselves as to how they're going to provide the data.

23 THE COURT: So how does the deliberative privilege
24 apply at all?

25 MR. CARMICHAEL: Our intent is to provide everything

1 that is -- all the data that they presented and how they got
2 that. So that's our intent as we're going back and making
3 sure that we provided all of that.

4 THE COURT: Okay. Well, intent is one thing,
5 production is another. And as you reminded me, you have very
6 little time left to do this. All right. So this is the next
7 grouping that we're going to look at. You're going to supply
8 them with the working group names, who's on the working
9 group, the dialogue in e-mail or any other communication
10 within those working groups, and the data that they produced.

11 I don't think the privilege applies at all there, because
12 these folks aren't deliberating, they are researchers
13 providing information and having discussions amongst
14 themselves, as I understand the way you just described it to
15 me.

16 MR. CARMICHAEL: They addressed other questions as
17 well. And they're all not exactly the same. So I think
18 for -- I mean, certainly it's something we'd be willing to
19 consider, but communications, everything besides
20 communications we're already presenting. But if there was
21 some deliberations --

22 THE COURT: Well, we're past "willing to consider,"
23 I'm telling you you're going to produce it.

24 MR. CARMICHAEL: We'd have to identify -- from
25 specific working groups?

1 THE COURT: Yes. I mean, if you really did organize
2 all this data, you should be able to call it up. And
3 apparently at some point you labeled it having a deliberative
4 privilege. And I'm now identifying a group of things that I
5 don't think fall into that. So you have to turn it over.
6 It's not a matter of, we're considering, it's not a matter
7 of, we'll go back and look. You have to turn it over.

8 MR. CARMICHAEL: Okay.

9 THE COURT: Now, what other category can we
10 discretely find within this interrogatory?

11 MR. HEINZ: I think another category would be the
12 post-panel-of-expert work that went into the report. So the
13 panel of experts did their work and handed that off to, I
14 believe, the Office of the Secretary of Defense. And then
15 his office, from what we can tell, did additional work. They
16 reached out to other researchers, other doctors.

17 THE COURT: Was this after the vote was taken or
18 before?

19 MR. HEINZ: This is after the panel of experts had
20 voted and deliberated, or perhaps it was around the same
21 time. And there were two independent work streams. But it's
22 not as if the panel of experts drafted this report that was
23 sent over to the President. It was done by the Department of
24 Defense and I believe the Secretary of Defense's office. So
25 we would want that additional material that went into the

1 development of the report.

2 THE COURT: So let me understand the steps of this,
3 so that I get it clear.

4 Explain to me these two lines that you just referenced.

5 MR. HEINZ: Drew or Matt could do this better than
6 me. So the panel of experts did their work from October
7 through January. October 2017 through January 2018. And the
8 deliberations of the panel began in December 2017 and went
9 through January of 2018. And then around that time, then
10 they sent over their recommendation to the Office of the
11 Secretary of Defense. And then there was work done there,
12 then, to create and draft the report, the 44-page report that
13 the government points to, as its justification for the
14 policy.

15 So what we would want, then, are the documents and the
16 communications that went into the drafting of that report.

17 THE COURT: Okay. And this is post-decision making,
18 or no?

19 MR. HEINZ: Well, it's post-panel-of-expert decision,
20 but the decision -- it's pre-decision by the Secretary of
21 Defense, I suppose.

22 THE COURT: Okay.

23 MR. HEINZ: And, Drew, correct me if I'm misstating
24 how that operated.

25 MR. CARMICHAEL: Yeah, that's pretty accurate. There

1 was a meeting -- there were, I think, two meetings of
2 January -- around January 11th, around January 17th, in which
3 they briefed Secretary Mattis. And the briefings we've given
4 over to plaintiffs.

5 And then he accepted the decision and asked for a report
6 to be made by the Undersecretary of Defense's office. And
7 they wrote the report and presented that to him. And there's
8 drafts and communications from the report, you know, from the
9 making of that report.

10 THE COURT: Okay. So what's the problem with turning
11 that over?

12 MR. CARMICHAEL: It's drafts -- generally drafts of
13 reports, particularly something that was made for using to
14 send to the President, and for something that was, you know,
15 -- I think there is a little -- there's an issue there with
16 the report is also used for litigation, too. But I think
17 there's ones that were just deliberative process.

18 THE COURT: You told me that somehow you don't turn
19 over drafts. Where's the rule that says you don't turn over
20 drafts?

