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FEDERAL CIRCUIT JUDICIAL COUNCIL

BEFORE: THE HONORABLE KIMBERLY A. MOORE
THE HONORABLE RICHARD G. TARANTO
THE HONORABLE SHARON PROST

IN RE: COMPLAINT NO. 23-90015

SEALED HEARING

PUBLIC REDACTED VERSION

CORRECTED

NATIONAL COURTS BUILDING
717 Madison Place, N.W.
Washington, D.C.
Thursday, July 13, 2023

Reported by: Susanne Bergling, RMR-CRR

1 APPEARANCES :

2

3 ON BEHALF OF JUDGE PAULINE NEWMAN:

4 GREGORY DOLIN, ESQ.

5 JOHN VECCHIONE ESQ.

6 MARK CHENOWETH, ESQ.

7 New Civil Liberties Alliance

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

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3 (Proceeding called to order at 2:00 p.m.)

4 CHIEF JUDGE MOORE: Good morning. We're here for
5 argument -- or afternoon -- we're here for argument
6 today.

7 Mr. Dolin, are you going to proceed?

8 MR. DOLIN: I am.

9 CHIEF JUDGE MOORE: Please proceed.

10 MR. DOLIN: Thank you, Judge Moore. Good
11 afternoon, Your Honors. Gregory Dolin, senior
12 litigation counsel from the New Civil Liberties
13 Alliance, for The Honorable Pauline Newman. With me are
14 senior litigation counsel John Vecchione and, to his
15 left, Mark Chenoweth, president and general counsel of
16 the NCLA.

17 Before I begin on the merits, with the
18 Committee's permission, I would like to read our
19 objections in for the record.

20 CHIEF JUDGE MOORE: Before you begin with that,
21 let me -- as a housekeeping matter, I just want to
22 remind counsel at the outset that our rules prohibit any
23 audio or video recording of this argument, and I want to
24 ensure that you are not recording it in any way.

25 MR. DOLIN: Judge Moore, we have read your order,

1 and we certainly have no intention of violating it.

2 CHIEF JUDGE MOORE: Okay. And then I just want
3 to remind counsel that all aspects of this hearing are
4 confidential until we agree otherwise, okay?

5 MR. DOLIN: Yes. And, actually, I would like to
6 come back to that point, but, yes, I do understand that.

7 CHIEF JUDGE MOORE: Please proceed.

8 MR. DOLIN: So, first, just objections for the
9 record. First, we object to this proceeding before this
10 Committee and the Judicial Council of this Circuit due
11 to the inherent risk of an actual bias which we have
12 documented in our submissions.

13 We particularly object to the Special Committee's
14 membership given that all three of the members of this
15 committee attempted to convince Judge Newman to retire
16 in exchange for not launching this investigation. We
17 simply do not understand, given the constitutional and
18 statutory requirements, why the Chief Judge and/or the
19 Judicial Council have refused to request a transfer of
20 this matter.

21 Second, we object to this Committee's orders
22 excluding parts of Judge Newman's legal team and her
23 chambers staff from attending this hearing.

24 Third, we object to the Committee's refusal to
25 either provide us with a recording of this proceeding or

1 permit us to create one.

2 Fourth, and perhaps most importantly, we object
3 to Judge Newman's continued and illegal suspension from
4 the duties of the office to which she was nominated and
5 confirmed, and our appearance here today should not be
6 viewed as a waiver of any of the above objections.

7 Finally -- and this, I guess, goes to your last
8 point, Judge Moore -- we reiterate our request that all
9 of our materials submitted to this committee, including
10 our letters of July 5th and 12th, the Committee's order
11 of July 7th, 11th, and 12th, and a transcript of this
12 hearing be released with appropriate redactions pursuant
13 to Rule 23(b)(7).

14 With these objections noted for the record, I am
15 ready to address the substance of today's hearing. On
16 the merits we take issue with the Committee's
17 characterization of Judge Newman's behavior as failing
18 to cooperate. Quite the contrary. Judge Newman did not
19 fail to cooperate with this investigation.

20 As we've stated in our letter of April 4th --
21 sorry, April 21st, that Judge Newman is willing to
22 cooperate with an investigation that's conducted
23 consistent with the limits that the Constitution, the
24 Judicial Disability Act of 1980, and the rules of the
25 Judicial Conduct and Judicial Proceedings impose on such

1 investigations.

2 In our May 9th letter, at pages 45, we've
3 indicated that Judge Newman is willing to cooperate --
4 i.e., work together -- as the word "cooperate" is
5 defined in the dictionary. In our letter on May 25th at
6 3, we once again said that Judge Newman is committed to
7 providing records and undergoing appropriate medical
8 examination if this matter is transferred.

9 JUDGE PROST: But Mr. -- I'm sorry --

10 MR. DOLIN: Of course.

11 JUDGE PROST: -- but on that matter of
12 cooperation, even the citation you had in your brief,
13 that was predicated on our transferring the case, as I
14 understood it, and on our restoring her to sitting. Am
15 I -- and that's the quote that was in your brief --

16 MR. DOLIN: That is correct, because as of our
17 letter on May 25th, Judge Newman was suspended,
18 according to Judge Moore's own email, "pending
19 conclusion of this investigation." Respectfully,
20 there's no authority for such suspension.

21 We, of course, question the authority to suspend
22 even to -- at the conclusion of the investigation
23 because we submit that the Constitution does not permit
24 suspensions, but that aside, there's absolutely no
25 authority to suspend a sitting judge pending the

1 investigation.

2 JUDGE PROST: No, I appreciate that. I just
3 wanted to clarify your statements about her willingness
4 to cooperate and the predicate of --

5 MR. DOLIN: Correct, and so -- correct, and she
6 was willing to cooperate predicated on appropriate due
7 process proceedings and this Council and this Committee
8 behaving in an appropriate and legal manner as well.
9 So, yes, that was predicated on those matters.

10 And in contrast, this committee has refused to
11 work cooperatively, because as we've pointed out in our
12 letters, cooperation is a two-way street. It means
13 working together. This committee, on matters big and
14 small, refused to cooperate and work together with Judge
15 Newman, as we have now said a number of times, and
16 refused to transfer, even though every circuit faced
17 with a similar situation has transferred any
18 investigation of a circuit judge to another circuit, and
19 in refusing to do so attempted to support this refusal
20 with misleading data.

21 Just to point out that how every other circuit
22 dealt with this issue, even when a judge was no longer a
23 member of the Circuit Court, as was the case with then
24 Judge Kavanaugh when complaints were filed against him
25 citing his alleged misbehavior during Senate

1 confirmation hearings for his current seat, by the time
2 complaints were filed, he was already confirmed to the
3 Supreme Court.

