UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JUDICIAL WATCH, INC.,	)	
	)	
Plaintiff,	)	Civil Action
	)	No. 13-163
v.	)	
	)	Monday, July 18, 2016
UNITED STATES DEPARTMENT OF STATE,	)	10:00 a.m.
	)	
	)	Washington, D.C.
Defendant.	)	

TRANSCRIPT OF MOTION HEARING PROCEEDINGS
BEFORE THE HONORABLE EMMET G. SULLIVAN,
UNITED STATES DISTRICT COURT JUDGE

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

MORNING SESSION, JULY 18, 2016

(10:08 a.m.)

THE COURTROOM CLERK: Your Honor, this is Civil Action 13-1363, *Judicial Watch, Inc. versus the Department of State*. Will parties please come forward to the lectern and introduce yourselves for the record.

MR. BEKESHA: Good morning, Your Honor. Michael Bekesha on behalf of Judicial Watch. Along with me at counsel table is James Peterson, Ramona Cotca and Tom Fitton.

THE COURT: All right, Counsel. Good morning.

MR. BEKESHA: Thank you.

MS. WOLVERTON: Good morning, Your Honor. Caroline Wolverton with the Department of Justice, appearing on behalf of the defendant, the United States Department of State. And with me are, from the Department of State, Marcy Berman, Steven Myers. And with us from the Department of State is Alison Welcher.

THE COURT: All right, Counsel. Good morning. Good morning.

MR. KENDALL: Good morning, Your Honor.

THE COURT: Good morning, Counsel.

MR. KENDALL: David Kendall, with my colleagues, Katherine Turner and Amy Saharia, from Williams & Connolly, here for nonparty, Hillary Rodham Clinton.

THE COURT: All right. Good morning to everyone.

All right. Let me -- I think it's always helpful to give a little backdrop, background, about how we got to this point and then I'll hear some argument. I'll have some questions, and counsel shouldn't read anything into the questions that I ask. I tend to ask a lot of questions, only because I'm trying to reach the right decision for the right reasons. So don't read anything into the questions I ask, because you're probably wrong if you think you know what the answer's going to be.

But we are here this morning on Judicial Watch's motion for additional discovery. It's ECF Number 97. On February the 23rd, the Court granted the plaintiff's motion for discovery under Rule 56(d). The Court was persuaded by the plaintiff that questions surrounding the creation, purpose and use of the clintonemail.com server should be explored through limited discovery before the Court could decide, as a matter of law, the ultimate issue, whether the government has conducted an adequate search in response to Judicial Watch's FOIA request. That's all set forth -- I'm not going to go over that opinion -- in the order. I stand by it. It's docket 59.

The critical question explored during discovery was whether or not Mrs. Clinton or the State Department sought to deliberately thwart FOIA through the creation and use of Mrs. Clinton's private server. The full procedural history of the case is set forth in the Court's memorandum and order granting limited discovery, and that's not an issue before the

Court today.

During the following eight weeks, from early May of this year to early June, six individuals were deposed, and the State Department answered interrogatories and voluntarily produced documents. Among those deposed was Ms. Karin Lang, director of the executive secretary staff at the department, who testified on behalf of the State Department as a 30(b)(6) deponent. The other officials deposed include Stephen D. Mull, the executive secretary of the State Department from June 2009 to October 2012; Lewis A. Lukens, the executive director of the Executive Secretariat from 2008 to 2011; Patrick F. Kennedy, Under Secretary of Management since 2007, and the Secretary of State's principal advisor on management issues, including technology and information services; Cheryl D. Mills, Mrs. Clinton's chief of staff throughout her four years as Secretary of State; Huma Abedin, Mrs. Clinton's deputy chief of staff and a senior advisor to Mrs. Clinton throughout her four years as Secretary of State, and who also had an e-mail account on clintonemail.com; and Bryan Pagliano, the State Department's Schedule C employee who has been reported to have serviced and maintained the server that hosted the, quote, clintonemail.com, end quote, system during Mrs. Clinton's tenure as Secretary of State. Mr. Pagliano's testimony was extremely limited since he did -- and he certainly had the right to do that -- invoke the Fifth Amendment.

Now, the plaintiff seeks permission to take three

additional depositions including that of Mrs. Clinton, Mr. Clarence Finney and Mr. John Bentel, and I'll separate out the individuals.

And as the public knows -- and I've written extensively about this. And I know Mr. Kendall's present. I wrote extensively about this in the *Steven's* case, in which your firm was directly involved, and issued at least three opinions about the public's right to know the whistleblower complaint, the Schuelke report, and then a couple of other opinions.

The Court takes extremely seriously the public's right to know about the details of why Mrs. Clinton used a private server for official government business. Indeed, FOIA was designed by Congress to, "pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." And that's all set forth in D.C. Circuit precedent, especially *Morley v. CIA*, 501 F.3rd 1108.

As set forth by the Supreme Court, FOIA serves as, "The citizen's right to be informed about what the government is up to," citing the Supreme Court authority in *U.S. Department of Justice versus Reporters Community For Freedom of the Press*, 489 U.S. 749.

I agree with the FBI director, Director Comey, that the American people deserve as many details as possible in the case of intense public interest. And in that regard, I've read his statement on the Clinton investigation, and I totally concur with

him on that point.

The resolution of this case, in a fair and appropriate manner, is critical to the principles of transparency in government that FOIA espouses. I'll give a brief overview of the parties' argument. I've read everything more than once. I'll give a brief overview of the parties' arguments and then invite argument from counsel. And I'll ask that you be to the point, because I've read everything, I understand your arguments, but I want to give everyone a chance to highlight their principal arguments and concerns.

Judicial Watch argues that deposing Mrs. Clinton is necessary to explore the following issues: 1, the purpose for the clintonemail.com system; 2, why the system was used even though at times it interfered with her job; 3, Mrs. Clinton's claim over the records on the clintonemail.com system; 4, Mrs. Clinton's inventorying of records upon the completion of her tenure as secretary; 5, why clintonemail.com was not archival; and 6, details about Mr. Pagliano's role in creating and operating clintonemail.com. And that's all set forth in the plaintiff's memorandum and supplemental memorandum.

Both Mrs. Clinton's private attorneys and the State Department oppose Judicial Watch's request to depose Mrs. Clinton. Mrs. Clinton's attorneys argue that the six topic areas identified by Judicial Watch have either already been sufficiently answered or, indeed, are irrelevant to the discovery

that was permitted in this case. Mrs. Clinton also emphasizes precedent requiring the presence of extraordinary circumstances before current or former governmental officials be ordered to sit for a deposition; the apex line of cases.

And Judicial Watch recognizes the significance of asking a former agency head and presumptive nominee for president to sit for a deposition, so I don't think there's any disagreement there. But Judicial Watch argues that based on the record developed thus far, her testimony is crucial to understanding how and why the system was created and operated.

The State Department argues that the record developed thus far by plaintiff during discovery includes no evidence of an intent to thwart FOIA, by Mrs. Clinton or the State Department or anyone else employed by the State Department, and that discovery has refuted plaintiff's theory of an intent to thwart FOIA, making additional discovery either futile or moot.

In the alternative, the State Department urges the Court to stay its decision on additional discovery until the search of the additional 3,000 documents found by the FBI during its investigation is complete. And actually, I think it's probably an appropriate point to make an inquiry of the State Department before I give the plaintiff an opportunity to be heard, and at inquiry we'll deal with that last topic that the Court just focused on, the additional documents.

So you've reached out --

Good morning, Counsel. You've reached out to the FBI for the additional documents?

MS. WOLVERTON: Yes, Your Honor.

THE COURT: Do you have them yet?

MS. WOLVERTON: Not yet, Your Honor. The FBI is in the process of compiling the retrieved materials and will begin transferring those retrieved materials to the State Department this Friday. And as soon as the State Department receives them, it will begin its process for searching the retrieved materials, using the same search terms and date range restrictions that the parties agreed to previously, to search the retrieved materials coming from the FBI for anything that's responsive to Judicial Watch's FOIA request.

THE COURT: Let me stop you for a second. I'm not being critical of them, but I just thought about -- maybe I am being critical. Why does the FBI need so much time to get the documents to you?

Well, first of all, when was the request made of the FBI?

MS. WOLVERTON: The State Department made the request of the FBI July 8th, and the FBI responded -- I believe it was July 12th. Those exchange of letters are in the papers attached to the State Department's briefing. And the FBI and State Department are in close communication. They're focusing on the technical logistics of transferring the materials. The idea is to transfer them electronically and that will facilitate

expeditious searching.

THE COURT: And then you need more time to figure that out?

MS. WOLVERTON: Your Honor, I understand that they will be ready by Friday. It's possible it could happen sooner, but they are moving as quickly as possible.

THE COURT: All right. Well, it'd seem to me that they -- especially the FBI -- could figure out a way to transmit those documents electronically, immediately upon request, if they had no objections. I mean, you just push a button. I mean, I know that. This computer's as illiterate as I am, but -- all right.

So you'll get them this Friday?

MS. WOLVERTON: Yes, possibly sooner.

THE COURT: And so the next question, then, you know what that's going to be: How much time will it take the State Department to go through those documents?

MS. WOLVERTON: Sure, sure. And I do want to make clear that the process of transferring the materials is to begin this Friday. It's going to be on a rolling basis. It's not all going to come at once. And, again, this is because --

THE COURT: Was there a reason given to that, a rolling basis?

MS. WOLVERTON: It, again, has to do with the kind of technical aspects of the transferring, making sure that it all

happens correctly. And the State Department is committed to searching as soon as it retrieves the materials and, again --

THE COURT: I mean, it just seems like it's foot dragging. And I am being critical now. If the FBI -- and I have the highest regard for Director Comey.

If the FBI has told the American public that there are 3,000 documents, I think -- there's not? You're shaking your head. I mean, I --

MS. WOLVERTON: Several thousand.

THE COURT: Several thousand, oh. Do you know the number?

MS. WOLVERTON: No.

THE COURT: I thought it was a finite number that had been identified?

MS. WOLVERTON: Um, Director Comey did make reference to, not a specific number, but I think tens of thousands of work-related e-mails.

THE COURT: Oh, tens of thousands more documents.

Excuse me one second.

(Brief pause in proceedings.)

THE COURT: All right. Maybe I should not be critical. I think the best evidence is several thousand documents, so --

MS. WOLVERTON: I believe that's right, Your Honor.