21 MR. CARMICHAEL: Drafts aren't deliberative process.
22 It's not necessarily even the actual decision. But like, you
23 know, little subparts of the decision, tweaking how you're
24 going to do a particular sentence or how you're going to
25 write a particular paragraph.

1 THE COURT: Okay.

2 MR. CARMICHAEL: There's deliberations that go into
3 that. It's just as you're writing something, you want it to
4 read well.

5 THE COURT: Who are the people who are doing this?

6 MR. CARMICHAEL: This is the Undersecretary's office
7 for the Secretary of Defense.

8 THE COURT: Yeah, well, that tells me who the office
9 is. But do you know who the people are?

10 MR. CARMICHAEL: We know the people that were the
11 staff members, yes. We know the staff members.

12 THE COURT: So you know who was working on drafting
13 this report?

14 MR. CARMICHAEL: Yes.

15 THE COURT: And you're saying that it's a
16 deliberative process. Is it really? Or has a decision been
17 made and all this is doing is memorializing it?

18 MR. CARMICHAEL: When you're writing versions of a
19 report and you're doing -- the final decision was made. But
20 when you're talking about how you're going to phrase a
21 certain paragraph, one way or another, there's still
22 deliberations there involved.

23 THE COURT: Okay. And you're the only ones who have
24 that information?

25 MR. CARMICHAEL: We are the only ones that have that.

1 THE COURT: They can't get it. And once the decision
2 is made, the people who are exchanging information to write
3 this report wouldn't have a chilling effect because they're
4 not the decision maker or not the debater.

5 MR. CARMICHAEL: I think it still has a chilling
6 effect. If you, you know, if you write a sentence a certain
7 way or write a paragraph a certain way, then your boss says:
8 I don't like the way that reads, rewrite it. I think that
9 has a chilling effect to have that go out in the public.

10 MR. SKURNIK: Your Honor, if I could sort of jump off
11 on that a little bit. I think the idea is, and this is the
12 concern that our clients have in this process is, this is
13 clearly, you know, a controversial issue. And what the
14 Department of Defense is concerned about, the next time
15 there's a controversial issue on which they need to develop a
16 policy, whether it's a personnel issue or some other issue,
17 something relating to North Korea or Afghanistan or something
18 else, if internal communications and drafts and comments on
19 drafts, if they're disclosed, people within the Department of
20 Defense and the military services are going to be much less
21 willing to lend their candid views, in light of the fact that
22 the things they say may be turned over in litigation in the
23 future.

24 And I think that is the core of the chilling effect.

25 THE COURT: Well, I get that. If we're talking about

1 world peace, you know, blowing up Korea. But this is a
2 discrete policy concerning one issue. Now, if people are
3 afraid that somebody is going to come after them because they
4 hold certain views about transgender individuals, we can
5 handle that with a protective order. I don't necessarily
6 think, at the level you're talking about, people need to be
7 identified to the public by name.

8 But what they're after is looking for the process that you
9 went through, and if the document that was produced is
10 consistent with the data that was debated. So when you say
11 that there's a chilling effect, just as the judge in *Doe*
12 says, there are ways to handle that. You can have a
13 protective order.

14 But at this point, you're talking about four or five
15 people who are pretty far down the line, as I would assume
16 that they are, and they're taking direction of how to write
17 the report. Am I correct?

18 MR. CARMICHAEL: Yes. Yes. It also shows there's
19 not a lot of relevance to that, too, if they're drafts.

20 THE COURT: But relevance -- it may lead to -- it
21 doesn't have to have extraordinary relevance. It only has to
22 have some relevance, particularly in discovery, if it leads
23 to another inquiry that may have relevance.

24 MR. CARMICHAEL: That's for production. But for
25 actually for overcoming the privilege, it has to have enough

1 relevance to overcome -- you know, the need needs to overcome
2 the chilling effect. And we don't think there's a need for
3 early drafts that weren't accepted.

4 THE COURT: Well, that's just your opinion. Tell
5 me -- I don't understand --

6 MR. CARMICHAEL: Of course it is. I'm advocating for
7 my client.

8 THE COURT: I understand that you have that
9 responsibility. But I'm trying to decide whether -- the
10 Ninth Circuit says that relevance at this point, you know,
11 you hold the documents, and we're looking to try and find how
12 this was produced. So I'm trying to take each stage and say
13 -- did the report, which is key, you told me that that's the
14 only thing you're going to be introducing at trial, if that
15 is the only thing that you've got on the table, then probing
16 whether or not it is consistent with the other data and with
17 the other opinions might seem pretty important.