4 The complaints went to the D.C. Circuit Judicial
5 Council, and even though Judge Kavanaugh -- but now
6 Justice Kavanaugh -- was no longer a member of that
7 Council, the matter was transferred. Chief Judge
8 Srinivasan was requested to transfer the matter, and it
9 was transferred to the Tenth Circuit. We were able to
10 find not a single instance when a complaint against a
11 circuit judge that was not dismissed outright was
12 handled in his home circuit, whether it's a complaint
13 against Judge Kavanaugh, Judge Maryanne Trump Barry, or
14 Judge -- I'm blanking on his name -- but the former
15 judge of the Sixth Circuit, Judge Jones of the Fifth
16 Circuit. Every single one was transferred.

17 This is the only time that it was not. The
18 Federal Circuit Judicial Council stands alone, and,
19 again, I fail to understand the logic behind it, and it
20 does show that this committee and council has refused to
21 cooperate with Judge Newman.

22 Of course, it has refused to reinstate Judge
23 Newman, and as I've pointed out, Judge Prost, there is
24 absolutely no basis -- at least there was no cited basis
25 up until the order of the Judicial Council of June 5th.

1 JUDGE TARANTO: Can I just ask you, the word
2 "cooperation" you're using with reference to the
3 committee based on what source?

4 MR. DOLIN: Based on the definition of that word
5 in the dictionary. It means working together, Your
6 Honor.

7 JUDGE TARANTO: The -- and the -- this is about
8 Judge Newman's refusal to cooperate with compliance with
9 the orders of the Committee, right?

10 MR. DOLIN: The hearing is certainly meant to
11 address that issue. What I am submitting to this
12 Committee is that in order to cooperate, in order to
13 work together, there must be -- both parties must
14 actually work together. At no point was the Committee
15 willing to entertain any of Judge Newman's requests,
16 whether it's her restoration or, in fact, even given an
17 explanation up until June 5th after we filed our suit as
18 to why she remains suspended.

19 JUDGE TARANTO: So we're here on a -- as you
20 know, a very specific three-part issue, whether there
21 was a failure to cooperate with respect to the directive
22 with medical records, that's first; second, with respect
23 to the directive regarding the neurological and
24 neuropsychological examinations; and third, the request
25 for interview.

1 Can we just start briefly with the last one?
2 Twice, I think on April 17th and May 16th, the Special
3 Committee specifically invited Judge Newman to sit down
4 for an interview to discuss any alleged factual errors
5 or, more generally, in the April 17th one. What was the
6 good cause for Judge Newman's refusal to take up that
7 express invitation for an opportunity to discuss the
8 claims with us?

9 MR. DOLIN: Well, Judge Taranto, I think I would
10 respectfully disagree with the characterization. I
11 don't think it was an invitation to discuss, as you
12 said, factual errors or other general matters. In fact,
13 the invitation --

14 JUDGE TARANTO: I think the April 17th order was
15 perfectly general as to sit down for an interview. The
16 May 17th focused on -- was -- didn't limit it but
17 focused on some things that I think you all had said in
18 response to an earlier order and said there's been
19 assertions that we have made factual errors and we would
20 like an opportunity to have an interview to hear about
21 those factual errors, and yet Judge Newman has said no.

22 MR. DOLIN: So, Judge Taranto, so to finish my
23 previous answer and then kind of to expand on it, I --
24 again, I so respectfully disagree with the
25 characterization and the following sentence. I think

1 that the order did not specify exactly what the
2 Committee wished to interview Judge Newman about. There
3 was just -- it's open-ended, but it didn't specify --

4 JUDGE TARANTO: But she said she wanted it.

5 MR. DOLIN: That's -- respectfully, that's not
6 what it said.

7 JUDGE TARANTO: The April 17th said sit down for
8 an interview.

9 MR. DOLIN: But an interview implies that the
10 Committee is asking questions, and so Judge -- it's
11 not -- it's not a conversation, so -- and so we would
12 want to -- but more fundamentally, like I said, we
13 object to this Committee proceeding because this
14 Committee cannot -- by definition cannot be a neutral
15 decision-maker, cannot be the neutral recommender.

16 JUDGE TARANTO: So it's not, in your view, that
17 there was no opportunity to have an interview with this
18 Committee, but that she's not interested in having an
19 interview with this --

20 MR. DOLIN: I don't think I suggested there was
21 no opportunity for an interview. I've suggested that
22 the Committee, in requesting an interview, did not
23 specify why it wants one. In fact, its request for an
24 interview was contrary to the prior assertion that this
25 Committee and this Judicial Council is apparently aware

1 of the personalities and aware of what has gone on,
2 which is why, supposedly, it's refusing to transfer the
3 matter elsewhere.

4 But furthermore --

5 JUDGE TARANTO: I'm sorry, "supposedly"? Where
6 do you get that?

7 MR. DOLIN: That was part of the order of -- the
8 first order that denied transfer. That was the order, I
9 believe, of May 3rd, and that order said one of the
10 reasons we're refusing to transfer is because we, the
11 Federal Circuit Judges, are familiar with the
12 personalities and with the issues in a way that other
13 circuits would not be familiar with.

14 JUDGE TARANTO: You're referring, I assume, to
15 some elaboration from the Breyer Committee Report about
16 why the Breyer Committee implemented the statute to make
17 transfer an exception, right, as a general matter?

18 MR. DOLIN: No, Your Honor. I'm referring to the
19 order of May 3rd, which -- hold on -- on page -- it's a
20 long order. I have to find it.

21 (Pause in the proceeding.)

22 CHIEF JUDGE MOORE: I think you want page 10 of
23 the May 3rd order.

24 MR. DOLIN: Page 10, thank you. Thank you,
25 right. So request for a transfer, so it starts at page

1 9, and it suggests that in this case relative ignorance
2 of the judges of another circuit, of local circumstances
3 and personalities that might make them less able to
4 gauge whether corrective action would be effective and
5 appropriate, and judges within another circuit would be
6 in a poor position to persuade a judge whom they do not
7 know well to take the actions they believe are
8 necessary.

9 Of course, that is always true in every complaint
10 about a circuit judge, but this seems to me, at least
11 the way I read it, was a justification as to why this
12 matter was not asked to be transferred.