THE COURT: All right. Okay. So I take back my criticism of Mr. Comey. All right.

And so it'll commence on Friday and continue for how long?

MS. WOLVERTON: On a rolling basis, as expeditiously as possible. It all is happening very quickly, and it's relatively new. The FBI investigation just concluded a little less than two weeks ago, and so it's hard -- I'm not really in a position to provide any greater specifics, but I can assure the Court that it is moving with all due speed.

THE COURT: Okay. And I'm looking at Mr. Comey's statement in which he did say that the FBI also discovered several thousand work-related e-mails that were not in the group of 30,000 that were returned by Secretary Clinton.

Which, again, I think raises a legitimate question. Since they've discovered several thousand, I mean, they know what exists, it would seem to me. They're not still searching, so I don't understand the need for all this time to have a rolling production of something you already have.

MS. WOLVERTON: Your Honor, it has to do with the format within the -- which the materials are organized, and making sure that the way that they are transferred is in a format that the State Department can use its existing systems to access. And there is direct and continuous communication with --

THE COURT: Can you explain that in layperson's terms? I mean, the format, what do you mean?

MS. WOLVERTON: Your Honor, I do have to beg the Court's indulgence that I don't have the technological expertise to describe it in detail. And, again, it is fluid, but the State

Department does want to receive the materials in an electronic format, and a format that it can work with readily, whether that's in PDF form or in another kind of form.

THE COURT: All right. So then, how long will it take the State Department to go through these documents? And as I understand it from pleadings, the State Department has no objections releasing the business e-mails to the public; is that correct?

MS. WOLVERTON: Your Honor, I believe that that is the intent. And I do apologize that I don't have more specifics. It's just, as I said, you know, everything is happening sort of very quickly and the information is new. We would be happy to provide the Court with a status report, perhaps, in seven or ten business days, and we anticipate that by that time, there hopefully will be more information along these lines.

THE COURT: Okay. Can you make an informed prediction about how long the search is going to take by the State Department?

MS. WOLVERTON: I wish that I could --

THE COURT: I'm sorry, but I have to keep asking these questions.

MS. WOLVERTON: -- respond, but unfortunately, we don't have that information at this time.

THE COURT: And that's because you don't know the scope of what you're going to receive? Let's assume it's 10,000

documents. Hypothetically, how long would it take the State Department to go through 10,000 documents? That's just a hypothetical. That's not because -- go ahead.

MS. WOLVERTON: Well, Your Honor, I should clarify, though, that the intent is not for the State Department to wait until it has, you know, all of the materials and conduct a full records assessment of all of those. As soon as it receives materials, it will run the searches for Judicial Watch's FOIA request and identify any documents that are responsive, and then at that point, make a records assessment to see, you know, if there is anything more to be released. So it's not that, you know, it's going to take a long time. Once the -- the anticipation is it won't take a long time once they get the documents.

THE COURT: All right. Well, that's -- that's relative, though. What's a long time?

MS. WOLVERTON: Well, when the State Department received the 55,000, it did take some months for the State Department to conduct a records assessment of all of those and put them up on the State Department's Website, so that -- that's the longer time that I was referencing, and there shouldn't be anything like that with respect to the plaintiff's FOIA requests, because that's going to happen first, before there's the overall records assessment of all of the materials received from the FBI.

THE COURT: All right. So you're assuming that it's not

55,000 documents? It's less than an additional 55,000 documents?

MS. WOLVERTON: The best information we have, as Your Honor recognized, is several thousand.

THE COURT: Several thousand, okay.

I note -- and, again, I'm not being critical.

I note that the Department of State has asked for an extension of time in related cases because of a lack of resources. I assume that this case will be given some preferential treatment, I assume?

MS. WOLVERTON: Yes, it will be. I had to confirm with my client, and the confirmation is yes, it will be given priority.

THE COURT: All right. Is that the State Department lawyer at the end of the table; is that right? All right. We'll talk about what that means.

All right. So you don't have the number now. It will be given preferential treatment. I accept that.

The question still becomes: How long will that take?

MS. WOLVERTON: Again, Your Honor, we will be happy to provide the Court with a status report and get as much information as we can to answer that question, and we would suggest seven or ten business days, we could provide that.

THE COURT: All right. Thank you very much, Counsel.

MS. WOLVERTON: Thank you.

THE COURT: I want to hear from Judicial Watch with respect to its request for additional discovery. And, you know,

of course, the major question is: Why is any additional discovery necessary? And in answering that -- I mean, Judicial Watch has taken the position in the past that the ultimate remedy it sought, and was correct, was the State Department's searching of the server, which it can't do. The FBI has searched the server, and I have -- I have no doubt that a subsequent search of the server by any other agency of the government would be useless. The FBI -- I accept Mr. Comey's representations that he made under oath and to the public that the FBI did an exhaustive search utilizing numerous avenues to search the server or servers. I don't think any additional search of the server by any other agency of the federal government would serve any purpose at all. In that regard, the FBI has completed.

And just to echo what I just said, I'm confident -- it's not based upon any of the discussions with anyone, I haven't talked to anyone. But I'm confident, based upon public statements made by Mr. Comey, that the FBI's search was far more extensive forensically -- forensically, than anything the Department of State could have accomplished.

In view of the inspector -- let me back up for a second.

When the Court issued its memorandum opinion and order, what was not existing at that time was the report of the State Department Inspector General. What was not present at that time were the conclusions of the FBI and recommendations to the Department of Justice. So all that information is public, and

Mr. Comey has testified before the Hill about additional -- about his recommendations. I assume he was under oath at the time.

So why do you need more discovery?

MR. BEKESHA: Sure. Thank you, Your Honor.

I think there were two questions there: One was talking about potential remedy and relief that Judicial Watch is seeking and how that plays into where we are; and then the second part on being why additional evidence is necessary.

Again, just what we think the FBI turning over records, why that doesn't moot out this case, as Mrs. Clinton's attorney suggested it did --

THE COURT: Well, a few months ago you told me all you wanted was the documents.

MR. BEKESHA: That's --

THE COURT: That's in the transcript, right?

MR. BEKESHA: It is, Your Honor.

THE COURT: So let me stop you for a second. So you're going to get the documents that you're entitled to, so why doesn't that end the search?

MR. BEKESHA: Sure. There are a couple of points there.

First, I did have the opportunity to go back and look at the numerous hearings, the transcripts we've had over the years, and over the past year, and last summer, in August, I talked about what the FBI had may be a subset of all of the information.

The reason I focused on the system in February was

because, at that time, we didn't know -- we assumed that the server, that system, had all the information on it. It would have had all of Mrs. Clinton and Ms. Abedin's e-mails for the four-year period on the one system.

Mr. Comey testified that some of the e-mails have -- were deleted or lost, for whatever reasons, during that four-year period, and so the FBI recovered some of the e-mails, but we don't know if it's all the e-mails.

Mr. Comey's statement said that the -- as you read before, that the several thousand work-related e-mails that were not in the group of the 30,000 that were returned by Secretary Clinton, this FOIA request is about Ms. Abedin's special government employee status. The government has said that Ms. Abedin's e-mails are at issue as well. As the Court knows, Ms. Abedin used the clintonemail.com system as well. And it's not at all clear that the FBI recovered any deleted records of Ms. Abedin from the server or if they were even looking for it.

Mr. Comey -- Director Comey testified --

THE COURT: But you have a FOIA request pending with the FBI, though, do you not?

MR. BEKESHA: We do have a FOIA request pending with the FBI. But, you know, it's also unclear -- and when we sent the FOIA request, we weren't 100 percent sure about how that would play and what the law is.

You know, it's unclear if the server's still

Mrs. Clinton's, and the FBI's supposed to return the records. If the FBI is turning over records to the State Department, the FBI may not have records anymore. And then those records are in an investigative file and how the law and what the -- how that plays out with FOIA. So the FOIA request to FBI was important for us, but it's not sure it answers all the questions.

But the other issue is it's -- we don't -- there's no evidence, whatsoever, that the FBI was going around looking for Ms. Abedin's e-mails from the clintonemail.com system. We don't know if they -- if the FBI went to other employees in the State Department, if they went to other entities, other agencies. We just don't know, and so --

THE COURT: And you'll probably never know.

MR. BEKESHA: We probably won't know, because I doubt the FBI likes to share what they did.

But that's why we don't think that this case is moot simply because the FBI is turning the records over to the State Department. We appreciate it. We're -- you know, we appreciate the fact that the State Department's willing to voluntarily turn over additional records, but this is very -- you know, we're in the same place we were with the 55,000 pages. We're in the same place we were when the State Department was conducting additional searches because they found a new archival system.

You know, in the end, they --

THE COURT: They keep it in the same place?

MR. BEKESHA: We're in the same legal posture wise. Factually, we have --

THE COURT: You've taken a lot of depositions, and I just want to give some credit to the attorneys for the individuals and also for Judicial Watch for -- my assumption is they were all conducted in a very civil manner. I didn't hear anything to the contrary.

MR. BEKESHA: They were, Your Honor.

THE COURT: And these are people with demanding schedules, and I've been -- believe me, when that -- when those -- when that type of -- when you see that type of civility, it requires us to say, "Thanks, we appreciate it." I never got a phone call, and I was dreading that, about an objection during the course of a deposition, so believe me, that means a lot.

MR. BEKESHA: All parties were able to come to agreements on schedule, any issues with objections. We submitted additional information from Ms. Mills, because there were questions, but the parties were able to come together and resolve that issue without giving Your Honor a call.

THE COURT: What you've done, though, you've taken all these depositions. You have the IG report. You have Mr. Comey's statement to the public, as well as under oath. There's not a scintilla of any evidence that this e-mail system was created in a effort to thwart FOIA.

Is that a correct statement up to this point?

MR. BEKESHA: We don't believe that is a correct statement, Your Honor.

THE COURT: What evidence do you have?

MR. BEKESHA: The evidence we have -- and a lot of evidence has been provided. The Court has the transcripts, the exhibits. You know, very briefly, I think there are six facts that, to an extent, highlight where our focus is and why we need additional information.

THE DEFENDANT: Those are six areas?

MR. BEKESHA: These are different from the six areas. They were part of the six areas, but reviewing all the papers, I tried to condense everything to something a little bit more clear, using the different parts.

THE COURT: Let's talk about the six areas first, though --

MR. BEKESHA: Okay.

THE COURT: -- and I'll give you an opportunity to focus on the six additional points.