18 MR. CARMICHAEL: Well, that's the final, obviously,
19 the final version of it. But these are drafts that we're
20 talking about.

21 THE COURT: Where do you get that drafts aren't
22 important? People ask, all the time, for the metadata
23 underneath their electronics. That's a given. So isn't this
24 the metadata on what it is that you produced?

25 MR. CARMICHAEL: But how does the need for drafts

1 that staffers -- first drafts that staffers wrote to the
2 Secretary that the Secretary ultimately did not accept those
3 drafts, how does that overcome the chilling effect? I think
4 that's the --

5 THE COURT: Because you don't identify the people who
6 are doing it. They can't be chilled if people don't know who
7 they are, if they only see their work.

8 MR. CARMICHAEL: I think that would essentially mean
9 that in any case, you could just do a protective order and it
10 would be overcome.

11 THE COURT: I do them all the time. I might sign
12 five or six a day. It's not unusual.

13 MR. CARMICHAEL: I understand. I just think that
14 there's still more of a chilling effect in this litigation.

15 THE COURT: Well, with a protective order, I don't
16 see that there's a chilling effect. So you're going to have
17 to turn over the drafts for attorneys' eyes only, the names
18 of the people who are involved, and identify how many people
19 there are.

20 MR. HEINZ: And I think we'd be interested in those
21 communications within the Undersecretary's office as to how
22 those reports were created. You know, based on what they
23 have disclosed to us, there was additional fact finding going
24 on by that office, separate and apart from what the panel
25 did. This office, these individuals were reaching out to

1 scientists, which we will submit have questionable
2 backgrounds, to get articles and data from them. And so --

3 THE COURT: So these are the folks that are drafting
4 the materials?

5 MR. HEINZ: Drafting the report.

6 THE COURT: Well, you'll get the dialogue and what it
7 is that they asked for and any data that they received during
8 the course of their drafting of the materials.

9 All right. We are -- it's taking longer than I
10 anticipated, but let's -- can we leave this particular
11 category yet, or not?

12 MR. HEINZ: I was going to say I think that's the
13 hardest one. So the steepest hill is behind us. Anything
14 else on 29 that you wanted to discuss?

15 The other one should be fairly quick, I think.

16 THE COURT: Okay. Tell me about 15.

17 MR. HEINZ: So 15 is another request that the
18 defendants believe is too broad. And for 15, we're just
19 wanting to understand how, under the Carter Defense
20 Department, how they came to the opposite conclusion two
21 years before. So we're not necessarily, at least initially,
22 interested in the back and the forth and the detail that we
23 just went through with the panel of experts and the current
24 policy, but what did the Carter working group consider and
25 how they came to their final conclusion, which was that

1 transgender individuals could serve.

2 THE COURT: So would you be satisfied with the same
3 categories of documents that they already turned over to you
4 pursuant to the *Doe* order for the Mattis decision? In other
5 words, assuming that it was a similar process, you know,
6 they've turned over to you the transcripts, they've turned
7 over to you the custodians. So if they did exactly the same
8 thing in exactly the same scope, presumably it would be
9 exactly the same decision concerning the deliberative
10 privilege, because these are the same types of documents.
11 Would that satisfy your inquiry?

12 MR. SIEGFRIED: Your Honor, I think, yes, without
13 prejudice to, if there's something in there that we think we
14 need to probe further.

15 THE COURT: Okay. All right. Can you do that?

16 MR. CARMICHAEL: We can. I don't think there is as
17 much as a need for the actual deliberations. So what we're
18 producing -- right now what we're producing there, after our
19 conversation, we went back and we isolated a few documents
20 that we think would answer the questions for them. And
21 they're going to come in the December 20th production.

22 So the equivalent of the report, like the final report
23 that actually wasn't public, that the transgender working
24 group did, the meeting minutes which describe what they
25 heard, and the briefing slides from Rand when they briefed

1 the transgender working group, we're putting all that in the
2 December 20th production.

3 The only thing that we wouldn't that is the same
4 equivalent is e-mail communications from members on the
5 transgender working group. Because that's in the panel of
6 expert's production. But that's not in the production that
7 we're doing December 20th. We could isolate it. We don't
8 think, again, the need is that high for that level of detail
9 into that one.