13 JUDGE TARANTO: Can I -- can I turn to a
14 different topic --

15 MR. DOLIN: Of course.

16 JUDGE TARANTO: -- and this is --

17 CHIEF JUDGE MOORE: Before you turn to that,
18 could I ask a followup question?

19 JUDGE TARANTO: Yes, of course.

20 CHIEF JUDGE MOORE: I guess, Mr. Dolin, I'm
21 perplexed. All this says is other judges in other
22 circuits would be less familiar with personalities. How
23 does that not -- how does that equate to, therefore, you
24 don't need to interview Judge Newman to understand the
25 concerns about errors of fact that she claims may exist?

1 MR. DOLIN: Well, first, Judge Moore, we've
2 pointed out two obvious errors of fact that -- you know,
3 the claim that she had a heart attack and the claim that
4 she had a cardiac stent placed. Frankly, we don't even
5 understand where such allegations -- what the source of
6 these allegations are and on what basis they were made.

7 CHIEF JUDGE MOORE: Before we -- before we
8 potentially discuss that, I guess I'd like to stick with
9 what is the good cause for her refusal to interview. In
10 the May 16th order, I will read to you the portion of
11 the order which requests an interview.

12 "Judge Newman has suggested that the Committee's
13 prior orders contained errors of fact, but she has not
14 identified any specific errors."

15 I get now that you're saying she did identify one
16 error, at least by now she has, and that's fine. I'll
17 give you that.

18 "We have previously invited Judge Newman to meet
19 with the Committee for an interview in which she could
20 provide the Committee with information relevant to the
21 investigation -- that's very open-ended, you see --
22 including correcting any errors of fact. We again
23 request that Judge Newman participate in a videotaped
24 interview with the Committee which will provide her with
25 an opportunity to clarify these matters."

1 How is the fact that another Circuit may be less
2 familiar with personalities good cause for her refusing
3 to participate in an interview which would create the
4 Committee with an opportunity to gain clarity into the
5 matters before it?

6 MR. DOLIN: So a two-part answer. First, I
7 think, as we're now on the same page, we have clarified
8 some of these errors with respect to the heart attack,
9 with respect to the cardiac stent, with respect to the
10 errors on --

11 CHIEF JUDGE MOORE: Actually, you have attorney
12 argument about them. You don't actually have evidence,
13 right?

14 MR. DOLIN: No, I respectfully disagree. It's
15 not an argument. It's a statement that --

16 CHIEF JUDGE MOORE: What's a statement?

17 MR. DOLIN: -- Judge -- it's a statement that
18 Judge Newman -- it's not an argument. It's a statement
19 of fact that Judge Newman did not have a heart attack.

20 JUDGE TARANTO: I'm sorry. Is that by somebody
21 with personal knowledge?

22 MR. DOLIN: Yes, by somebody with personal
23 knowledge.

24 JUDGE TARANTO: That's you?

25 MR. DOLIN: That is me, but I -- based on a

1 personal --

2 JUDGE PROST: Well, since we're there, and I hate
3 to interrupt the flow, but I would like to ask you about
4 that. If you feel it's appropriate for you to respond
5 and to detail for us the information with respect to her
6 medical condition, including a heart attack, correct,
7 you've made statements that she never had a heart -- she
8 didn't have a heart attack and she didn't have a stent,
9 but in our May 16th order, we repeatedly, when we talked
10 about getting medical records, we talked about cardiac
11 issues.

12 So can you represent to us, if she is accepting
13 that she didn't have a heart attack and didn't have a
14 stent, did she engage -- have any cardiac issues during
15 the period in 2021 that we're discussing that required
16 hospitalization or medical attention or otherwise?

17 MR. DOLIN: I'm trying to -- respectfully, Your
18 Honor, I'm trying to think through my answer, not
19 because I don't necessarily know the answer but because
20 of our standing objection to sharing medical information
21 with this Committee.

22 And so I think a better approach would be that
23 I -- I can't provide that answer, because --

24 JUDGE PROST: Okay. Well on that point,
25 though --

1 MR. DOLIN: -- of our standing objection.

2 JUDGE PROST: -- in terms of sharing medical
3 information, some of the at least the surface
4 information that we have arises from Dr. Rothstein's
5 1 1/2 page report, in which in at least one paragraph,
6 which he did, which I think most physicians and
7 neurologists would do, they would request certain
8 background medical information, and there's a reference
9 that he makes in that report to [a cardiac condition]
10 being treated by -- with a Pacemaker, and, [REDACTED]

11 [REDACTED]
12 [REDACTED] a quick review of
13 just the Mayo Clinic's report on defining that -- and
14 you're a doctor, you probably understand this better
15 than I -- is that that is a heart-related problem.

16 MR. DOLIN: I don't think we dispute -- I think
17 Judge Newman -- I think she has been very open that she
18 has a Pacemaker. You asked me more specifically whether
19 she had any issues in 2021. Maybe I misunderstood the
20 question. And so I think it's not -- it's really not a
21 secret Judge Newman has a Pacemaker. I believe it's
22 even in newspaper reports, but --

23 JUDGE TARANTO: But you don't -- you don't want
24 to say whether there was a cardiac event in 2021.

25 MR. DOLIN: I -- not because there was one and

1 I'm trying to hide it, but I do not want to discuss
2 Judge Newman's medical records, especially ones that are
3 entirely irrelevant to her mental abilities, for all the
4 reasons we have stated in our letter or our numerous
5 letters.

6 CHIEF JUDGE MOORE: But just -- I just want to
7 make sure we're clear. You -- you have asserted she
8 didn't have a heart attack in the summer of 2021.

9 MR. DOLIN: Correct.

10 CHIEF JUDGE MOORE: You've admitted she's had a
11 Pacemaker installed, but you won't tell us whether she
12 had a cardiac issue that resulted in her hospitalization
13 for any surgical procedures in 2021?

14 MR. DOLIN: We've admitted that she had the
15 Pacemaker installed for, I believe, over a decade,
16 nothing to do with 2021. She's had the Pacemaker for
17 quite some time.

18 CHIEF JUDGE MOORE: But you won't acknowledge
19 whether she was admitted to the hospital, say GW
20 Hospital, on, say, June of 2022, or admitted to another
21 hospital in May or June or July of 2021. You won't
22 admit or deny or discuss, so you'll say she did not have
23 a heart attack, and you can't imagine where we got that
24 idea.