The first area is the purpose for the clintonemail.com system. In that regard, can you point to any credibility issues, based upon Mrs. Clinton's current statements about the purpose for clintonemail? Can you?

MR. BEKESHA: The -- the specific evidence we have shows that no one was able to testify, under oath, why the system was created. Both Ms. Abedin and Ms. Mills pointed to Mrs. Clinton's

public statements. Mrs. Clinton's public statements were for convenience. She says she created the system because it was the most convenient for her.

THE COURT: Has Mrs. Clinton ever testified before any forum or in any case, under oath, that the e-mail system was set up for any reason other than convenience?

MR. BEKESHA: Um, we don't know that, Your Honor. That question was touched upon during the Benghazi select committee hearing. It wasn't -- I don't believe it was directly asked, with a direct answer. It may have been asked during the FBI interview of Mrs. Clinton.

THE COURT: Mr. Comey, indeed, testified under oath that it was his understanding that the system was set up for Mrs. Clinton's convenience, did he not?

MR. BEKESHA: He said, on their best information, yes, Your Honor.

THE COURT: Right.

MR. BEKESHA: But, again --

THE COURT: And on the FBI's best information after, what, a year-long investigation? Why isn't that sufficient?

MR. BEKESHA: They weren't asking the same questions we're asking. The FBI was focused on -- or we assume the FBI was focused on classified information, and her creation of the system, her use of the system, as it relates to classified information. And so the question wasn't about the Freedom of

Information Act, it wasn't about federal recordkeeping processes, and the interplay of the system with those statutes and with those obligations.

THE COURT: I think I probably agree with you that the focus was not on whether or not FOIA was violated, but if, indeed, Mrs. Clinton's informal meeting with the FBI convinced the FBI that the system was set up for her convenience, period, why shouldn't that just carry the day on that issue?

MR. BEKESHA: We think the facts that we've gathered during discovery show that the system really wasn't all that convenient, that the additional facts and additional evidence shows that, you know, maybe the system -- that throughout the period, you know, the State Department asked Mrs. Clinton if she wanted -- during the transition period when she started --

THE COURT: This is a second factor that you've highlighted, though, the fact that, at times, that system -- that e-mail system interfered with her job, then?

MR. BEKESHA: That's correct, but the first --

THE COURT: That's the second one. Let's deal with the first one, though.

MR. BEKESHA: Sure. The first factor is the State Department asked Mrs. Clinton if she wanted a State Department BlackBerry and a State Department e-mail address, and she said no. Mrs. Clinton, prior to her -- testimony has been that Ms. Abedin and Ms. Mills understood that Mrs. Clinton was simply

continuing her practice of using a personal e-mail account, just one e-mail account to do everything, both personal and work-related stuff.

Prior to Mrs. Clinton becoming Secretary of State, she never had FOIA obligations or federal recordkeeping obligations when she was a senator, so that changed. Her legal obligations changed. And the question is: When those legal obligations changed, why did she not recognize those obligations and then change her normal course of business because of these new legal obligations that applied when she became Secretary of State?

THE COURT: Is that a line of questioning -- is that a line of questioning that was pursued during the Benghazi investigation?

MR. BEKESHA: I don't believe it was, Your Honor. I mean, the Benghazi select committee, their focus was the Benghazi terrorists attacks. They did take -- they did have several interviews. They asked Mrs. Clinton about the e-mail use, but I don't believe that anywhere --

THE COURT: About the e-mail use and why she used that system?

MR. BEKESHA: A little bit of that, but not much.

THE COURT: Okay.

MR. BEKESHA: I mean, it wasn't the focus of their investigation. We believe that their focus, their authority, was to investigate the Benghazi terrorists attacks. They

tangentially reviewed evidence, took testimony about her use of the system, but she didn't answer the specific questions. The specific questions weren't put to her: Now that you have these new obligations as Secretary of State, obligations of FOIA and other federal recordkeeping statutes, why did you keep using that same system?

THE COURT: But she said publicly, and I believe under oath -- and I stand corrected because there's just a ton of information. But she said publicly that it was a mistake on her part. If she had to do it over again, she'd do it differently. And how many times a day do all of us say that?

MR. BEKESHA: That's correct, Your Honor.

THE COURT: I mean, when I sign my name to an order, sometimes I think, "Why did I do that?"

MR. BEKESHA: You know, that's correct, Your Honor, people make mistakes, but --

THE COURT: Right.

MR. BEKESHA: -- we would say that even, you know, to the extent it may have been a mistake at that time, and maybe she didn't understand all of her FOIA obligations when she created the system prior to her becoming secretary, once she became secretary, she was aware of her obligations, and then looking at some of the evidence and our other points, that she was reminded of her FOIA obligations or her staff was reminded of her FOIA obligations throughout her tenure, and she didn't change using

the system.

The question is: Why did she not change using the system? At one point Mr. Mull -- Ambassador Mull, the e-mail that we provided with the Court early on, before discovery, where he talks about the personal, private e-mail server being down and maybe that's why she's looking for a State Department BlackBerry. You know, the first sentence of that paragraph talks about that Mrs. Clinton made a choice to use a State Department BlackBerry and a State Department e-mail address.

Mr. Mull then reminded Ms. Abedin, her deputy chief of staff, that such e-mail would be subject to FOIA. The head of the IRM unit, Mr. Bentel, around the same hour, identified to other staff that it would be subject to FOIA. And then for some reason, Mrs. Clinton decided not to use a State Department e-mail account and a State Department BlackBerry.

And the question hasn't been answered: Why did she reverse course on her decision? Ms. Abedin said she didn't speak to Mrs. Clinton about that. Ambassador Mull didn't remember sending the e-mail. He didn't remember talking to anybody. He didn't remember that he even knew that she was using a private e-mail server, even though he wrote those words in the e-mail.

So we've tried to gather the evidence from her senior aides, from individuals at the State Department that were responsible for records management, and we haven't been able to get some of these simple questions about why she started using

the system and why she continued using the system.

THE COURT: So there are probably five or six questions that you would like to get the answers to, right?

MR. BEKESHA: We'd like to say -- we'd like to say "issue areas," because, as you know, in discovery, you ask one question and that leads to another question.

THE COURT: But you have a fairly good idea of what the follow-ups would be, depending on the answers?

MR. BEKESHA: Well, that could be, Your Honor, and that's why we suggested that a deposition of no more than three hours, because we're not on a witch hunt here. We're not taking discovery for discovery sake, but --

THE COURT: But she's not a party, Mrs. Clinton is not a party.

MR. BEKESHA: She is not a party, that's correct, Your Honor, but she has essential information. We thought we were able to -- we were going to be able to get some of this information from her chief of staff and from her deputy chief of staff.

THE COURT: Suppose you had an opportunity to ask her one question, and that question was, "Why did you set it up?" And she said, "You know, I set it up, like I've said publicly, for my convenience. And looking back -- and I don't know how many times I've said it -- it was a mistake, and I wish I could undo it, and -- but that was my -- that's the reason why I set it up."

Would that be sufficient?

MR. BEKESHA: It wouldn't be, Your Honor, because I think --

THE COURT: Why not?

MR. BEKESHA: Because there are some follow-up questions, you know, talking --

THE COURT: Like what?

MR. BEKESHA: Some of the follow-up questions like, what about in light of Mrs. Clinton's FOIA obligations, in light of federal recordkeeping obligations? We understand that it may have been her private practice, but now that her legal obligations changed, how did it change with her?

Mrs. Clinton said that there was approval. Is that informal approval? Is that formal -- or it was allowed. I'm sorry, Your Honor. So was it informally allowed? Was it official approval? Why did she think it was allowed? That really hasn't been answered. I don't believe that question's been answered under oath, why Mrs. Clinton believes that her system was allowed. That's a follow-up question about the creation and the early years of the use of the information.

THE COURT: All right. So the question's why she chose -- Mrs. Clinton chose to set up the system.

The second category, "why the system was used, even though, at times, it interfered with her job," how is that remotely relevant to the narrow scope of discovery permitted by

this Court?

MR. BEKESHA: Sure. We believe it's extremely relevant because Mrs. Clinton has stated publicly that she used the system for convenience. The evidence shows that over almost her entire tenure, there was difficulty using the system, communicating with State Department employees, receiving and sending e-mails to them. The State Department spent significant time at the IT's department trying to resolve the issues.

As I said, there are --

THE COURT: Doesn't this presume that the system always worked well? And I think we all know it didn't, did it?

MR. BEKESHA: It didn't work well, but the questions are: Why did she stick with it? Why -- at one point we have the e-mail where Mrs. Clinton said -- she said, "This isn't a good system." And then later on she said, "I don't want the personal being accessible." And the questions: What does that mean? Did she decide not to use a State Department BlackBerry, a State Department e-mail account, because she didn't want the personal accessible?

Now, you could read it one way, that she didn't want personal e-mails accessible, but the question then is, as Mrs. Clinton would know, personal e-mails are not subject to FOIA requests, so her -- even if she used the State Department system, she would not -- her personal e-mail would not be turned over to the public, and so that doesn't really seem to be a concern.

Another way you could read that e-mail is that she didn't want the personal system to be accessible. And so the question then is: What was she hiding on the system? Why was she using the system? I mean, there were -- you had Ambassador Mull, who was the executive secretary at the time; Mr. Bentel, that was the director of IRM for the seventh floor, so he was the IT person, helping -- you know, assisting the secretary with any technical issues.

And both of them reminded her staff that a State Department BlackBerry and a State Department e-mail account would be subject to FOIA, and so the question we have for Mrs. Clinton is: Because they were subject to FOIA, is that why you didn't follow through on your decision to leave the personal system that was having issues and go towards a State Department and official system? Was that the reason why?

And Ms. Mills and Ms. Abedin didn't testify about that because they didn't speak to Mrs. Clinton directly about those issues. So that's other questions that we have for Mrs. Clinton, that we don't believe the FBI has asked her. Looking at the transcript for the Benghazi select committee, they did not ask those questions of her. So these are questions that remain, and Mrs. Clinton is the only one that can answer those questions.

THE COURT: The third category you focused is on is Mrs. Clinton's claim over the records on the clintonemail.com system. And, again, why isn't that outside the scope of

discovery?

MR. BEKESHA: It's not outside of the scope of discovery, Your Honor, because what Mrs. Clinton thought about those records during her time as Secretary of State is directly related to her operation of the system and how the operation of the system also interfered or interacted with Freedom of Information Act obligations.

