

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NATIONAL SECURITY :  
COUNSELORS, : Docket No. CA 11-443  
 :  
 Plaintiff, : Washington, D.C.  
 vs. : Friday, December 16, 2011  
 : 10:10 a.m.  
 CENTRAL INTELLIGENCE :  
 AGENCY, :  
 :  
 Defendant. :  
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TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE BERYL A. HOWELL  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Official Court Reporter  
United States District Court  
District of Columbia  
333 Constitution Avenue, NW  
Washington, DC 20001

Proceedings recorded by machine shorthand, transcript produced  
by computer-aided transcription.

1 THE COURT: Could you say your name again?

2 MR. MCCLANAHAN: Kel McClanahan.

3 THE COURT: McClanahan. Okay.

4 MR. PARKER: Ryan Parker from the Department of  
5 Justice representing the Central Intelligence Agency.

6 THE COURT: Okay, thank you.

7 Mr. McClanahan, we're here on your request for a status  
8 conference so I'll let you proceed.

9 MR. MCCLANAHAN: Thank you, Your Honor.

10 As we see it this issue is really very simple. We have  
11 asked the agency in this and other cases, but only today we're  
12 just going to talk about this one, for electronic records, and  
13 they have not provided them. And when I asked why aren't you  
14 providing them, they said because we don't ever provide  
15 electronic records.

16 This is something that should be fairly simple, I would  
17 think, to resolve without having to go into a motion to compel  
18 or motion for summary judgment, motion for PI or anything  
19 procedural like that.

20 THE COURT: And I agree with you on that.

21 I'm not, but I'm not sure that the resolution is  
22 necessarily in your favor given the affidavit's support that  
23 they provided and the legal standard that the Court has to  
24 apply in this case.

25 But on that point, I do agree with you which is why we

1 scheduled a status conference.

2 MR. MCCLANAHAN: Well, in reference to the affidavit  
3 and the legal standard I think that first of all there's not a  
4 whole lot of case law on this. There's a few cases that are  
5 related to it and then there's the sample case and the T P S  
6 case that are the only ones who have really addressed the  
7 issue.

8 THE COURT: Can I just ask a couple of basic  
9 questions?

10 MR. MCCLANAHAN: Yes.

11 THE COURT: When you asked for the documents in  
12 electronic form, are you providing specific format or are you  
13 just requesting for documents to be reduced in whatever  
14 electronic form they're originally stored?

15 Are you asking for Word format, PDF format?

16 MR. MCCLANAHAN: It doesn't matter. What we did in  
17 the initial request was a, the forms that off the top of our  
18 heads qualify are Word, PDF, TIF, GIF, what have you. Because  
19 we are unfamiliar with the way the system work, they may store  
20 their records in .CIA secret form.

21 So an electronic form that would be accessible to  
22 someone else. PDF generally works. PDF, Word is what I have  
23 always generally gotten from other agencies. Sometimes I get a  
24 doc form but generally PDF is sort of one of the industry  
25 standard for this.

1 THE COURT: When you reviewed Ms. Viscuso's  
2 declaration was this the first time that you understood exactly  
3 how the CIA produces, does its FOIA processing?

4 MR. MCCLANAHAN: To that degree of detail yes.

5 THE COURT: I found it very illuminating.

6 MR. MCCLANAHAN: I found it very interesting. That  
7 in and of itself was information that we didn't have.

8 It says, I think it says more in support of our case  
9 than it does in support of their case.

10 THE COURT: How is that? Because I'll be honest with  
11 you, when I look at 5 U.S.C. 552(a)(4)(B) that says I'm suppose  
12 to give the CIA's assessment of whether a document is readily  
13 producible electronically substantial weight in combination  
14 with the quite detailed declaration of Ms. Viscuso, you know, I  
15 find it difficult to overcome that legal requirement to direct  
16 the CIA at least with respect to unclassified documents which  
17 they appear to be taking and uploading into a classified  
18 computer system to do the FOIA processing which one can puzzle  
19 over that step, but since that is the step they're taking and  
20 creating other burdens it, you know, it's, I find it difficult  
21 to make the direction that they produce the documents  
22 electronically.

23 And so I'm curious to hear from you how based on this  
24 declaration and the substantial weight standard that the Court  
25 must apply that you think that the Court has room to make that

1 direction?