10 THE COURT: Let's do this: They're going to give you
11 this on the 20th. You take a look at it. You don't like it,
12 you want more, you come back and we have another talk about
13 it.

14 MR. SIEGFRIED: Thank you.

15 THE COURT: Okay? So you're promising that on the
16 20th, 15 will be responded to?

17 MR. CARMICHAEL: As far as -- yes, we're going to --
18 a lot more information on 15.

19 MR. SIEGFRIED: Your Honor, can I ask a question?

20 THE COURT: Sure.

21 MR. SIEGFRIED: Drew, you mentioned the Rand briefing
22 slides. Is that the only presentation to the working group
23 that you're intending to produce?

24 MR. CARMICHAEL: There's a full summary of all of the
25 presentations they got in the transgender, it's like a

1 50-page report with meeting minutes that go after it. I
2 didn't find any other briefing slides in the collection.
3 I'll look again and make sure that we do. But if there are
4 any other briefing slides, we'll put them in.

5 THE COURT: Okay. What's next?

6 MR. HEINZ: How about Request for Production 36,
7 which asks for complaints related to the *Carter* policy of
8 open service. And here, I believe that the defendants have
9 agreed to produce the one or two complaints that they're
10 aware of, and that they would look through their production
11 to see if there were any others. And then, wasn't sure if
12 you found any others or what your position was after our
13 meet-and-confer.

14 MR. CARMICHAEL: Still doing it.

15 And we did an isolation of the searches, and we -- I think
16 they found one other mention of a complaint, which we can do
17 as well. But it was really just those two.

18 So there were two complaints that were mentioned in the
19 Mattis report that we're releasing in response to that. If
20 there are any other in the production, we'll look at those.

21 THE COURT: So two in all of the military -- all
22 those serving, there were only two complaints?

23 MR. CARMICHAEL: There were two complaints that the
24 panel of experts considered. We didn't go back and look
25 through any other complaints.

1 THE COURT: Well, that's a different thing, because
2 I'm assuming that if they plucked out two complaints, you
3 probably want to know the full range, don't you; or no?
4 Because if they plucked out two complaints, it seems to me
5 that that might prove your point.

6 MR. HEINZ: Your Honor, that's why we issued the
7 request, to see how many complaints there really were.
8 Whether people had an issue with transgender people serving.

9 And so we want the defendants, the government, to agree to
10 produce all complaints. And there may only be the two. And
11 that would sure be helpful to our case. But certainly the
12 deliberative-process privilege doesn't apply to complaints.
13 That's factual information.

14 MR. CARMICHAEL: In the production, we'll go back and
15 make sure we don't have any.

16 THE COURT: So if there's two, you give them the two.
17 That's all there is. You won't be arguing that there are
18 5,000.

19 MR. CARMICHAEL: Well, I think the Uniformed Service
20 Chiefs testified before Congress that they weren't aware of
21 any other complaints. So I think that probably is enough for
22 them to --

23 MR. SIEGFRIED: We're just trying to avoid ambush at
24 trial with all of these other complaints that we don't know
25 about.

1 THE COURT: Well, as far as I'm concerned with this
2 is if they don't give it, they don't use it. That's the rule
3 in federal court. If you don't turn it over, you don't give
4 people notice, and this seems to me fairly significant data,
5 if there are only two, we're not going to find out that
6 there's others because they will have done a complete search
7 and see what they can find. And when will you do that by?

8 MR. CARMICHAEL: So, we'll search in our database.
9 We're not agreeing to go to, like, the actual ID complaint
10 database, which is really not searchable that way, to go
11 through and see if there's any other complaints filed.

12 THE COURT: Well, if you're intending to justify what
13 is done, based upon complaints about transgender individuals,
14 we're trying to find out just exactly what you're going to
15 put up.

16 MR. CARMICHAEL: There really hasn't been a lot of,
17 as the service chiefs have testified, like bullying and
18 harassment. That hasn't been -- that was not one of the
19 major problems. That was not one of the problems with the
20 policy.

21 THE COURT: Well, then, if you have two, you only
22 have two. But I think the point is, you have to answer that
23 specific interrogatory. Because if they, at trial, they want
24 to read your interrogatory, you say there's only two.

25 MR. CARMICHAEL: We may be able to agree with the

1 plaintiffs that we're not aware of any other complaints and
2 leave it at that.

3 THE COURT: Okay. Moving right along.

4 MR. HEINZ: Request for Production 33, which asks for
5 documents related to alternatives to the Mattis policy. So
6 other options or courses of action that the Department of
7 Defense was considering an alternative to what they ended up
8 adopting. And here, I believe that the defendants have
9 agreed to go back and look for any other courses of action.