Mrs. Clinton's attorney, in one of his papers, said that Mrs. Clinton had a private right -- a claim of right to the server, which --

THE COURT: Well, why do I even have to get into that issue? I mean, the fact of the matter is -- and no one disputes it -- that Mrs. Clinton voluntarily returned some 55,000 pages of documents. And the Court's well aware of the recent circuit opinion and concurring opinions as well. I don't think we need to discuss that, at all.

And so I just need your best answer as to why this area is not outside of the scope of discovery?

MR. BEKESHA: It's outside of the scope of discovery because it go goes to the heart of why she used the system. If she believed that all of these e-mails during her four years conducting government business were her e-mails --

THE COURT: That gets back to question number 1, that question, that one question.

MR. BEKESHA: It does, Your Honor.

THE COURT: Just answer that one question: Why did you use this?

MR. BEKESHA: I think all of the questions do, as Your Honor even identified in the memorandum opinion. You know, the real focus is the motivation, and all of these --

THE COURT: That's number 1. Why'd you set it up? Why'd they do it?

MR. BEKESHA: Yes, Your Honor, and our argument --

THE COURT: Do you really anticipate an answer different from the public answers that Mrs. Clinton has given: She did it for convenience purposes?

MR. BEKESHA: I don't expect a different answer about that question, why the system was initially set up. I think what is important is motivation throughout her tenure. So there may have been one reason why the system was set up early --

THE COURT: Right.

MR. BEKESHA: -- but then also, factual circumstances change, legal circumstances change. And then why was a decision not to change made, and how and why was it made not to change the system throughout the four years? And I don't think Mrs. Clinton has publicly answered that question. All questions were: Why was the system created?

And so it may have been for convenience prior to she became office -- we know that the clintonemail.com domain name was set up on January 13th -- I believe it was January 13th. She

started using the e-mail account shortly thereafter. Mrs. Clinton said she didn't think -- she couldn't remember when she started. She thought it may have been March. Records that we've -- e-mails that we've received in the course of this discovery, as well as other FOIA requests, show that there were e-mails in February, as well as January, so --

THE COURT: She was Secretary of State. She just started a new job.

MR. BEKESHA: She did. She started a new job that had FOIA obligations and recordkeeping requirements, and instead of -- it appears that instead of recognizing those and using the State Department system, when the State Department asked her if she wanted an e-mail account, she said no. And why was that? And why did she continue with the system as it goes out?

You know, that also leads to, I believe, it's our fourth point -- it may be our fifth point -- but about the type of system she created. You know, Director Comey talked about that if she used a commercially available system, such as G-mail or the State Department system, it would have automatically be archiving records. The system she used, that was created, was not automatically archiving records, so the question then is: Why?

And so all of these questions -- you're right. All the questions go back to the first question or to the motivation question, but it was the motivation at the beginning, during, and

then we get to at the end of her tenure, when the Secretary of State -- when Mrs. Clinton and her staff were packing up the boxes, were deciding what records to take from the State Department, what records they were not allowed to take, and why, at that point, the 55,000 pages or -- you know, and that's an imprecise number, because we now know there were thousands of other e-mails -- why those e-mails, the 30,000 e-mails plus these other ones, were not returned, were not left at the State Department when she left.

And what's the motivation for that? Was that motivation so they would not be available to the public? These questions haven't been answered. We've tried to receive these answers from the seven witnesses, from the other evidence. We haven't received those answers, and we believe that Mrs. Clinton is the only one that can answer these questions.

And that's -- you know, she has personal -- you know, neither Mrs. Clinton's attorneys or the State Department says that she does not have personal knowledge about the questions we need answered. Neither say she's not available. The apex doctrine, Mrs. Clinton's attorneys --

THE COURT: Wait. We'll get to that in a few minutes, the apex -- I mean, you don't -- you don't dispute that she was a high-ranking former public official?

MR. BEKESHA: We don't, Your Honor.

THE COURT: Okay.

MR. BEKESHA: I mean, we recognized it.

THE COURT: You agree that the apex line of cases does control?

MR. BEKESHA: It does, Your Honor.

THE COURT: All right.

MR. BEKESHA: We do agree with that. That was one of the reasons why we provided Mr. Kendall with our motion when we filed it, because we also recognized the unusual and extraordinary circumstances of this case.

Of note for the apex doctrine is the State Department isn't arguing that. Only Mrs. Clinton's attorneys are arguing that, because she was a former agency head that -- only in the extraordinary circumstances which should be available. And the lines of cases there, looking at a more recent case by Judge Cooper in an FDIC matter of not allowing --

THE COURT: Is that the great former official's case? I believe it is.

MR. BEKESHA: I think it -- yeah, Your Honor. It was with --

THE COURT: It's a 2013 opinion.

MR. BEKESHA: It was with Chairman Bair and whether or not she should sit to testify. That was the *FDIC vs. Galán-Alvarez*.

THE COURT: Right.

MR. BEKESHA: In that case the focus was on firsthand knowledge, personal knowledge and the only place to get. And we

believe that Mrs. Clinton, here, is the only one that has this information. You know, the -- her attorneys also cited to the *Cheney* case. And one of the things that the *Cheney* court talked about was that a party didn't seek to depose the chief of staff before they sought to seek Vice President Cheney's deposition.

Here we asked Ms. Mills the questions. We've asked everybody that we believe would have the relevant information. They didn't answer those questions. They could not answer those questions, so that's why we believe this is the exception to the apex doctrine.

THE COURT: All right. The two other categories -- you've touched on them -- Mrs. Clinton's inventorying of the records upon the completion of her tenure as secretary. And, again, I question why that's not outside of the scope of discovery or, indeed, cumulative. And, you know, I just raise the question: What information do you think Mrs. Clinton would have on that point?

MR. BEKESHA: It goes back to the motivation.

THE COURT: Goes back to question 1?

MR. BEKESHA: It goes back to the continuation of question 1 throughout her term, this being at the end of her term. Why were these records that were agency records of her conducting official government business, why were those not left at the State Department? Her staff that was sitting -- that sat in the meeting with Mr. Finney, Ms. Abedin and her other aides,

you know, they all knew her e-mail address. They all knew that she was conducting government business on this e-mail address. They knew that government business, federal records, existed. Why were they not put in the box that needed to stay? Why were questions not raised? Why was the question not asked of Mr. Finney: Do we need to put the e-mails from the clintonemail.com system in the box that's staying, or can we take those?

You know, there are questions on what was the motivation behind not inventorying those records, why not leaving them behind? This was four years --

THE COURT: Hasn't Mrs. Clinton stated publicly that she thought her e-mails were caught up in the system by sending e-mails to state.gov?

MR. BEKESHA: She did say that, Your Honor. The State Department says -- I mean, they said that wasn't official policy. The -- Ms. Lang, the 30(b)(6) deponent, said it doesn't really mean anything, because you would have to go and search 70,000 e-mail accounts of all the State Department employees. So it wasn't a good way, or probably a proper way, to preserve her e-mails.

Also, we know from evidence already submitted to this Court, that Mrs. Clinton would e-mail with individuals not at their state.gov e-mail account; in particular, in this case, Ms. Abedin. And so e-mails that were sent from Mrs. Clinton's

e-mail address on clintonemail.com --

THE COURT: Ms. Abedin was a very -- she was not a reluctant witness during her deposition.

MR. BEKESHA: She was not. She answered every question to the best of her ability, and some questions she wasn't able to answer.

You know, Ms. Mills also wasn't a reluctant witness. She answered the questions that she believed she was required to answer, and because of those two testimonies, some questions remain.

These important junctures that we've highlighted, the beginning of the term, when she was having problems, when they were inventorying records, neither of them spoke with Mrs. Clinton about her motivations and what she was thinking.

THE COURT: Motivation -- let's focus on that for a second, motivation at the time that Mrs. Clinton left the Department of State. Why isn't that moot, in view of the fact that she's returned 55,000 documents? The personal e-mails may have been deleted. The FBI has attempted to recover. The FBI can't. They tried a number of ways to do it. If the FBI can't -- I doubt if anyone else can -- forensically recover, so why isn't the motivation issue a moot one, since she's voluntarily relinquished all those documents?

MR. BEKESHA: She's provided -- as we've said before, she self-selected documents to return. The FBI has now found some

documents. We don't know the quantity. We don't know where they came from. We don't know how the FBI gathered them.

But when I was here in February, I talked about the system, and I talked about the system because we didn't believe e-mails were deleted or lost. We thought if we had -- if the State Department took possession of the system or took possession of everything on the system, that would be the whole universe of records, both for Mrs. Clinton and for Ms. Abedin. We now know that -- we don't know. We don't know if Ms. Abedin's e-mails were searched for, so we don't know what records of Ms. Abedin's were pulled from the server and how many thousands of pages those are. Those records would be potentially responsive to this request.

We also don't know if the FBI was able to recover all of the e-mails from the system conducting official government business of Mrs. Clinton that weren't turned over. And so if this Court were to find that the search wasn't adequate, we believe -- as we've said before, and based on the new information from the FBI -- that the State Department may have to go other places to ensure that it has a complete record.

THE COURT: Where?

MR. BEKESHA: Other State Department employees, other State Department employees that weren't identified that maybe have responsive records in this case. That's a narrow universe. They may expand it. Ms. Abedin, Mrs. Clinton, may have e-mailed

another State Department employee. The State Department hasn't reviewed that employee's e-mail account. The FBI may have not reviewed that employee's e-mail account during a search for, however it would be done, clintonemail.com with the asterisks, and so everything with that comes up, and then looking at those records.

So because this is the extraordinary case, because this is the case where the adequate search may have not been conducted, and we're still trying to gather evidence so that the Court can make that determination, I just want to say that if the Court were to determine that an adequate search was not made, we think there may be additional remedies, additional relief because of the extraordinary circumstances.

THE COURT: The last area -- actually, the fifth area was -- and I think you touched upon -- is why clintonemail.com was not -- was non-archival. I mean, that assumes that Mrs. Clinton or any other layperson would know what that means, first of all.

MR. BEKESHA: It would, Your Honor. But she may be able to answer the questions about why she chose to use that system instead of G-mail, why she decided to leave the AT&T BlackBerry, why she didn't go use a Verizon account, why she didn't use State Department. So you're right. It may not be the technical, but she may have been presented options. We don't know. We -- you know, I can stand here and speculate, and I can raise issues such

as, did the technical person who was creating the system tell her, "We can set up a G-mail account for you and that has archiving? You could use the State Department e-mail, that has archiving, or we could create a brand-new system, store the server in the basement of your house and that won't have archiving."