25 MR. DOLIN: Correct.

1 CHIEF JUDGE MOORE: But you won't say she wasn't
2 in the hospital during that same time for cardiac
3 issues.

4 MR. DOLIN: Correct, although, of course, I
5 wouldn't know that the Committee also did not indicate
6 as to where its belief that Judge Newman did have a
7 heart attack or had a cardiac stent placed, which is a
8 fairly specific procedure --

9 JUDGE PROST: But we were -- okay, what we were
10 talking about -- initially I started this by, okay,
11 we're moving away from a heart attack and the technical
12 definition of a heart attack to then whether she suffers
13 from any cardiac issues, which could have, as the
14 symptoms for [the cardiac condition] indicate, could result
15 in confusion, dizziness, or light-headedness, fainting
16 or near fainting, fatigue, shortness of breath, slower
17 pulse, chest pain, et cetera.

18 MR. DOLIN: Those are conditions associated with
19 [the cardiac condition]. I'm not quite sure what, for
20 example, dizziness or shortness of breath have to do
21 with one's ability to carry on and work as a federal
22 judge.

23 JUDGE TARANTO: How about to finish up the list?

24 MR. DOLIN: Sorry?

25 JUDGE TARANTO: Finish the list. Confusion, some

1 of the other items, you think that has nothing to do
2 with -- with the issue of --

3 MR. DOLIN: It might, but there is no --

4 JUDGE TARANTO: -- Judge Newman's ability?

5 MR. DOLIN: Again, anybody -- you know, I have
6 spoken to Judge Newman at length. Reporters have spoken
7 to Judge Newman at length. Former judges of this Court
8 have spoken to Judge Newman at length. No one, except
9 several staff members, have indicated that she was at
10 any point confused. So, yes, it --

11 JUDGE PROST: But you have pinpointed the whole
12 heart issue, you have disputed it, and we focused on a
13 particular time frame as the Chief just mentioned, but
14 you are unwilling to disclose to us if any issues
15 related to [the cardiac condition] would require
16 hospitalization or intensive medical care during that
17 period that we had identified with respect to the heart
18 ailment.

19 MR. DOLIN: Correct. But also, I mean, I would
20 point out that the -- I think, again, I may -- I
21 understand that -- you know, in one of the orders, the
22 Committee said that the underlying question may come
23 into the purview, as we're discussing, refusal --
24 alleged refusal to cooperate, but, of course, again,
25 this hearing is focused on whether or not Judge Newman

1 cooperated, and it's not to whether she had a good
2 cause, and if she does not, what is the appropriate
3 sanction, so --

4 JUDGE PROST: Well, with respect to the
5 cooperation aspect of the medical records, as our May
6 16th order indicated, what we said was those records --
7 the medical records we were talking about would be
8 provided to the neurologist or people examining her, and
9 that seems to be kind of what happened even in, you
10 know, whatever limited medical exam was performed by
11 Dr. Rothstein.

12 MR. DOLIN: And I --

13 JUDGE PROST: These records with respect to her
14 medication and coronary issues were provided to
15 Dr. Rothstein, correct?

16 MR. DOLIN: Dr. Rothstein was provided with such
17 records as he deemed necessary.

18 CHIEF JUDGE MOORE: I guess that's a little bit
19 hard for me to understand. Was Dr. Rothstein provided
20 with any medical records or is his statement about her
21 condition in his report based on her oral discussion of
22 her medical conditions?

23 MR. DOLIN: I will refer you to the answer I made
24 just moments ago. Dr. Rothstein was provided with such
25 information as he deemed necessary to conduct his

1 examination.

2 JUDGE TARANTO: And you think that that's an
3 answer to the question, what the source of the
4 information was?

5 MR. DOLIN: That I -- I believe that is the --
6 the answer that -- that I can give.

7 JUDGE TARANTO: Okay.

8 MR. DOLIN: Again, I'm -- for reasons stated
9 before, Your Honor -- and I do mean no disrespect -- but
10 for reasons stated before, we're not willing to discuss
11 Judge Newman's medical records with this Committee --

12 JUDGE TARANTO: And remind me what those reasons
13 are, please.

14 MR. DOLIN: Again, this Committee -- again, this
15 Committee --

16 JUDGE TARANTO: You keep saying "again," and if
17 you can state it so that I understand it clearly.

18 MR. DOLIN: We believe this Committee is
19 improperly constituted. We believe this matter should
20 not stay with the Federal Circuit. We believe this
21 Committee has not made a prima facie case as to why the
22 evaluation is needed in the first place.

23 So, for example, if you will allow me to
24 sidetrack a little bit, one of the main points that the
25 Committee has made on numerous occasions was that Judge

1 Newman has extraordinary delays.

2 JUDGE TARANTO: And I need to back up, get off
3 the statistical point, or before we get to it, do I
4 remember your response -- your July 5th response
5 objected to providing information to or agreeing to
6 undergo examinations with the two medical professionals
7 that our medical consultant identified, partly -- maybe
8 entirely -- anyway, you say because there hasn't been
9 some sort of Daubert qualification of them?

10 Is it your position that the Daubert standard
11 applies to the examiners or other submitters of expert
12 evidence to us?

13 MR. DOLIN: My position is that we have no idea
14 of who these people are or why -- on what basis they
15 were chosen --

16 JUDGE TARANTO: Can you answer the question about
17 whether you're asserting that the Daubert standard
18 applies?

19 MR. DOLIN: Well, I think if you let me finish my
20 answer, I think -- I'll get to the answer --

21 JUDGE TARANTO: Just try to answer the direct
22 question.

23 MR. DOLIN: I understand, but I promise I will
24 get to it. Give me just a little bit of leeway.

25 We don't know who these people are, we don't know

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1 why they were chosen, and, therefore, we have no idea
2 whether they are or are not experts.

3 And so whether it's the full Daubert that applies
4 or any kind of smaller version of it, I think the
5 general idea that people doing the examination and then
6 providing supposedly an expert report to the Committee
7 have -- we have to have some assurance that these are
8 actually qualified people, and we have -- that they're
9 not biased, that they're not -- and we have no idea on
10 what basis these individuals were chosen.

11 So I don't -- I -- I think, ultimately, when
12 these reports are submitted and they're considered by
13 the Committee, I think Daubert has application
14 whether -- you know, whether it's verbatim or it's
15 just -- or it's general idea, but, you know --

16 JUDGE TARANTO: So let me ask you then about
17 that, and this is now turning back to Dr. Rothstein.
18 The essence of Daubert is that qualifications are in the
19 beginning, that the substance of the testimony must have
20 a sound foundation, a reliable foundation, and that it
21 is for that reason absolutely standard, that when the
22 expert testifies, he or she has to disclose the basis,
23 the materials he or she looked at and what their
24 reasoning was from them.

25 So if that's right, how is it that you think it's

1 irrelevant what materials Dr. Rothstein was supplied?