2           MR. MCCLANAHAN: Well, with regard to the substantial  
3 weight I found a quote that I've used in many other briefs  
4 including cases before you from the D.C. Circuit Campbell case.  
5 That in the context of B (1), you also give substantial weight  
6 to agency declarations and the Circuit came down and said  
7 deference is not equivalent to acquiescence that substantial  
8 weight does not mean that whatever they say however weird or  
9 unusual has to be granted, that sort of robs the judiciary of  
10 any authority.

11           And when it comes to this declaration I think there's  
12 two main points that point to why this doesn't square with sort  
13 of any kind of reasonability standard.

14           The first is and you've sort of touched on it in your  
15 observation, it's a self-inflicted wound. They by their own  
16 practices take a document from an unclassified system and put  
17 it on a classified system and even if they decide to release  
18 that in its entirety, they say we can't do it because we can't  
19 get it off of the classified system.

20           They could take the original off of the unclassified  
21 system and give it to us, but they don't because they have put  
22 it on a classified system. That's the first thing.

23           The second thing is I don't know how long this system  
24 has been in place, but I know how long the amendments have been  
25 in place. In 1996 this rule was set down. In my former life I

1 was an IT guy. Most of the systems that they're describing  
2 were not in existence in 1996.

3 I would posit there's a very good chance that they have  
4 created this system since 1996. And I would argue that  
5 deliberately creating a system that does not allow you to  
6 readily reproduce something knowing that you have to readily  
7 reproduce something does not allow you to say that I cannot  
8 readily produce something because of the system I created.

9 THE COURT: So Mr. McClanahan, what you are saying is  
10 that even though the law obliges each agency to make reasonable  
11 efforts to maintain its record in forms or formats that are  
12 reproducible for purposes of this section, I'm reading from 5  
13 U.S.C. 552 (A)(3)(B) that the CIA's process is not fulfilling  
14 that legal obligation?

15 Is that your argument?

16 MR. MCCLANAHAN: That is my argument and I will  
17 support it by their arguments that we have all these secrets,  
18 when you have all of these threats that are trying to get our  
19 secrets, I deal with lots of agencies. I deal with lots of  
20 intelligence agencies.

21 The Director of National Intelligence gives PDFs. The  
22 NSA gives PDFs. The NGA gives PDFs. The NRO gives PDFs. The  
23 only agency that does not give PDF, until very recently State  
24 has decided not to do it too and that's a different issue in a  
25 different case, is the CIA.

1           Of all the intelligence community, the only agency  
2 including INSCOM from Army, including the Navy, including every  
3 agency you can think of that we filed a request with we have  
4 gotten PDFs. All of these agencies found a way between '96 and  
5 2011 to comply with the law. And the CIA found a way to make  
6 it so that it was impossible by their own action to comply with  
7 the law and I don't think they should be allowed to do that.

8           THE COURT: Yes, just remind me of your name again.

9           MR. PARKER: Ryan Parker, Your Honor.

10          THE COURT: Mr. Parker, so thank you for your quick  
11 turn around. I know I did not give you that much time, but  
12 thank you for your quick turn around of the Viscuso declaration  
13 and your papers.

14          I did as I mentioned I found this process illuminating.  
15 The CIA does have a huge FOIA backlog and I think for the first  
16 time I understood possibly why.

17          MR. PARKER: Right.

18          THE COURT: I can't imagine a more cumbersome process  
19 to have been created to do FOIA processing, I really can't. It  
20 boggles the mind that the CIA takes unclassified documents,  
21 puts them on a classified computer system, which can only print  
22 for obvious reasons in order to process what might otherwise be  
23 a fairly simple FOIA request for unclassified documents.

24          Let me pause for a second because I also wanted to,  
25 perhaps I should have asked Mr. McClanahan this. The request

1 for the tables of contents for this inhouse journal, are those  
2 unclassified?

3 MR. PARKER: Actually, there's information in the  
4 tables that is classified and has been redacted in the paper  
5 version of the documents that have been produced to  
6 Mr. McClanahan.

7 So as Your Honor may well know, a large percentage of  
8 the documents that the CIA holds contain classified  
9 information. So often, I don't think it's often the case that  
10 they take documents that have no classified information and  
11 upload them to the system. I'm sure that it happens on  
12 occasion, but a very large percentage of the documents that the  
13 CIA has contain classified information because of the very  
14 nature of the work that the CIA does.