THE COURT: And that gets into the six categories about the details about Mr. Pagliano's role in creating and operating clintonemail.com.

MR. BEKESHA: That's correct, Your Honor.

And so, you know, those questions can be posed to her, and we believe she can answer those. You're right, she may not know all the technical details, but we don't know what was presented, if you think it was a menu of options of the different e-mail addresses, the different systems she could have used and she picked one from the menu, why did she pick that one menu?

So the six issue areas all focus and go back to motivation: The motivation; why the system was created; why it was operated; how it was; and the purpose of it; as well as, then, its impact on FOIA and federal recordkeeping statutes.

And that's all within the scope of discovery. It's the -- you know, it's really the three issues or the four issues: The creation; the operation; the purpose; and its impact on FOIA.

And we believe that the motivation falls in each one, and each of these issue areas fall directly within the scope of

discovery. We've tried to get these answers elsewhere. We haven't, that's why her testimony is necessary.

THE COURT: So there could be six questions, then, that are highly relevant?

MR. BEKESHA: With some follow-up, yes, Your Honor. I mean, I think it's always tough to say there's six questions until you -- you know, you see the answers, and then there's going to be some follow up. So we do believe it's limited. It's why we only asked for three hours. We don't believe it's an inquiry that can go on all day. We want to be respectful of Mrs. Clinton's time, you know, the Court's time and everything. We just think there's some issue areas that need additional information.

THE COURT: Now, the D.C. Circuit has said on at least one occasion, if not -- and actually on more than one occasion, that an agency is not required to search every record system to comply with FOIA, and that's the *Merrell* line of cases going back to at least 1986.

A reasonable exhaustive search of the system under their control, why wouldn't that suffice?

MR. BEKESHA: Because of the extraordinary circumstances of this case, Your Honor. In the normal case, in the normal FOIA case, that's the appropriate standard. Judicial Watch doesn't disagree with that. It's what we argue or, in most instances, we don't argue about the scope of the search because of those lines

of cases, but this is different.

This is the first time, to our knowledge, that a head of an agency created a separate system of records to use for a four-year period of time. Not only did she use the system, but one of her closest advisors, the deputy chief of staff, used the system. These are the exceptional circumstances.

As Mrs. Clinton's attorney and the State Department has said several times in their papers, you know, discovery in FOIA is rare, but there's an a exception, and this is the exception. It's the exception for why discovery was allowed. It's the exception why, if the Court finds -- could find that the search was not adequate. It's why additional remedies and relief may be necessary. It's because of how unusual this case is.

THE COURT: Let me ask you this, Counsel. I want to -- I'll give you a few minutes to talk about the apex line of cases. We're all familiar with that. And you don't dispute that, the apex line of cases, including Judge Cooper's opinion, are persuasive.

In that regard, though, considering Mrs. Clinton's -- is it relevant that she -- that Mrs. Clinton is the democratic candidate for president? Is that -- is that relevant?

MR. BEKESHA: It's relevant to the extent that Judicial Watch is willing to accommodate Mrs. Clinton at a deposition at, you know, her convenience. I think we know she's the presumptive nominee. We're not hiding behind that.

THE COURT: That cuts into the apex line of theory, though, because the apex line of -- the apex theory is that high-ranking government officials and former high-ranking government officials should be -- should not be subjected to depositions unless there are extraordinary circumstances. That's as far as that goes, and you agree with that line in there?

MR. BEKESHA: Well, we agree with that. The -- I guess the fact that she's a presumptive nominee, we don't believe factors into that equation. She is a former head of a government agency. That's the line of cases. Whether or not it's allowed or not allowed, based on that fact alone, is where we think her status in the election is important and relevant.

It goes to the other parts, which I said, providing Mr. Kendall with a copy of the motion when it was filed; identifying to the Court that we're willing to take her deposition at a time and place convenient to her. So we recognize that, but we don't think it factors into the legal argument of if there's a higher burden because of that. We don't believe that's the case.

THE COURT: Along those lines, the Court is well aware, and I think counsel for the parties are indeed well aware of the recent 2nd Circuit case issued in the context of considering whether the District Court had properly issued a protective order. The Court held that, and I quote, "To depose a high-ranking government official, a party must demonstrate

exceptional circumstances justifying the deposition. For example, that the official has unique firsthand knowledge related to the litigated claims or that the necessary information cannot be obtained through other less burdensome means." And that's a 2nd Circuit decision, *Lederman versus NYC Department of Parks and Recreation*.

So why wouldn't interrogatories be an appropriate less burdensome means to obtain the information you state is needed? And I'm sure that Mr. Kendall very reluctantly suggested that as an alternative in his footnote. His argument is there shouldn't be any discovery. But if there's going to be, it should be limited interrogatories.

Why doesn't that -- why doesn't that satisfy -- why doesn't that route properly address this issue and provide the plaintiff with an appropriate remedy?

MR. BEKESHA: We believe it's not an appropriate -- it's not appropriate in this case because of the follow-up questions, because --

THE COURT: You know what your follow-ups are going to be. I mean, you know -- you know what those questions are.

MR. BEKESHA: Well, we know some of them, but it also depends on Mrs. Clinton's answers, and --

THE COURT: Well, suppose you were given an opportunity -- and, again, no one should read much into what I'm saying. I have to ask these questions.

But suppose you were afforded the opportunity to propound an appropriate follow-up question or two, depending upon an answer given to you that you didn't anticipate?

MR. BEKESHA: I think one thing --

THE COURT: And under the federal rules, you can ask a question and, indeed, subparts to that question as well.

MR. BEKESHA: Absolutely, Your Honor. However, you know, it's always -- when you ask a question in person and you ask a question on paper, they're very different.

THE COURT: Why? Why? The person's giving the answer under oath.

MR. BEKESHA: The person is giving the answer under oath, but, you know, there can be questions on how you define terms. There are questions about -- there may be additional objections. It can lead to more arguments.

THE COURT: There could be objections to questions. Then why wouldn't that be appropriate to afford Judicial Watch an opportunity to propound whatever question -- not whatever questions you want -- the rules limit it to 25 -- propound your 25 questions, entertain any objections, get the answers, and if there's a need for supplemental, give the plaintiff the opportunity to ask supplemental follow-up questions?

MR. BEKESHA: We just believe how that process plays out, one, it's probably going to take more time than a three-hour deposition. I think there's going to be --

THE COURT: Why do you think that?
MR. BEKESHA: Because --
THE COURT: It will take more time for who?
MR. BEKESHA: Take more time, I think.
THE COURT: You know the questions right now. If I told you to take the deposition right now, you'd have those questions right now.
MR. BEKESHA: We have most of those questions, Your Honor.
THE COURT: Right. So it's not going to take you three hours, so --
MR. BEKESHA: It would take the time for Secretary Clinton to answer the questions, then for us to review the questions, ask additional questions, maybe fight over paper by e-mail.
THE COURT: I'm sure the secretary appreciates your answering that question on her behalf, but the attorneys can answer it. I just -- I have a guess that it probably wouldn't take much time.
MR. BEKESHA: It may not. It may not, Your Honor. It's our position that the best way to gather evidence is by deposition. We found that depositions of the seven witnesses to be very helpful. We have definitely moved the ball forward. We have received a lot of information. You know, I hate to say where we are --
THE COURT: That's a big factor also. There's a ton of information that's available now that was not available when the

Court issued its memorandum opinion order. You have the IG's report. Everyone has that. Mr. Comey's public statements. Mr. Comey's testimony under oath before Congress. I mean, there's a lot of information under oath out there that you didn't have.

MR. BEKESHA: There is, Your Honor.

THE COURT: The landscape has changed.

MR. BEKESHA: And we recognize that, and we recognize all the information that we've gathered, as well as all the information that's available from these other sources, but we don't believe that the motivation question in these six issue areas has been answered.

THE COURT: How can the motivation question be answered under oath and answered fully under oath in an interrogatory in a question?

MR. BEKESHA: It could be, Your Honor. I don't want to say that it can't be.

THE COURT: All right.

MR. BEKESHA: We just believe there are follow-up questions, and it may lead to more back and forth that may be easier to resolve. You know, I say we've asked for no more than three hours, but it may be even shorter than that. We just don't know. We just believe, based on how this case has proceeded, the numerous declarations that have been filed, including one by Mrs. Clinton, that has left other questions to be answered. And

we're concerned that any wind discovery may have additional questions that need to be answered and additional follow-up, and if we only get one opportunity to follow up instead of two opportunities to follow up, it raises all sorts of issues. And we just think it's more appropriate to conduct, you know, a short deposition to ask the questions, the follow-up questions, we want and hopefully receive the information we need at that point, to present it to the Court so that the Court -- so Your Honor can rule on the adequacy of the search. All we're trying to do is complete the record and allow the Court to have a full factual record before it.

THE COURT: All right. Let me do this. Here's what I want to do. I want to shift gears. I was going to ask questions of the State Department and Mrs. Clinton's attorneys. I think what I should do, though, is focus on the individual depositions of Mr. Clarence -- your desire to take Mr. Clarence Finney's deposition and also -- is it Bentel? Is that how you pronounce his name?

MR. BEKESHA: I believe it's Bentel.

THE COURT: All right. And Mr. Bentel, because the Department of State -- I don't think Mrs. Clinton's attorneys have raised any objections to these depositions, but the Department of State opposes discovery of those individuals. So I think it's appropriate to give you a chance to persuade me that you're entitled to depose those individuals, to hear from the

State Department. And I also have some questions for Mrs. Clinton's attorneys as well.

It's 11:15, depending on the glare of that clock which is always difficult to see, so why don't we do this? We'll take a 15-minute recess and resume again at 11:30. The Court will stand in recess, but there's no need to stand.

(Thereupon, a break was had from 11:12 a.m. until 11:39 a.m.)

THE COURT: Let's talk about Mr. Finney for a few minutes. As I understand it, Mr. Finney was the director of the Office of Correspondence and Records of the executive secretariat during Mrs. Clinton's tenure. He had responsibility, as I understand it, for the day-to-day records management and research in response to FOIA requests. And plaintiff, indeed, acknowledges that the evidence supports the conclusion that Mr. Finney did not know about the clintonemail.com system.