2 MR. DOLIN: I don't think it's irrelevant. I --
3 but for reasons stated previously -- and, again, of
4 course, Dr. Rothstein is not testifying --

5 JUDGE TARANTO: So you don't think it's
6 irrelevant. You just think that we're illegitimate
7 outfits that doesn't deserve to get that answer.

8 MR. DOLIN: I don't think it's illegit -- I
9 wouldn't call this an illegitimate outfit, Your Honor.
10 I think this Committee is improperly constituted and is
11 an improper body to adjudicate this matter, and because
12 of the -- both the bias --

13 CHIEF JUDGE MOORE: Counsel -- Counsel, in your
14 brief, you pointed us to Dr. Rothstein's evaluation of
15 Judge Newman. You told us his conclusion, that her
16 cognitive function is sufficient to continue her
17 participation on the Court, and then you expressly told
18 us that this examination should obviate the need for
19 further testing.

20 This is a hearing about whether it was misconduct
21 for Judge Newman to refuse to undergo the medical
22 testing we requested. Your answer in your brief to us
23 was, no, it wasn't misconduct, because she did different
24 testing with a different person, and that should
25 suffice.

1 Why, then, would it be improper for us to seek to
2 know the basis upon which that other testing was
3 rendered, like the material that doctor considered in
4 forming his opinion? You've asked us to accept that
5 testing in lieu of the testing we requested. So why
6 don't we then have an opportunity to inquire about the
7 reliability or the basis of that testing?

8 MR. DOLIN: Your Honor, respectfully, I would
9 again say that this Committee is not a proper body to
10 conduct an evaluation or examination for these
11 proceedings because --

12 JUDGE TARANTO: And from that answer, what you
13 submitted from Dr. Rothstein counts for nothing, because
14 it cannot be examined under Daubert standards.

15 MR. DOLIN: What we have submitted from
16 Dr. Rothstein is -- mostly was a point of information
17 that the Committee could choose to credit or not credit
18 as it wishes. Our response was to the Committee's
19 inquiry as to Judge Newman's cooperation, or lack
20 thereof, her reason for it, and the appropriate sanction
21 for doing so if she didn't cooperate.

22 We wanted the Committee --

23 CHIEF JUDGE MOORE: But didn't you tell us in
24 your July 5th submission that this Dr. Rothstein report
25 should put an end to the concern about Judge Newman's

1 medical history and should, therefore, obviate the
2 concern of misconduct for not taking the testing that
3 was required?

4 MR. DOLIN: I've mentioned the report or we've
5 mentioned the report as part of the broader information
6 to the Committee that should, in our view, frame this
7 proceeding that should have never started to a close.
8 If you look at --

9 CHIEF JUDGE MOORE: This examination should
10 obviate the need for any further testing.

11 MR. DOLIN: Correct, and any further proceedings
12 before this Committee or this Judicial Council, because
13 if you -- looking at Judge Newman's opinions submitted
14 since March, looking at Judge Newman's public
15 statements, looking at this evaluation, there is no
16 basis to conclude that she's in any way disabled.

17 CHIEF JUDGE MOORE: Well, this is not about
18 whether she's disabled, Counsel. This is about whether
19 or not this Committee had a reasonable basis to order
20 the medical testing, to ask to interview her, and to
21 request her medical records be provided to someone who
22 would evaluate her. This is not a proceeding about
23 whether she's disabled.

24 MR. DOLIN: So can we get -- and so this goes to
25 the answer I've provided to you, Judge Taranto, but can

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1 we go to the basis --

2 JUDGE TARANTO: Sure, we can get to that in just
3 one second. Just one thing that I wanted to make sure
4 about. After your July 5th responses, you know, we
5 issued an order two days later saying please supply us
6 three categories of documents, the unredacted version of
7 Dr. Rothstein, the actual filled-out MoCA form, and then
8 the category of written materials given to or relied
9 on -- I'm not sure what the word is -- accepted by
10 Dr. Rothstein, and in your July 12th response, you say,
11 as to that last category, the medical records, we're not
12 going to give you any more for the reasons we've already
13 discussed.

14 But the category, what we asked you about or
15 directed you to supply July 7th is not just medical
16 records. It was all materials. So, for example, that
17 would include all written materials, would include all
18 of the written materials that you have from this
19 proceeding, declarations and other things that supplied
20 the basis for concern about Judge Newman. In your July
21 12th letter, it doesn't say anything at all about that
22 category. Were those materials supplied to
23 Dr. Rothstein?

24 MR. DOLIN: Your Honor, are you referring to
25 affidavits, various affidavits that --

1 JUDGE TARANTO: All of the written materials that
2 you -- yes, that were a part of this proceeding that
3 have been given to you as undergirding the -- in
4 particular the May 16th order for --

5 MR. DOLIN: It is -- it is my understanding that
6 materials that are sealed were not provided to
7 Dr. Rothstein.

8 CHIEF JUDGE MOORE: What about the orders? Were
9 any of the orders which have been made public provided
10 to Dr. Rothstein?

11 MR. DOLIN: I don't know that he's reviewed the
12 orders either.

13 CHIEF JUDGE MOORE: I'm sorry. I couldn't hear
14 you.

15 MR. DOLIN: I do not know whether he reviewed the
16 orders either.

17 CHIEF JUDGE MOORE: But were they provided to
18 him? You don't know whether he reviewed them --

19 MR. DOLIN: I was not in the room, Your Honor.

20 CHIEF JUDGE MOORE: Pardon?

21 MR. DOLIN: I was not in the room, Your Honor.

22 CHIEF JUDGE MOORE: Oh, so you don't know if
23 Judge Newman provided him with those orders?

24 MR. DOLIN: I can't comment on that.

25 JUDGE TARANTO: You can't?

1 MR. DOLIN: I can't comment on that as to whether
2 or not -- whether or not they were provided or whether
3 he reviewed them or -- et cetera. I do know that he
4 reviewed those materials that he deemed in his
5 professional judgment appropriate before administering
6 the test and reaching his conclusion and writing the
7 letter.

8 CHIEF JUDGE MOORE: Mr. Dolin, can you speak up
9 just a little bit? I'm having trouble hearing you.
10 Sorry.

11 MR. DOLIN: He was provided such materials as he,
12 in his professional judgment, of decades of experience,
13 and being a full professor at George Washington School
14 of Medicine, deemed appropriate to conduct his
15 examination and reach his conclusions, and I was not in
16 the room, and I'm -- you know, despite my medical
17 degree, I am not going to second-guess a full professor
18 of neurology --

19 CHIEF JUDGE MOORE: Well, let me ask you a couple
20 of questions about his report. We did ask you to come
21 here today prepared to discuss the report and his
22 scoring of the report. Is it true that Judge Newman
23 either had at the time of his evaluation a cast on her
24 arm or her right wrist?