15 THE COURT: Oh, well then perhaps I'm overreading the  
16 Viscuso declaration because I had understood from the  
17 declaration that all FOIA processing and review happens on a  
18 classified computer system without regard to whether the  
19 documents were classified or unclassified. I think she said  
20 that in one of her statements.

21 MR. PARKER: Your Honor is correct and I'm sorry if I  
22 misled Your Honor.

23 What I was trying to say is that many of the documents  
24 that are requested in FOIA requests contain classified  
25 information.

1           And so as Mr. McClanahan said why would they take  
2 documents that are unclassified and put them on a classified  
3 system, I don't think that that's entirely accurate and it's  
4 not accurate in this case because the documents that were  
5 ultimately produced contain classified information which was  
6 ultimately redacted from the documents that were provided to  
7 Mr. McClanahan.

8           So in many cases the documents that are uploaded onto  
9 the classified system contain classified information. That's  
10 the only point I was trying to make, Your Honor. I wasn't  
11 trying to say anything different than the declaration.

12           THE COURT: I see. I was under the impression that  
13 these tables of contents were not classified. So that, that's  
14 an interesting point.

15           Why don't you answer the question that was raised in my  
16 discussion with Mr. McClanahan of how does this process comply  
17 with the CIA's obligation under the law to make reasonable  
18 efforts to maintain its records in forms or format that are  
19 reproducible for purposes of this section? How does it comply  
20 with that requirement?

21           MR. PARKER: Yes, Your Honor. Agencies in the  
22 federal Government all have different missions and the CIA's  
23 mission is particular in that they deal with sensitive  
24 information often gathered about foreign countries and the  
25 nature of their information is somewhat different than the

1 information that is stored by other agencies.

2           And so the CIA is very mindful of FOIA. They received  
3 3,094 FOIA requests last year. They dedicated a substantial  
4 amount of resource and people to working on FOIA requests, but  
5 the protection of classified information is really of the  
6 utmost importance for the CIA.

7           And these processes are in place because of the threat  
8 of the release of classified information and the importance of  
9 protecting that information. So I believe that the CIA does  
10 everything in their power to comply with the FOIA in an  
11 atmosphere that requires them to be very protective of the  
12 information that they have.

13           So I would say that although this appears to be a very  
14 cumbersome process, I think it is a very cumbersome process.  
15 These protections are in place for a reason to protect very  
16 sensitive classified information and I think in that regard the  
17 CIA's hands are somewhat tied and that those protections are  
18 essential and necessary.

19           So I would say that the agency is doing all that it can  
20 to process these requests in the ways that, as required by the  
21 statute, while at the same time protecting the classified  
22 information the agency houses.

23           THE COURT: Well, among the issues that make it  
24 cumbersome as I read this declaration even for unclassified  
25 documents is that there's redaction software only on the

1 classified system and not on the unclassified system.

2           So even if there were a purely unclassified document  
3 which I thought the tables of the TOCs were but I guess they're  
4 not, but say there was a totally unclassified document, the  
5 FOIA officers of the CIA would be unable to review that  
6 unclassified document, make any appropriate redactions and  
7 release it electronically because their unclassified computer  
8 systems don't have the redaction software.

9           That seems to me to be a fairly simple step to get the  
10 redaction software on an unclassified system so that at a  
11 minimum requests for unclassified documents could be reviewed  
12 and redacted appropriately on an unclassified system and  
13 produced electronically as opposed to the uploading of  
14 unclassified documents on a classified system solely to make  
15 use of the redaction software that's only on that system. So  
16 that doesn't seem like a reasonable process to me.

17           MR. PARKER: You're correct, Your Honor, that all  
18 documents in your hypothetical situation if we had a document  
19 that did not contain any classified information, my  
20 understanding is that would have to be uploaded to the  
21 classified system because that is the system that has the  
22 redaction software.

23           I think that's a choice that has been made by the CIA  
24 based on its needs to protect classified information. I would  
25 agree that it does not seem to be, it is a cumbersome process.