So why -- what would his testimony -- what would his deposition reveal? It's kind of hard for someone to say -- to articulate all the reasons why they didn't know something.

MR. BEKESHA: It is, Your Honor. You know, now that we finished the approved discovery, we took a step back and we looked at a couple of different issues, and one being whose name kept appearing in all the evidence. And Mr. Finney's name was discussed in every deposition. His name showed up in the responses to the interrogatories --

THE COURT: It sounds like he's been very helpful with respect to the 30(b)(6) deponent?

MR. BEKESHA: He was. You know, the 30 --

THE COURT: In fact, during a recess, he was telephoned by the deponent for assistance in answering some questions, which is fine.

MR. BEKESHA: Yeah, absolutely, Your Honor. And, you know, as -- we didn't argue. We didn't argue that the 30(b)(6) witness wasn't prepared and her testimony wasn't adequate.

What we saw, though, was that there was additional information that Mr. Finney may have about discussing more in detail about the conversations he had with the IT department when he saw Mrs. Clinton's photo, using a BlackBerry, and then he inquired about whether or not she was using State Department -- a State Department BlackBerry, State Department e-mail. You know, more conversations, more details specifically, exactly what he asked, what he was told, you know, how that conversation went.

You know, he had a similar conversation at the beginning of her term, where Mr. Finney inquired with either Mr. Bentel or someone in his office, about whether or not she was going to use a State Department BlackBerry or State Department e-mail. He was told no. We didn't get all the details about what the conversation was about, who said what, and we think that's all relevant about what he knew, and also what he didn't know and maybe why he didn't know it. You know, did he not ask the right

questions? Did he ask questions and others weren't giving him straight answers? Kind of what he knew, you know. We asked Ms. Lang if he talked -- if Mr. Finney talked to any of his employees, or any employees of his talked to him about the -- her -- Mrs. Clinton's e-mail use, and Ms. Lang said he didn't know -- she didn't know if anybody had talked to him about any of those issues.

The other interesting thing is the numerous times I've been before this Court before, I was always under the assumption that under Secretary Kennedy, was the most senior level records management person. He would have approved or not approved the system. His testimony showed me why I shouldn't make assumptions. He said during his testimony that -- I asked him who would be responsible for informing the secretary that she should not use a non state.gov e-mail account to conduct government business? And he identified the director of CRM, who is Mr. Finney, and the director of IRM, as -- who was Mr. Bentel, so Under Secretary Kennedy, has said that the two other individuals that we're seeking to depose now were the ones who would have approved or disapproved Mrs. Clinton's system.

We didn't know that until we took the deposition of Mr. Kennedy. That also would have been outside the scope of the narrow 30(b)(6) deposition, so Ms. Lang may not have been prepared for that. But now we know Mr. Finney was one of two people who could have approved or disapproved of the system, and

so we have questions: Did he speak with Mrs. Clinton? Did he speak with any of her aides? And, you know, was any discussion, maybe not about the clintonemail.com system, but about how she was communicating with State Department employees?

You know, they may have had more vague, more general discussions, and we just don't know. And so all that goes to, I guess, why he wouldn't know about something, but it also goes to, what did he know? What should he have known?

You know, there's testimony that there was no guidance memo for the Office of the Secretariat when it came to FOIA, but Mr. Finney knew his obligations. So if Mr. Finney knew his obligations, did he talk to Ms. Abedin? Did he talk to Ms. Mills? You know, what was going on? How were these processes taking place? How was he doing his job of managing, on a day-to-day basis, Mrs. Clinton's and Ms. Abedin's e-mails?

THE COURT: So no one -- am I correct in saying that no one at the State Department had the responsibility for providing FOIA information to high-ranking officials?

MR. BEKESHA: I think somebody had the responsibility. It was Ms. Lang's testimony, I believe, that no one provided guidance to Ms. Abedin -- Ms. Abedin and Mrs. Clinton were not trained when it came to FOIA. I imagine there was somebody responsible for it, it just never happened, for whatever reason.

THE COURT: Did you ever learn who that person was during the relevant time period?

MR. BEKESHA: I believe it was Mr. Finney. Mr. Finney was the day-to-day person responsible, the director of the office responsible for managing records when it came to federal recordkeeping statutes, obligations and FOIA. And so he was also the official responsible for ensuring that State Department records did not leave the State Department at the end of Mrs. Clinton's tenure.

We learned during Ms. Abedin's testimony that there was a meeting at the end of Mrs. Clinton's term where Mr. Finney went through what could be taken and what couldn't be taken out of the State Department. Ms. Abedin testified, you know, it was extremely detailed. She wasn't able to take her e-mails or her State Department BlackBerry with her, but if she had any contacts or photos that she took on the BlackBerry, she was allowed -- they were put on, you know, a thumb drive or something, and she was able to take the contacts and the photos. So there was a lot of detail that was taking place. A lot of people in these meetings. And no evidence in those meetings at that time talked about Mrs. Clinton's use of e-mail to conduct government business.

You know, did -- we don't know, did Mr. Finney ask about Mrs. Clinton's use of e-mail at that point? You know, there are just all these questions, and Ms. Lang did -- she did a good job. You know, she answered all the questions to the best of her ability. She was very well prepared. She talked to a lot of

individuals, and counsel for her talked to a lot of individuals or individuals' counsel, but she -- all the testimony we got was through her filter. And so because Mr. Finney is so important to this case, because we've learned he was the day-to-day person responsible for records management and FOIA for Mrs. Clinton and Ms. Abedin, we think it's necessary to depose him.

THE COURT: And so is the Court correct that up to this -- up to -- strike that.

Is the Court correct that the record shows that Mr. Finney was not aware of the clintonemail.com e-mail address until the *New York Times* story?

MR. BEKESHA: I believe that's what the record shows, Your Honor. I mean, at least there was some time after. I don't know if it was the *New York Times* story or when Mrs. Clinton returned the e-mails to the State Department. He -- the testimony so far has been that he did not know about it, and --

THE COURT: So it would be relevant why he was not aware of it?

MR. BEKESHA: Well, he was told by other employees, when he inquired at least twice about her use of e-mail, specifically what he was told and probably what he wasn't told, and Mr. Bentel is the other piece of that. You know, Mr. Bentel was the director of IRM, the IT department that worked for the executive secretariat. He was the second person that under secretary -- Under Secretary Kennedy said would be responsible for informing

the secretary not to use a non state.gov e-mail account.

Mr. Bentel did not provide any information to the 30(b)(6) witness, so we don't even have that testimony from him through the filter. So Mr. Bentel is important because he was the director of the office that would have provided Mrs. Clinton her BlackBerry and her e-mail address.

He also wrote at least one e-mail where he identified if she used a State Department BlackBerry and a State Department e-mail account, it would be subject to FOIA. And so there's questions for him about what he knew and what he didn't know. And I think, most importantly, when it comes to Mr. Bentel, is the IG finding.

THE COURT: Mr. Finney, though, did the IG recognize that there were certain institutional failures with respect to recordkeeping? So why isn't that sufficient? I mean, the government's recognized that -- the independent arm of the government has recognized that there were -- there were problems, and the State Department is presumably working through those problems now and correcting them, so that there won't be further problems in the future.

Why isn't that sufficient?

MR. BEKESHA: Because we still need to know why those problems happened and how they happened.

THE COURT: Didn't IG talk about that, though?

MR. BEKESHA: They talked about it a little bit, but, you

know, from our perspective, everyone we interviewed, everyone that we deposed, everyone that we talked to, said that Mr. Finney knew his obligations, he knew his responsibility. Mr. Finney was in charge of records management. Mr. Finney didn't know about Mrs. Clinton's records. How did that happen? And the question is: How did that happen when he --

THE COURT: And there, again, he's going to be asked to explain why he didn't know something.

MR. BEKESHA: It could be.

THE COURT: Okay.

MR. BEKESHA: But we could ask questions about who he talked to, when he talked to them, what did they say. You know, a fuller picture, a fuller record, than what we have through the filter of Ms. Lang. You know, maybe these issues were touched upon, he didn't recognize the significance of it until he read the *New York Times* article.

But maybe, you know, through questioning, we'll get a better sense of, you know, maybe he asked specifically the question, "Is she using a non state.gov e-mail account," and somebody told him no. Now, the important thing there would be who told him no, because that would look -- that would show the motivation, potentially, of the State Department. That shows, you know, as the IG report shows with Mr. Bentel, the IG found that two employees asked Mr. Bentel about Mrs. Clinton's use of a non state.gov e-mail account, also very specific to how it

related to FOIA. And he said, "It was approved by legal counsel. Don't ever speak about it again."

Now, if Mr. Finney asks that question or a general question to Mr. Bentel, and he got that answer from Mr. Bentel, then Mr. Bentel, as a director in the Office of the Executive Secretariat, that shows a little bit about the motivation of the State Department. Was the State Department deliberately thwarting FOIA because the person that would have been responsible said don't worry about it or -- actually, let me clarify that. He said, "Don't speak about it again."

We have no testimony. There's no evidence that the Office of the Legal Advisor approved this system, but there's a question in the IG report that at least two employees heard from Mr. Bentel that it was. And Mr. Bentel and Mr. Finney were both in, I believe, daily meetings with the executive staff, with Mr. -- now Ambassador Mull. They would have relevant information. They're necessary witnesses, and we just didn't know who they were and to what extent they had such responsibility.

You know, we identified --

THE COURT: But you knew early on, though, who Mr. Finney was and what his responsibility was at State, though, right?

MR. BEKESHA: We knew, generally, that he was in charge of records management. We didn't --

THE COURT: But you didn't --

MR. BEKESHA: We didn't appreciate what that meant until we started hearing the evidence. I mean, when we identified Lewis Lukens and Stephen Mull, as they were the executive director and the executive secretariat, we thought they had a more active role in the management of -- of the secretary's records.

It wasn't until we started getting their testimony that they said they weren't involved at all. We were going -- we were relying on the e-mails that we submitted to the Court in our motion for discovery. You know, that's how we identified those people, based on the evidence we had at that time. We thought they were the relevant factors. You know, we learned, after, that Mr. Mull, unfortunately since it was seven years ago, he didn't remember -- he didn't remember most of the information, why he put what he did in e-mails. He didn't really speak to Mr. Finney about FOIA requests related to Mrs. Clinton, you know. And Mr. Lukens just assumed the whole time that she was using e-mail to e-mail with family and friends. And so we thought we were going to the right places, and we learned that, unfortunately, we weren't.