10 THE COURT: Well, if you get all the other things
11 that I told them to give you, isn't that going to be in
12 there?

13 MR. HEINZ: I would think so, yeah.

14 THE COURT: So let's see what that produces. And if
15 you feel that it's not adequate, then you can come back.

16 But it should be there.

17 MR. HEINZ: I agree. It should be within the panel
18 of experts. And then also the Undersecretary documents, I
19 would think.

20 THE COURT: Or if they didn't entertain anything
21 else, then that should be obvious by what they produce as
22 well. If there was only one course of action, if that's all
23 that there is, then nobody is going to argue that they
24 entertained other options.

25 MR. HEINZ: Okay. Then I think there's one last one,

1 Your Honor. Request for Production 44, which requests data
2 sufficient to show the number of service members
3 non-deployable due to gender dysphoria or transition-related
4 medical care.

5 And here, the defendants did agree to look for that data
6 and documents. And I'm not quite sure where they ended up
7 with that search.

8 MR. CARMICHAEL: Yes. We're producing this in the --
9 anything that was withheld for deliberative process, we're
10 going to produce that in the December 20th. And what this
11 was is, we went back -- this is what I was explaining earlier
12 -- that there was, the services specifically came up with
13 these, searched their records for information about
14 deployability, and presented this to the panel. So we're
15 taking a step back and saying, all the stuff the services did
16 on that. And that's what we're producing.

17 THE COURT: Okay. So you're agreeing that you're
18 doing the search and that the material will be in the
19 December 20th?

20 MR. CARMICHAEL: Yes, Your Honor.

21 THE COURT: Okay. All right. Anything else?

22 MR. HEINZ: No, Your Honor.

23 THE COURT: Okay. You're going to come back and see
24 me again. And I believe the only day I probably have is
25 January the 25th, Friday.

1 THE CLERK: January 24th is a Friday.

2 THE COURT: January 24th. And you're going to come
3 back and here's the next issue. Are you satisfied with what
4 it is that I've outlined that they have to give you, or do
5 you -- are you intending to ask for your next grouping of
6 interrogatories?

7 MR. HEINZ: I think that based on what we've
8 discussed today, it would be helpful for us to sit down and
9 chat again with the defendants and look at some other
10 Requests for Production -- we've kind of identified our next
11 five that we would propose -- and see if we can come to an
12 agreement on those. And perhaps with Your Honor's
13 permission, we could submit another joint status report a
14 week before the next hearing.

15 THE COURT: Okay. Well, this is what you need to do:
16 Five more, okay? Five more interrogatories that you put
17 together in order of priority. Then you examine what you're
18 going to get. And it would seem to me that you can do that
19 relatively quickly, if you've already got that. Give it to
20 them as soon as you can. I'm going to probably issue an
21 order that -- what is today? Today is Tuesday. Give it to
22 them by the end of the week.

23 Then you're going to look at what you get back. Then
24 you're going to confer to make sure that you've got
25 everything that they promised you, and whether that data

1 answers some of your next five, and to see if you can get an
2 understanding of which of those five you can dispense with.

3 Now, one of the things that I did not see that you did,
4 maybe you did -- because I know the State of Washington is at
5 the table -- but I think I asked you, because counsel stood
6 up and said, I've got 200 interrogatories. And I said: No,
7 you don't, you've probably got about 50. Are you
8 coordinating with the other cases around the country?

9 MR. HEINZ: We are, Your Honor. So three other
10 cases. And we conferred with them about the five RFPs that
11 we prioritized that we just went over, and asked for
12 feedback, received some feedback, to ensure that we were
13 representing kind of what the priorities were across all of
14 the cases. And before we send over the new five Requests for
15 Production, we'll do the same.

16 THE COURT: Okay. Is there any problem with them,
17 that you just send this out to the other four?

18 MR. CARMICHAEL: That's what we're doing. If we send
19 it out to one, we send it out to all.

20 THE COURT: Now, I talked about a protective order.
21 If you decide you're going to do a protective order, you need
22 to decide, if it's going to be attorneys' eyes only, how many
23 of those attorneys are there. I can only control the
24 attorneys that are right here.

25 MR. HEINZ: And I think we have protective orders

1 across the cases, yeah, that have an attorneys' eyes only
2 provision.