1 But I know that the CIA tries to allocate their resources in a  
2 way that makes sense for them as far as protecting the  
3 information that they have in complying with the FOIA, and I  
4 can't tell you as far as the decision about where to put the  
5 redaction software how that decision was made, but I'm  
6 confident that the CIA makes the decisions in the best way that  
7 they can as far as allocation of resources are concerned.

8 THE COURT: What's not clear from the declaration of  
9 Ms. Viscuso and although you're clearly cognizant as is she of  
10 the CIA backlogs in FOIA processing about any appreciation for  
11 review of this process to make it more expeditious and less  
12 cumbersome at least when it comes to requests for unclassified  
13 records, is any kind of review in that respect underway or  
14 given any thought to by the CIA?

15 MR. PARKER: Your Honor, to be candid, I can't answer  
16 that question at this time but I will be happy to take Your  
17 Honor's suggestion back to the agency.

18 As you noted that's not in the CIA's declaration. They  
19 are (sic) planning to review that process, but I can certainly  
20 suggest that to the agency following this hearing.

21 THE COURT: If you could and I'd like to know the  
22 response to that.

23 In addition and perhaps a predicate to that is how many  
24 of the FOIA requests that the CIA gets involve just unclass,  
25 requests for unclassified information? The response may be all

1 of the FOIA requests that we get implicate classified  
2 information and classified records so therefore, this process  
3 is the most effective one that we can come up with to protect  
4 as the CIA must classified information. But they know what the  
5 requests are and how many are for classified, necessarily  
6 involve classified and versus unclassified information.

7           If I could just pause for a second. Mr. McClanahan,  
8 when you, you all asked for the tables of contents, did you  
9 expect that they would be classified or unclassified?

10           MR. MCCLANAHAN: Both, Your Honor.

11           THE COURT: So you were not surprised that the tables  
12 of contents contained some classified information?

13           MR. MCCLANAHAN: No, Your Honor, we expected some of  
14 them to. Actually, we expected many of them to be classified  
15 because Studies in Intelligence was classified up until the  
16 early '90s.

17           However, there were unclassified editions that were  
18 nonetheless not made publicly available. We got some of those.  
19 In fact, we got 14 documents released in their entirety that  
20 were not redacted at all. And we got two that were printouts  
21 from their website that are available on the website and we  
22 didn't get those in electronic form even though they're on  
23 their website. Now it was a moot point because it's on their  
24 website.

25           But it is sort of this proposition and our main argument

1 with this, had they come back and shown that they have a  
2 process that they evaluate these documents and see if they're  
3 readily reproducible and then in another request they evaluate  
4 those documents and decide if they're readily reproducible and  
5 that was an individualized thing and sometimes they were and  
6 sometimes they weren't, we actually would not have a problem  
7 with it. But they have released to us a copy of a printout  
8 from the CFR that they said they could not release in  
9 electronic form.

10 I have a very good feeling that was not on the  
11 classified system. That is actually in one of your other cases  
12 with, one of the related cases. This is a blanket across the  
13 board policy where they say we evaluated these records and  
14 found that they were not readily reproducible because no  
15 records are readily reproducible.

16 And it is maybe not in these, although I would point to  
17 two that we know were not classified, the two that were  
18 available on their website. The others may have been  
19 classified and were declassified that were released in their  
20 entirety. We would actually concede that actually originated  
21 on the classified system, that's fine.

22 However, when documents come from an unclassified system  
23 and they stick it on a classified system and then say they  
24 can't take it off of the classified system because it's unduly  
25 burdensome, that doesn't play and they do that for classified

1 records, they do it for unclassified records.

2           The annual FOI -- I have countless FOIA requests,  
3 responses from them that do not implicate classified records  
4 and they'd never give electronic records. The National  
5 Security Archive files thousands of these. They have not once  
6 received electronic records even when they file requests for  
7 random stuff.

8           A guy named Jason Smathers got a release of comment  
9 cards from the cafeteria that could not be released in  
10 electronic form.

11           THE COURT: All right.

12           MR. PARKER: Could I respond, Your Honor?

13           THE COURT: Yes, please.

14           MR. PARKER: First as Mr. McClanahan said the  
15 documents at issue in this case in the FOIA request that is  
16 before the Court as he noted originated as classified  
17 documents. Some of them are now unclassified because of  
18 declassification review.