They didn't have all the information necessary. They had some pieces of it, but Mr. Finney and Mr. Bentel, being, you know, the directors of those offices that did the day-to-day IT, that did the day-to-day records management, were the key players. As I said, until Under Secretary Kennedy said they would have

been responsible for approving or disapproving the system, I was under the assumption that, as under secretary for management, that would have been Mr. Kennedy's role.

THE COURT: Mr. Finney is still employed at State.

MR. BEKESHA: Mr. Finney is still employed at State, and Mr. Bentel, I believe, retired. I'm not sure when that happened, the 30(b)(6) witness.

THE COURT: Let's focus on Mr. Bentel for a second. He served as director of -- and his title is S/ES-IRM. What does that mean?

MR. BEKESHA: It says, Office of the Executive Secretariat, and then IRM is Information and Resource Management.

THE COURT: All right.

MR. BEKESHA: So he's the IT department within the executive secretariat.

THE COURT: All right. And that office was responsible for the information technology for Mrs. Clinton, then?

MR. BEKESHA: Yes.

THE COURT: The record appears to suggest that Mr. Bentel was involved with resolving any communication difficulties Mrs. Clinton encountered with the clintonemail.com e-mail. It appears to. And that's as set forth in the report by the IG. The record also appears to suggest he knew about Mrs. Clinton's private server as early as March 2009.

Now, the May 2016 OIG report concluded that Mr. Bentel

told employees in his office that Mrs. Clinton's e-mail arrangements were approved by the State Department. I'm quoting from the OIG report at page 40. "Two staff members in that office, S/ES-IRM, reported to OIG that in late 2010 they each discussed their concerns about Secretary Clinton's use of a personal e-mail account in separate meetings with the then director of S/ES-IRM. In one meeting, one staff member raised concerns that information sent and received on Secretary Clinton's account could contain federal records that needed to be preserved in order to satisfy federal recordkeeping requirements."

And, again, this is a quote, "According to the staff member, the director stated that the secretary's personal system had been reviewed and approved by department legal staff, and that the matter was not to be discussed any further."

According to -- and I'm not reading everything. According to the other S/ES-IRM staff member who raised concerns about the server, the director stated that the mission of the S/ES-IRM is to support the secretary and instruct the staff not to speak of the secretary's personal e-mail system again.

So Mr. Bentel -- note that's set forth in the report at page 40 -- he no longer works at State, and apparently when Mrs. Lang was preparing for her deposition, she reached out to Mr. Bentel's attorney, who informed her that Mr. Bentel declined to speak with her. So I don't know if he's invoking any

privileges he has or not. I mean, I don't know. Do you?

MR. BEKESHA: We don't know if he invoked any privileges, Your Honor.

THE COURT: The government's -- the government's argument is essentially that deposing Mr. Bentel is not necessary because nothing in the record shows he would have more information about whether there was an effort to deliberately thwart FOIA. That's the government's response memorandum at page 22.

And the government -- State points to Mr. Bentel's testimony before the select committee on Benghazi where he testified, presumably under oath, that he had no knowledge about why Mrs. Clinton elected to use a personal e-mail account to conduct official business.

Now, I recognize in the reply by Judicial Watch, the argument is that the record contains contradictory information about what Mr. Bentel knew and when he knew it. For example, he testified before the Benghazi committee he was not aware of clintonemail.com until 2015. The record allegedly suggests that he knew of the e-mail as early as 2009, and I think that's reflected in the IG report, I believe.

So was he -- I don't know. Was he interviewed for the OIG report, do you know?

MR. BEKESHA: I believe he refused to testify before the -- or talk to the IG.

THE COURT: Okay. And the report -- so it's the

inconsistencies that you're principally concerned about?

MR. BEKESHA: It is, Your Honor. There's evidence that -- evidence shows that he had direct personal knowledge of the system, and we believe it's important for us to ask him questions about that knowledge based on the evidence we have.

I mean, you have the IG report talking about the two employees. You also have the e-mail where he talked about when he provided Ms. Abedin -- or I think it's actually Ms. Hanley, another aide to Mrs. Clinton, he provided them with State Department e-mail address that Mrs. Clinton had created; I believe it was SSHRC. And in that e-mail he said, "We can get you a BlackBerry and e-mail address." Don't -- and I'm paraphrasing, but "that's subject to FOIA. It would go through our systems and subject to FOIA." So it seemed as though he had the -- the evidence shows that he had personal information. We didn't ask for his testimony back in February or March because all of the news reports out there were that he didn't have any knowledge. And now that we have gathered evidence that he does, we think his testimony is important.

THE COURT: All right. All right. Anything else you want to say?

MR. BEKESHA: I don't think so, Your Honor.

THE COURT: All right, Counsel. Thank you very much.

MR. BEKESHA: Thank you.

THE COURT: Let me hear from government counsel, starting

with Mr. Bentel, first. Why shouldn't he be deposed?

Good morning -- or good afternoon. How are you today?

MS. WOLVERTON: Good afternoon, Your Honor. All right. Thank you.

Yes, Mr. Bentel, as the Court recognized, is retired from the government service, and we submit that, you know, recognizing -- as the Court and, I believe, witness counsel agree -- really what plaintiff's counsel is after is information about Secretary Clinton's motivation, which, as we have argued in our papers, we believe has been thoroughly explored through the discovery the parties have conducted, and there's no reason to believe that Mr. Bentel is going to add anything to her motivation. And so we don't think that plaintiff has presented a sufficient basis to effectively pull Mr. Bentel out of retirement to be deposed.

THE COURT: Well, I don't think they wanted to go that far to pull him out of retirement, but they want to explore about, at least, the apparent inconsistencies in his testimony.

MS. WOLVERTON: I understand that, Your Honor. We recognize that, but again, we think that given the focus that the plaintiffs have expressed is on the secretary's motivation, that it's not appropriate to depose him. He doesn't have anything to add to that.

THE COURT: He's not given any public statements at all, has he? He testified before the Benghazi committee under oath.

MS. WOLVERTON: That's correct.
THE COURT: And that's his only testimony?
MS. WOLVERTON: That's all that we are aware of.
THE COURT: All right. And no other public statements. All right.
When he refused to speak to the OIG, did he give a reason?
MS. WOLVERTON: I don't know. The Office of Inspector General is an independent arm, and so we aren't privy to all of the information.
THE COURT: Would that office have had the authority to demand his testimony, subpoena him, or otherwise demand it, go to court and get a subpoena issued? I don't know. It's not a trick question. I don't know.
MS. WOLVERTON: We do not think so.
THE COURT: It seems to me they ought to have that authority, though.
MS. WOLVERTON: I bet that they would like it.
THE COURT: What was that?
MS. WOLVERTON: I bet that the IG would like that authority.
THE COURT: Yeah. I mean, you know what, when you think about it, if the IG or any government agency's going to have any credibility with the public, it seems to me that it really should have the authority to demand compliance or at least make someone invoke a Constitutional privilege. I mean, otherwise, you know,

you could tell the IG to go fly a kite and that's it?

MS. WOLVERTON: We don't disagree.

THE COURT: Yeah. All right. What about Mr. Finney?

You know, I think Mr. Bentel should be deposed, I think, but I'm going to give it some more thought.

But Mr. Finney, I'm not so sure what else we'd learn from him. I mean, he was very helpful to the extent he could be, it appears, with the 30(b)(6) deponent.

MS. WOLVERTON: Absolutely, Your Honor. And Your Honor made reference to the telephone call during a break of the 30(b)(6) deposition where the deponent spoke to Mr. Finney and specifically asked one of the questions that the plaintiff now indicates that it would like to ask him directly about, but plaintiff incorrectly, I believe, indicated that there was no answer. And that was as to whether Mr. Finney -- whether any of the staff who worked for Mr. Finney had asked the IT arm, the S/ES-IRM, whether the secretary had a State e-mail account. And the result of that telephone call was the 30(b)(6) deponent's information that, no, no staff member had done that. That's what Mr. Finney related.

So plaintiff really has not identified any reason to think that Mr. Finney would have anything substantive to add to the information that the 30(b)(6) witness conveyed. As plaintiff recognized, she was very well prepared. She spoke with numerous people, reviewed numerous documents and spent a lot of time with

Mr. Finney, in particular. And as Your Honor recognized, he can't explain why he didn't know something. He simply wasn't told. And so we maintain that for that basic reason --

THE COURT: Well, suppose he wasn't told because he didn't ask; is that relevant?

MS. WOLVERTON: Well, Your Honor, I don't think that there's any reason to think that it would be. You know, he has explained that he did ask on two occasions whether the secretary used a State e-mail account and was told no. So there's no reason to think that, you know, a deposition of him would provide any further detail to that answer. It would be cumulative testimony, we believe. We don't think that the plaintiff has put forward anything other than its own speculation as a basis for believing that Mr. Finney should be deposed, and the D.C. Circuit has recognized that speculation is not a ground for authorizing discovery in a FOIA case.

THE COURT: All right. The government -- the State Department's not taking a position with respect to discovery of Mrs. Clinton, further discovery.

MS. WOLVERTON: That's correct. If I could come back to Mr. Finney just one more time?

THE COURT: Yes, sure.

MS. WOLVERTON: Thank you, Your Honor. I did want to also point out that the plaintiff has incorrectly represented that Mrs. Clinton was in day-to-day contact with Mr. Finney. It might

be a misunderstanding. The questions during the depositions weren't very extensive on that point, but the answer is no, Mr. Finney was not in any regular contact, at all, with the former secretary. And the way that the executive secretariat is set up might help explain that. It's actually divided into two sections, and the Office of Correspondence and Records that Mr. Finney was part of was outside of the secretary's office. And another section was executive secretariat, the advancing staffing section, those are the people who sat right outside of her office, along with the executive secretary. So those are the people that, you know, she had regular interaction with, but not Mr. Finney, so we did want to clear that up as well.

THE COURT: Right. I wasn't trying to give you a hard way to go about the FBI transmitting the documents. I'm not going to penalize you for not knowing what you don't know because no one has told you. I think that'd be unfair to do that. But I think it's probably reasonable -- you can tell me if it's not -- for the Court to order that -- I think you said the government will file a status report this Friday, or they're going to receive some documents this Friday?

MS. WOLVERTON: Yes. The FBI has told the State Department that it should have the documents by Friday, if not sooner, the first batch of the documents.