25 MR. DOLIN: It is.

1 CHIEF JUDGE MOORE: And he says in two places she
2 was, therefore, unable to write. Is that correct?

3 MR. DOLIN: That's correct. She was advised
4 by -- she was advised by her orthopedic surgeon not to
5 hold a pen until the bone was healed.

6 CHIEF JUDGE MOORE: So not to hold a pen until it
7 healed. So she was not able to do any written part of
8 the MoCA, correct?

9 MR. DOLIN: Correct.

10 CHIEF JUDGE MOORE: Correct, okay. So I am going
11 to provide you with the MoCA, which is the same MoCA --
12 you can step forward if you don't have --

13 MR. DOLIN: I have it.

14 CHIEF JUDGE MOORE: You have it?

15 MR. DOLIN: I have it.

16 CHIEF JUDGE MOORE: I think you have a copy. So
17 this is the same thing we provided to you as an exhibit.

18 MR. DOLIN: Yep.

19 CHIEF JUDGE MOORE: And this is the MoCA.

20 MR. DOLIN: Yep.

21 CHIEF JUDGE MOORE: As you can see, across the
22 top, there are three portions of the MoCA that require
23 writing. There is what I'll call connect-the-dots. I'm
24 not a doctor, so I am going to use layman's language.

25 MR. DOLIN: Fair enough.

1 CHIEF JUDGE MOORE: Connect-the-dots on the left,
2 and there's copy a cube, and Dr. Rothstein noted that
3 she couldn't do either of those because she can't write
4 at all, right?

5 MR. DOLIN: Yes.

6 CHIEF JUDGE MOORE: Okay. So each of those is
7 worth one point, correct?

8 MR. DOLIN: Um-hum, yep.

9 CHIEF JUDGE MOORE: Okay. Then you have to draw
10 a clock where you actually fill in all the numbers and
11 put the hands of the clock on the correct time that's
12 assessed. If she can't write, how could she do that?

13 MR. DOLIN: Again, Your Honor, I'm -- I can't
14 comment on how she accomplished that task. I can
15 comment on Dr. --

16 CHIEF JUDGE MOORE: Did she accomplish that task?

17 MR. DOLIN: Again, I was not in the room. I --

18 CHIEF JUDGE MOORE: Okay. So do you understand
19 on the face of Dr. Rothstein's own report, there seems
20 to be an inconsistency? The inconsistency is he said
21 she was unable to write in two places. You confirmed
22 that she's been instructed by an orthopedic surgeon not
23 to even hold a pen.

24 MR. DOLIN: Yes.

25 CHIEF JUDGE MOORE: There are three parts of this

1 test that require writing. Dr. Rothstein said she
2 couldn't do two of the three of them because she
3 couldn't write, so how did she do the third?

4 MR. DOLIN: I suspect that there are ways to do
5 the third by either having the clock identified --

6 JUDGE PROST: Again, I'm sorry, I can't --

7 MR. DOLIN: I suspect there are ways to do it.
8 Instead of drawing it, you have a clock identified, as
9 well as time identified, et cetera.

10 CHIEF JUDGE MOORE: Actually, it turns out
11 there's not on the MoCA website. Do you know that the
12 MoCA website itself explains exactly how to administer
13 the test when you're unable to write? Let me provide
14 you with a copy of it. Here you go.

15 MR. DOLIN: Ah, was --

16 CHIEF JUDGE MOORE: And this is what they say all
17 qualified practitioners should do when a patient is
18 unable to write.

19 MR. DOLIN: So, with respect, Judge Moore --

20 CHIEF JUDGE MOORE: The MoCA website is -- yes?

21 MR. DOLIN: -- with respect, Judge Moore --

22 CHIEF JUDGE MOORE: Yes, yes?

23 MR. DOLIN: -- if it were up to me, I would rely
24 on several decades' worth of experience of a full
25 professor of neurology at one of the nation's leading

1 medical schools as opposed to a --

2 CHIEF JUDGE MOORE: Counsel, this whole professor
3 of neurology may generally be great, but his own report
4 is internally inconsistent. It says she couldn't write
5 in two places. You've confirmed she couldn't hold a
6 pen. He says because she couldn't write, she couldn't
7 connect the dots, and she couldn't copy a cube, but then
8 when it comes to drawing a clock, which is required by
9 the test to be drawn by the patient -- if the patient
10 can't write, according to the MoCA, they can't do any of
11 those three questions according to the MoCA's own
12 rubric.

13 So I'm wondering whether or not it's possible
14 that he erred in his report because he said she couldn't
15 write at all, but then he seems to have given her full
16 credit for drawing a clock.

17 MR. DOLIN: Of course, anything is possible.

18 CHIEF JUDGE MOORE: But that's why the Committee
19 has concerns and would like to see the document, is
20 because his report is internally inconsistent on its
21 face.

22 MR. DOLIN: Okay. If you'll permit me to finish
23 my answer I was beginning to go to, with respect, I
24 would put some trust in the -- or put trust in a full
25 professor of neurology and at one of the nation's

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1 leading medical schools over a -- a well respected
2 judge's interpretation of a MoCA website. And so I
3 understand what you've read, Judge Moore. Nevertheless,
4 I suspect that Judge -- that --

5 CHIEF JUDGE MOORE: Why -- you haven't seen the
6 MoCA test result, have you?

7 MR. DOLIN: I have not.

8 CHIEF JUDGE MOORE: Okay. So you haven't seen
9 it. He says that she couldn't write, so she couldn't do
10 the written portion. You don't think it's fair for us
11 to be concerned that possibly he mis-scored the test
12 since he has given her credit for portions that require
13 writing on its face? Draw a clock?

14 MR. DOLIN: Again, I suspect -- I suspect that
15 Judge -- again, that -- not Judge -- that Dr. Rothstein
16 knows how to administer this test, knows how to score
17 it, and he was advised before -- in fact, when the test
18 was scheduled, he was advised before that Judge Newman
19 was in a cast, and he asked whether or not we should
20 wait --

21 JUDGE TARANTO: Would you agree -- I don't know
22 what kind of experience you have with respect to
23 expert-laden cases -- that highly credentialed experts
24 sometimes make mistakes?

25 MR. DOLIN: Of course. Everybody makes mistakes,

1 including this Committee, but --

2 JUDGE TARANTO: And we don't have the basis for
3 determining that in a document that you submitted to
4 obviate concern here.