19           But in this case this is not a situation in which  
20 unclassified documents have had to be uploaded to the  
21 classified system. I would also say that the declaration and  
22 counsel's communication with Mr. McClanahan we have been very  
23 clear and if Your Honor looks at the declaration that this is a  
24 case by case determination that this CIA makes.

25           Now the CIA's IT systems are the same for each request.

1 But the nature of the request differs and in the last paragraph  
2 of the declaration the CIA explains that in certain situations  
3 it receives requests repeatedly for the same information and  
4 the CIA on occasion has made the decision that it is worth the  
5 investment of time and labor up front to convert those to an  
6 electronic format so that as those repeated requests come in  
7 they can be provided in that format.

8 THE COURT: So it's only documents, it's only  
9 requests for records that are in those collections that ever  
10 prompt an electronic response by the CIA?

11 MR. PARKER: That's correct, Your Honor.

12 In fact, in the declaration I think it explains that the  
13 CIA receives quite often requests for information regarding  
14 World War II or Nazi War Crimes, and so they have a collection.

15 THE COURT: Let me just say I have no issue with the  
16 systems that the CIA uses to review FOIA, to review records for  
17 response to FOIA requests that implicate classified  
18 information. That's a cumbersome process, they have to be very  
19 careful, I appreciate that.

20 But when I read that they take unclassified electronic  
21 and/or paper records and apparently although that's not  
22 detailed in this otherwise fairly detailed document, they take  
23 unclassified electronic records they must print them out and  
24 then scan them into electronic form into the classified  
25 computer system for review and use of the redaction software

1 only on the classified system for them and then to be printed  
2 out, I have to tell you I don't see how that is reasonable and  
3 compliance with the obligations under the 1996 mind you,  
4 electronic FOIA amendments.

5           So I was going to give you before ruling on this another  
6 opportunity to talk to Ms. Viscuso and the CIA about precisely  
7 how they process records that are unclassified in response to  
8 FOIA requests.

9           How much time do you need?

10           MR. PARKER: Given the holidays, Your Honor, and the  
11 fact that I think some of my colleagues in the CIA might be out  
12 of town next week, could we have until I would say the 13th of  
13 January for example? I know from the last case that that's a  
14 Friday, I think the first week of January that does not have a  
15 holiday, if that would work.

16           THE COURT: That's fine.

17           MR. PARKER: And you would like me to just submit  
18 that as an affidavit as additional authority?

19           THE COURT: Yes and additional explanation about why  
20 requests for unclassified records have to be treated in the way  
21 that it's described in Ms. Viscuso's declaration.

22           For example, why CFR pages and pages from the CIA's  
23 website have to be produced in paper form probably because  
24 they've been scanned and uploaded into the classified computer  
25 system.

1 MR. PARKER: That would be based on just a  
2 hypothetical situation. Obviously, the documents in this case  
3 were from the classified system but just based on a  
4 hypothetical request that did not include any classified  
5 information.

6 THE COURT: Correct.

7 MR. PARKER: Thank you, Your Honor.

8 THE COURT: Thank you.

9 Is there anything further?

10 MR. MCCLANAHAN: If I could ask one quick thing.

11 We have actually proposed to them, and admittedly it  
12 happened this morning so he didn't have a chance to check in  
13 with them, Studies and Intelligence is part of something called  
14 the Historical Review Program. And the CIA for many years --

15 THE COURT: What is the Studies and Intelligence?

16 MR. MCCLANAHAN: That's the journal, sorry.

17 THE COURT: That's the in-house journal.

18 MR. MCCLANAHAN: That's the name of the journal,  
19 yeah.

20 THE COURT: Oh, I see.

21 MR. MCCLANAHAN: And for several years the CIA has  
22 been engaged in this massive project to declassify and make  
23 publicly available as much of this journal as possible and so  
24 if you look into the electronic reading room, there's hundreds  
25 of articles.

1           If you look in their what's called the CREST data base  
2 which they gave to NARA, there's volumes of articles. In fact,  
3 on the CIA website there is an index of all of the articles  
4 that have been released, all of which are available  
5 electronically.

6           And so we have actually proposed that rather than give  
7 us a CD, if we cut out the CD process, that's a lot of their  
8 security concerns in the Viscuso declaration. We proposed if  
9 you are making the articles available on the website we would  
10 be happy if you make the tables of contents available on the  
11 website in the reading room.