3 THE COURT: Okay. All right. So we've got our plan.
4 You have to, by Friday, get your next five. You have to take
5 a look at what they give you on the 20th. After you've had
6 an opportunity to review those materials, you meet and confer
7 to see if those materials that you got you believe are
8 complete, or whether you need to put them back into a joint
9 status report for when you come back to see me again. Then
10 you start working on the next five.

11 MR. HEINZ: Understood.

12 MR. SYKES: Your Honor, one housekeeping note. The
13 motions cutoff regarding discovery dispute, the motions due
14 on 1/20, and I just want to make sure that with us coming
15 back on the 24th --

16 THE COURT: Remind me what your trial date is.

17 MR. SYKES: What is our trial date?

18 MS. ALA'ILIMA: June 22nd, Your Honor.

19 THE COURT: We'll push the deadline back 30 days and
20 see how we do on the 24th, and how many more rounds we have
21 to go through this. Okay? Any questions?

22 MR. CARMICHAEL: No, Your Honor. I'll wait and see
23 those. I think we've already sort of hit the core on what
24 the Ninth Circuit is asking us to review, so I do think at
25 some point there's a bit of a diminishing returns. And once

1 you get the core things, then get the side core things,
2 there's sort of a diminishing returns in continuing.

3 THE COURT: Well, I will meet as many times as
4 necessary to get as minute as necessary. Okay? I think
5 that's what I've been told I have to do. So we'll continue
6 to meet until we reach the point where everybody understands
7 what the background of this is, that we have the evidence
8 that's going to be appropriate, so that both sides can
9 present their case.

10 Now, yours is easy because you told me you only had one
11 document, or somebody did, I don't know if it was you. So
12 your case will be simple.

13 MR. HEINZ: Your Honor, I do want to flag just one
14 thing. We haven't taken any depositions in this case yet.
15 So we still have that phase, once we get the documents. I'm
16 just flagging that for scheduling purposes, that this -- that
17 defendants withholding so many documents is delaying the
18 depositions in the case. So just flagging that.

19 THE COURT: Well, I get that. But if you're not
20 going to note depositions until after you get the documents,
21 then we're kind of stuck. I suggest that you basically set
22 up some dates so that when you get these documents on
23 December 20th, you can start deciding who it is you're going
24 to depose.

25 I'm assuming you're not going to depose 41 people in the

1 room. But you're going to be discrete about who it is you're
2 going to depose. But you might as well get your dates set
3 now. And if there are people you know that you want, then
4 set them up. If you don't have the documents you want, you
5 can always cancel it. But be a little proactive on this.

6 MR. HEINZ: And after today's discussion, I think
7 that we can -- now we have a little bit more certainty to
8 move forward.

9 THE COURT: Okay. Do you have agreements with the
10 other cases to -- if you're going to coordinate lawyers from
11 four different cases, with four different judges, that's
12 going to take some skill, not necessarily in your wheelhouse,
13 but some judicial assistant -- not judicial assistant, but
14 paralegal or secretary has a lot of work ahead of them.
15 Although I think, you know, Doodle has made things a little
16 easier.

17 MR. HEINZ: It sure does.

18 MR. SKURNIK: Your Honor, just to clarify. The
19 government has started taking depositions of plaintiffs'
20 experts and other witnesses. And we've been scheduling
21 those. And the parties from the plaintiffs in all four cases
22 so far have been present at those depositions.

23 THE COURT: Okay. Well, that's great. Anything else
24 I can help you with?

25 MR. SIEGFRIED: No, Your Honor.

1 THE COURT: Are you coming from DC?

2 MR. HEINZ: Chicago.

3 MR. SIEGFRIED: Chicago.

4 MR. CARMICHAEL: We're DC.

5 MR. SKURNIK: We're DC.

6 THE COURT: Well, I hope you get out tonight on a
7 good flight. And I'll see you on January the 24th. And you
8 are going to need to file a report for me.

9 Now, so that you know, I am flying in from South America
10 on the 23rd. So it needs to be here on time. And it needs
11 to be here in a format that I can read it to get ready to
12 talk with you. Okay?

13 MR. HEINZ: Understood.

14 THE COURT: Okay. Have a nice holiday.

15 (Recess.)

16 C E R T I F I C A T E

17

18 I certify that the foregoing is a correct transcript from
19 the record of proceedings in the above-entitled matter.

20

21

22

23 */s/ Debbie Zurn*

24 DEBBIE ZURN
25 COURT REPORTER