5 MR. DOLIN: Perhaps, but, again, I think I would
6 go back to the point that this shouldn't be here in the
7 first place, that that's my -- I do want to get back to
8 the numbers, and so because Judge Moore asked --

9 JUDGE PROST: Well, before you do that, just a
10 quick question, because you mentioned in passing and you
11 moved over it, and you made the statement -- I think I'm
12 accurately stating it -- that we had no idea who these
13 people were, the people that we identified as --

14 MR. DOLIN: No, we don't. I'm sure the Committee
15 does. We don't have any idea.

16 JUDGE PROST: Yes, yes, excuse me.

17 And did we not, in our order, when we identified
18 Dr. [REDACTED], give you a way, suggest that you feel free
19 to contact him if you had any questions about anything,
20 and did you take advantage of that? If you had a
21 concern that you don't know either his qualifications or
22 the qualifications of the doctors that were being
23 proposed, did you take advantage of going and asking
24 him?

25 MR. DOLIN: No, because one of the -- because we

1 would also -- we would not ever learn as to on what
2 basis was he selected. So, no, we don't know -- no, we
3 did not contact Dr. [REDACTED].

4 CHIEF JUDGE MOORE: Did you do any other research
5 at all on your own to ascertain the credentials of the
6 doctors whose names you were given as far back as April
7 7th?

8 MR. DOLIN: I have looked at their website
9 profiles.

10 CHIEF JUDGE MOORE: And did that cause you to
11 have reason to be concerned about their credentials?

12 MR. DOLIN: It didn't suggest to me that they are
13 either -- you know, that they -- they have their
14 diplomas, they have done their residency, they have
15 their licenses. That's all I know.

16 JUDGE PROST: Did you ask or inquire of
17 Dr. Rothstein if he had any information? He's a
18 renowned specialist that you've identified. Would he
19 be -- wouldn't he be an appropriate person to inquire in
20 terms of the credentials of these other people --

21 MR. DOLIN: No.

22 JUDGE PROST: -- if you know and trust him?

23 MR. DOLIN: No.

24 JUDGE PROST: He wouldn't be?

25 MR. DOLIN: No. We would not ask Dr. Rothstein

1 of his opinion of some other doctor in a different
2 state.

3 CHIEF JUDGE MOORE: Okay. Just to be clear,
4 Judge Prost said you know and trust him. I just want to
5 make it clear for you. For your purposes, for the
6 record --

7 MR. DOLIN: I don't.

8 CHIEF JUDGE MOORE: Yes, that's where I was
9 going. You didn't -- you didn't choose Dr. Rothstein,
10 correct?

11 MR. DOLIN: I did not. As with every American
12 who seeks medical care, generally in this country we
13 pick our own providers, and Dr. Newman picked this
14 provider.

15 CHIEF JUDGE MOORE: Her name is Judge Newman.

16 MR. DOLIN: She is actually a doctor as well.
17 She is a Ph.D.

18 CHIEF JUDGE MOORE: To your knowledge, did she
19 have a prior relationship with Dr. Rothstein before this
20 test?

21 MR. DOLIN: She knows -- she has known
22 Dr. Rothstein for some time.

23 CHIEF JUDGE MOORE: Personally or professionally?

24 MR. DOLIN: Both.

25 CHIEF JUDGE MOORE: Does that raise any concerns

1 with you about whether or not he's rendering an
2 independent judgment?

3 MR. DOLIN: It does not. He rendered this
4 judgment as -- again, in his capacity as a professor of
5 neurology. He put it on his letterhead. His license is
6 on the line --

7 CHIEF JUDGE MOORE: But he has both a personal
8 and a professional relationship with her.

9 MR. DOLIN: But that is not surprising. I mean,
10 people often have both a personal and professional -- I
11 to this day have a professional relationship -- personal
12 relationship with my pediatrician. That is not
13 surprising.

14 CHIEF JUDGE MOORE: Are you still seeing the
15 pediatrician? That was a joke, just trying to insert
16 some levity.

17 MR. DOLIN: Sometimes. I'll give you an answer.
18 Sometimes.

19 CHIEF JUDGE MOORE: Okay.

20 MR. DOLIN: Although not recently because she
21 retired.

22 CHIEF JUDGE MOORE: I really want to give you a
23 chance, and I know that it says three minutes left, but
24 I will extend the time because on several occasions you
25 sought to try to move to something that you wanted to

1 talk about, and we kept you on the topics that we wanted
2 to ask questions about.

3 So I feel like if there's something you wanted to
4 move to, I want to give you the chance to --

5 MR. DOLIN: No, I am here to answer the
6 Committee's questions, but I guess two points, and I'll
7 try to make them quick. One of the main concerns, I
8 suppose, of this Committee throughout was Judge Newman's
9 alleged delays in production of the opinions, including
10 that compared to an average time for -- for an average
11 judge of this Court and her, the difference between
12 those average times is 141 days. If you do the math,
13 between 199 that it takes Judge Newman and the 58 that
14 it takes an average judge --

15 CHIEF JUDGE MOORE: Fifty-three.

16 MR. DOLIN: -- 53, so it works out to be 141
17 days. In a recent paper by Dr. Katznelson, he
18 calculates that the average difference between a
19 unanimous opinion and an opinion with a dissent is 143
20 days. So a unanimous opinion issues 143 days earlier,
21 on average, than an opinion with a dissent or a
22 concurrent opinion. That seems to track pretty well
23 with Judge Newman's delays given the fact that she
24 dissents in more than half of the cases.

25 So her dissents -- her delays are not

1 extraordinary, but even more important -- and that's
2 leaving aside the Dr. Katznelson paper -- this is based
3 on the Court's own data. Judge Newman's delays between
4 2020 and 2021, where there was apparently no suspicion
5 of any disability, and 2021 to 2023, have been reduced.
6 She's now --

7 CHIEF JUDGE MOORE: Counsel -- Counsel, her
8 sittings were reduced. She sat 65 cases through the
9 second period where the average judge sat 128. She sat
10 closer to the normal level of everyone else in the
11 earlier period. So the explanation, with all due
12 respect, to why she might have been able to get the same
13 number of opinions out quicker is because she sat on,
14 like, half the cases than she had the previous time
15 period compared to how --

16 MR. DOLIN: Of course, Judge Moore, but that was
17 not her choice. You -- it's hard -- it's hard for me to
18 understand how --

19 CHIEF JUDGE MOORE: You say that was not her
20 choice? None of the time period that we measured, just
21 to be clear, was any period of time in which she was
22 prevented from sitting by any of us.