12           So if it would be possible to see if that would be a  
13 feasible alternative, we would be okay with that.

14           THE COURT: Mr. Parker, I think I would take it that  
15 probably what's made available in the electronic reading room  
16 is probably even a more extensive bureaucratic process that  
17 might create more delay, but if you could also provide  
18 information about what that process is that would be helpful.

19           MR. PARKER: Just so that I understand, Your Honor,  
20 that's the process of taking documents and posting them into  
21 the CIA's electronic reading room?

22           THE COURT: Correct. I would take it that that  
23 probably goes through multiple levels of review, you know, like  
24 might perhaps people even outside of the FOIA unit to the  
25 public relations unit so, so that I understand this proposal

1 and what the issues are with that proposal, if you could  
2 address that in your papers so that I understand that process,  
3 it would be helpful to the Court as well. As you're  
4 considering the proposal in any event.

5 MR. PARKER: Right. So Your Honor, just so that I'm  
6 clear on January 13th we will file with the Court both an  
7 affidavit and a supplemental memoranda explaining first the  
8 process that takes place when someone, a hypothetical requestor  
9 requests information that is only unclassified. And --

10 THE COURT: Or but in addition to that, when a  
11 request that may encompass both classified and unclassified  
12 information how does the CIA handle the portion of the requests  
13 that it deals with unclassified information. And why it is so  
14 necessary to take the portion of the request that deals with  
15 unclassified information and stick it on a classified computer  
16 system with all of the limitations and production formats that  
17 entails.

18 MR. PARKER: Okay, Your Honor. I don't want to  
19 belabor this.

20 THE COURT: And how that fulfills the agency's  
21 obligations to maintain its records in forms or formats that  
22 are reproducible for purposes of this section, and I read that  
23 agency obligation in conjunction with its obligation to produce  
24 documents to the extent that the documents are readily  
25 reproducible in the format requested by requestors and

1 particularly with requests for voluminous records, you know,  
2 getting them in paper format rather than electronic format is,  
3 can be problematic also for further dissemination of the  
4 records.

5 MR. PARKER: Thank you, Your Honor. I think I  
6 understand. I don't want to belabor this point anymore but I  
7 do want to, because we've talked about these things for some  
8 time now, make sure that I understand.

9 I believe there are two points you would like addressed  
10 both in the memo and in the declaration. The first is how the  
11 CIA handles request for unclassified information or requests  
12 that include both classified and unclassified information. And  
13 how the CIA's system conforms with the obligation under FOIA to  
14 keep records in a format that in which they could be readily  
15 producible.

16 And then the second is the process the CIA goes to  
17 upload documents to their FOIA reading room.

18 Are those the two points, Your Honor?

19 THE COURT: Yes.

20 MR. PARKER: We will have that for the Court on the  
21 13th.

22 THE COURT: Thank you very much.

23 Is there anything further?

24 MR. MCCLANAHAN: May I clarify one small point, Your  
25 Honor?

1 THE COURT: Yes.

2 MR. MCCLANAHAN: Mr. Parker keeps talking about how  
3 in this request all the documents were classified and I would  
4 like to point out that no, they weren't.

5 The two that were on the website were not classified.  
6 And so this is not a hypothetical situation. This is your  
7 second fact pattern of when it has both classified and  
8 unclassified records. This is not an advisory policy idea.  
9 This is actually in play in this request for at least two of  
10 the documents.

11 THE COURT: With that clarification, is there  
12 anything further?

13 MR. PARKER: Well, as Your Honor stated, all of these  
14 requests were at one time from the classified system so but I  
15 understand the request and we'll certainly --

16 THE COURT: They were all generated by the classified  
17 system whether or not the underlying records were originally  
18 classified.

19 MR. PARKER: Right.

20 THE COURT: As I understand the declaration.

21 MR. PARKER: That's correct.

22 THE COURT: Okay.

23 All right, is there anything further?

24 MR. MCCLANAHAN: No, Your Honor.

25 THE COURT: Okay, thank you.

1           You're excused.

2           (Proceedings concluded @ 11:45 a.m.)

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## CERTIFICATE

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the stenographic notes provided to me by the United States District Court, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

\_\_\_\_\_  
/S/Crystal M. Pilgrim, RPR

\_\_\_\_\_  
Date: January 11, 2012