23 MR. DOLIN: My understanding, based on my time in
24 clerking on the Court and my conversations with Judge
25 Newman, is that judges don't just pick their cases, that

1 the assignment -- and also reviewing the clerical
2 procedure -- the assignment is done by the Chief Judge
3 together working with the Office of the Clerk. Maybe
4 I'm wrong.

5 CHIEF JUDGE MOORE: Completely false.

6 MR. DOLIN: So...

7 CHIEF JUDGE MOORE: The Chief Judge has no input
8 whatsoever --

9 MR. DOLIN: Not assignment, but assignment to the
10 panels, assignment to the panels, for how many --

11 CHIEF JUDGE MOORE: That's completely false. The
12 Chief Judge has no input whatsoever. Every judge does
13 their own selection.

14 MR. DOLIN: Fair enough. I apologize for that
15 misunderstanding.

16 And the second point that --

17 CHIEF JUDGE MOORE: And just to be clear, the
18 assignment of cases is random in the event that somehow
19 this transcript didn't make that clear. No judge
20 chooses their individual cases --

21 MR. DOLIN: Of course.

22 CHIEF JUDGE MOORE: -- and the assignment of
23 cases to each panel is random, but the judge's choice to
24 sit or not sit has always been the judge's choice
25 prior -- during these time periods that were measured.

1 MR. DOLIN: Well, fair enough, and then I
2 apologize for my misunderstanding and my misreading of
3 the clerical procedures.

4 I guess -- I know I'm out of time, but I did want
5 to touch on the potential sanctions. As we indicated
6 in --

7 JUDGE PROST: I'm sorry?

8 MR. DOLIN: Potential sanctions.

9 JUDGE PROST: Thank you.

10 MR. DOLIN: As we indicated in our letter, not
11 only is the requirement that Judge Newman sit for
12 medical exam unprecedented, has never been done, I know
13 this Committee cited the Adams case. Judge Adams never
14 actually did sit for the medical exam and had no
15 sanctions imposed for it.

16 JUDGE TARANTO: I'm sorry, but there was an order
17 upheld by the Judicial Conference Committee that
18 required him to do so. Then on remand he -- basically
19 he reformed his behavior, and the Judicial Council,
20 after a certain waiting period, decided that the
21 proceeding didn't need to go forward. So there has been
22 an affirmed order compelling in that case a psychiatric,
23 I think, examination, correct?

24 MR. DOLIN: Which he declined to do and received
25 no sanction for it. Even on remand, he declined to sit

1 for -- because on remand, the judicial investigating --
2 the Special Committee requested that he sit for the exam
3 again. He declined to do it again. The Special
4 Investigative Committee recommended a six-month
5 suspension, which the Judicial Council of the Sixth
6 Circuit refused to endorse.

7 UNIDENTIFIED: Um-hum.

8 MR. DOLIN: So the requirement -- so Judge Newman
9 would be the first Judge in the history of this country
10 to sit for a forced medical examination, okay?

11 But on the sanctions, to get back to the six
12 months, one, of course, our position is no sanctions are
13 warranted because we do not believe that Judge Newman
14 either refused to cooperate or that, if she did, that
15 such refusal was without a good cause, but to the extent
16 that this Committee or this Judicial Council believes
17 that a sanction is warranted, we would note that Judge
18 Newman has already been suspended from sitting on cases
19 for six months.

20 My understanding is that the September calendar
21 is out, so it would be April, May, June, July, August,
22 September -- six months. If it takes some time for this
23 Committee to issue its report, then, of course, we will
24 have 21 days to review it and file our appeal to the
25 Judicial Council, et cetera, et cetera. That gets us

1 probably into the October calendar. So at least on that
2 point, the sanction imposed, even taken into Judge
3 Adams' precedent, they suggested six months, and
4 certainly no more is appropriate here.

5 I'm happy to answer any other questions, but I do
6 have one question for the Committee if it will permit
7 me, and this goes back to, Judge Moore, at the very
8 beginning you said this matter is confidential, and I
9 said I understand, but I do want to go back to that.

10 We would like some guidance from the Committee as
11 to what can -- obviously we understand that no witness
12 names or witness statements can be discussed, I
13 understand that, and we have tried to keep that -- you
14 know, to keep that within that order, but we would like
15 to have some guidance as to which part of, beyond the
16 fact that this hearing has occurred, can be discussed.

17 CHIEF JUDGE MOORE: At this point, nothing. You
18 can submit a 23(b)(7) request to have the transcript
19 made public. You and I can work collectively on making
20 certain it's redacted. For example, quite a bit of
21 Judge Newman's personal medical information was
22 discussed, and I'm not 100 percent positive what about
23 that you would like to have redacted or not have
24 redacted. I don't remember if witness names were
25 discussed at all, but in any event, you know, I think

1 that probably we should wait and see the transcript and
2 then collectively work together to ensure that what is
3 released is something that we're both comfortable with.
4 Does that sound reasonable?

5 MR. DOLIN: That sounds reasonable. I'm
6 certainly happy to put in a formal 23(b)(7) request. I
7 think I've made it in my letter -- in my last letter to
8 the Committee, as well as here orally --

9 CHIEF JUDGE MOORE: If you want me to, I will
10 just assume this oral request is a 23(b)(7) request --

11 MR. DOLIN: Right.

12 CHIEF JUDGE MOORE: -- to have the transcript
13 made public --

14 MR. DOLIN: After --

15 CHIEF JUDGE MOORE: -- and if it's okay with
16 you --

17 MR. DOLIN: -- right, correct.

18 CHIEF JUDGE MOORE: -- I would like to review the
19 transcript first to ensure that nothing about it
20 contains information that should be otherwise kept
21 completely confidential.

22 MR. DOLIN: Of course, and vice versa.

23 And then, with that, I guess I'll close with
24 just, you know, again, reiterating our request that our
25 letter brief, which, of course, the Committee can, you

1 know, edit for -- I don't think that there's any witness
2 names there, but the letter brief as well as
3 everything -- all the submissions up until now be
4 released pursuant to 23(b)(7), and we have made those
5 requests in the submissions themselves.

6 CHIEF JUDGE MOORE: Anything further?

7 Okay. Thank you, Counsel. This case is taken
8 under submission.

9 (Whereupon, at 2:51 p.m. the hearing was
10 adjourned.)

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CERTIFICATE OF REPORTER

I, Susanne Bergling, do hereby certify that the foregoing proceedings were recorded by me via stenotype and reduced to typewriting under my supervision; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

s/Susanne Bergling
SUSANNE BERGLING, RMR-CRR-CLR