THE COURT: Okay.

MS. WOLVERTON: It's going to be on a rolling basis.

THE COURT: All right. So then, would it be unreasonable, then, to tell the State Department to file a report on Monday, next Monday, a week from today, and every Monday thereafter?

MS. WOLVERTON: If I might have an opportunity to confer --

THE COURT: Sure.

MS. WOLVERTON: -- with my colleagues at the State Department.

But before I do that, if I could be heard on a few more points --

THE COURT: Sure.

MS. WOLVERTON: -- relative -- relevant to the FBI investigation.

The question came up about whether Ms. Abedin's e-mails were recovered through the investigation, and the answer is yes, they were. And so those will be included in the retrieved materials that will be coming from the FBI to the State Department. So I hope that should clear up that question that plaintiff's counsel raised.

THE COURT: What about the other employees? Any other employees who have been deposed, were their e-mails also the subject of the investigation by the FBI, do you know?

MS. WOLVERTON: That's a good question, Your Honor, and I'm not privy to the details of the FBI investigation. My information just relates to the materials, the retrieved

materials, that will be coming back to the State Department.

THE COURT: Right. But since this case is focused on Ms. Abedin, I think that's probably the relevant point you just made about Ms. Abedin. If you get other materials, I guess we'll talk about that. Actually -- well, Ms. Abedin is the focus of the -- I don't want to lose sight of what this case is all about. It's about Ms. Abedin.

MS. WOLVERTON: Correct.

THE COURT: All right. And you don't know the number of e-mails regarding Ms. Abedin?

MS. WOLVERTON: No, Your Honor, at this point we don't.

THE COURT: All right.

MS. WOLVERTON: We just do know that they will be included, and the reason is because she had the clintonemail.com account. There's no evidence that any other State Department employee, apart from the secretary, had an address on that system.

THE COURT: All right.

MS. WOLVERTON: Thank you. And so I do want to make clear that the FBI is turning over all potential agency records to State that it retrieved from clintonemail.com.

THE COURT: Good. All right. Because I anticipated asking State to issue a subpoena, but you already reached out and asked for the documents, correct?

MS. WOLVERTON: Correct.

THE COURT: And I think you should have.

MS. WOLVERTON: Correct.

THE COURT: Good.

MS. WOLVERTON: Yes. And we do think that that's very relevant to all of the questions that are presented to the Court, because that's the whole reason, you know, that we're here, that we've been undertaking this discovery to see if there is any basis for the Court to issue, eventually, an order that the State somehow must undertake a search of the clintonemail.com e-mail system. And that, effectively, has already occurred.

And then as Your Honor also recognized, the FBI's forensic capabilities far exceed anything that the State Department could do. So we actually are at, you know, just about at the end point of getting all of those materials back, so we think that --

THE COURT: Are we? We are?

MS. WOLVERTON: Yes. That's our best -- yes, yes.

THE COURT: I can move on to other cases on my docket?

MS. WOLVERTON: Very shortly, that is our position, Your Honor. The FBI investigation has concluded, and so it no longer needs to retain those materials, so the circumstances have changed dramatically.

THE COURT: Right. All right. Thank you.

MS. WOLVERTON: Thank you.

THE COURT: I have a few questions for Mrs. Clinton's attorney. I may have a few follow-up questions.

Good morning, Counsel.

MR. KENDALL: Good afternoon, Your Honor. May it please the Court.

THE COURT: You've been very patient. Let me ask you: Has Mrs. Clinton ever explained why she used clintonemail.com, under oath?

MR. KENDALL: She has explained -- I sat there for the 11 hours of her Benghazi testimony. My recollection is that she did. We have that in our papers, exactly what she said. She's explained it many times in interviews, on the Website.

I would point out to Your Honor that in the exhibits we've submitted, Exhibit D is her Website, in which the very first question is: Why did she use it? It is because she opted to use her personal e-mail account as a matter of convenience.

I was with her the three-and-a-half hours she was interviewed by the FBI. That was under 18 U.S.C. 2001 -- or 1001, and she addressed it there, as Director Comey testified when he was before the oversight committee last Thursday.

So the answer's not going to change. Your Honor summarized it. It appeared to be a matter of convenience. It was her practice while in the Senate and in the campaign of '08, and so she just continued that practice. It wasn't a new thing that she devised for the State Department. It was what she had done.

And in terms of the State Department, it was clearly

permitted and allowed. It wasn't affirmatively authorized, and the State IG did find that, gee, if the question were asked, she wouldn't have been given approval. Well, I think that's really a retrospective matter, because Secretary Powell used it throughout his tenure, no question about that. Many of Secretary Rice's aides used it. The department was used to people using their personal e-mail.

The first Secretary of State to get a state.gov e-mail was Secretary Kerry, and that was in his second term in office. It just was not normal for secretaries of states to have a state.gov e-mail.

THE COURT: All right. FBI Director Comey did testify under oath, but that's -- that's -- and I accept his testimony under oath. But the plaintiffs argue that they haven't heard from her under oath. She's made public statements, and I don't think anyone disputes -- no one disputes the public statements that she used this for convenience. And, you know, no one's perfect, and she said if she had to do it over again, she'd do something different; but they want her testimony under oath.

MR. KENDALL: Your Honor, lawyers are great at making up questions. They're very ingenious. I think if the lawyers had been there on Mt. Sinai, Moses would have come down with not 10 commandments, but 10,000. Lawyers make up questions.

But that's not the relevant issue here.

THE COURT: I would never let them ask 10,000 questions of

Moses.

MR. KENDALL: All right. Mr. Bekesha is very ingenious, he'd get there, I'm sure.

Your Honor, the question is not, are there unanswered questions? The IG flagged them. There are going to be a lot of unanswered questions. This is a FOIA proceeding. This Court has recognized and not disputed, discovery is rare.

THE COURT: Right.

MR. KENDALL: You even said it's the exception, not the rule. And you said at one point in your February 23rd hearing, "I want a discovery plan that is very narrow, and I've said that three times."

THE COURT: And I purposely said "and not including the secretary."

MR. KENDALL: You did, indeed, and that's why, Your Honor, we're not here writing on a blank slate. To listen to my brother speak, you would have thought, gee, we're just in here, this is the kind of a discovery conference.

They have had all the discovery they asked for. They've had seven depositions. They've had interrogatory answers. They've had documents from the State Department. And as Your Honor also pointed out, since that hearing on February 23rd, there are three investigations that have significantly closed and given the public a great deal of information. The State IG investigation report in May, the majority Benghazi report in

June -- although that's not finalized, it's been played public -- and then finally Director Comey's statement on Tuesday, July 5th, and then his three-and-a-half hours of testimony on July 7th. So all of that's in the record. The public's right to know is going to be vindicated here.

Secretary Clinton turned over a record number of e-mails for any State Department secretary. She turned over 55,000 pages. In our -- in our brief, we made -- in our opposition, we made another point, and that is the futility of a deposition at this point. No matter what the former secretary says, the relief is not going to matter because we have nothing. We've turned over everything to the FBI. And, in fact, Mr. Bentel --

THE COURT: But neither the Court or the public, though, will ever know what Mrs. Clinton told the FBI. And I'm not saying that the Court should know or the public should know. That was a law enforcement investigation, and it's properly protected for a number of reasons. So no one would ever know. You were there, so you know.

MR. KENDALL: I was there. I was there, and I can make representations --

THE COURT: Can I swear you in?

MR. KENDALL: Your Honor, I prefer to be on this side of the lectern. Thank you.

But we do know from Director Comey, who was asked by Representative DeSantis the following question, "Was the reason

she set up her own private server, in your judgment, because she wanted to shield communications from Congress and the public?"

The $64,000 question.

Director, "I can't say that."

And then he continues, "Our best information is that she set it up as a matter of convenience. It was an existing system her husband had, and she decided to have a domain on that system."

THE COURT: So what would be the hardship for her, given that very -- for her answering that question under oath?

MR. KENDALL: Your Honor, it wouldn't be a hardship, but the point is: It would not be evidence of an intent to thwart. The one reason you authorized discovery, your narrow discovery, was because -- you identified at the beginning of the hearing, the central question of FOIA cases, of course: Did the agency conduct a good faith search that is reasonably likely to turn up responsive documents? And then as you said, it doesn't have to be every document, but is it reasonably devised to do that.

You accepted Judicial Watch's allegations that here there were questions, unanswered questions, back in February, about, you know, the operation of the system. You authorized discovery, and that discovery has been taken. And there's not one scintilla of evidence on the central question of: Is anybody trying to thwart FOIA?

Look, it may have been -- as the secretary recognized -- a

mistake to do it. It may have been that in the State Department there was cluelessness, negligence, oversight, but nobody set out to thwart FOIA.

My -- there was a reference made to a -- and I think I heard Mr. Bekesha correctly. He said she said "no" to a state.gov e-mail address. I think the e-mail that he was quoting actually is very different. And, Your Honor, if I may, I have it here. It's in the record, but for convenience, I'll give it to the government and to Mr. Bekesha. This is a copy. It's just -- I'm looking at tab 2.

THE COURT: Do you have one additional copy?

MR. KENDALL: Of course, Your Honor.

THE COURT: Thank you.

Tab 2?

MR. KENDALL: Tab 2, please, Your Honor. This is the --

THE COURT: Because I don't want to take your only -- oh, you have a copy?

MR. KENDALL: Yes. Thank you.

This is -- this quick e-mail exchange.

I should note here, that the secretary did not have a laptop. She didn't use a computer. She only used a BlackBerry, so her exchanges are often very short.

Ms. Abedin says, "We should talk about putting you on State e-mail." That's the middle e-mail. "We should talk about putting you on State e-mail."

And the response of the secretary is not "I don't want to go on State e-mail." She said, "Let's get a separate address or device, but I don't want to any risk of the personal being accessible." She's not saying, I don't want a separate address.

And this -- again, this goes by -- this was a problem with telephone calls. If you read the rest of the e-mails, the ops people were not giving the secretary direct telephone calls. So there's no -- there's no evidence of her thwarting or attempting to thwart FOIA at all. Maybe it should have been thought of, but as the testimony of Ms. Abedin, Ms. Mills, was, it wasn't thought of at the time.

You know, when she took office in January of '09, the world was on fire. There was a financial meltdown. There were two wars we were in. There was a lot of other stuff going on. It's very hard to put that into context now. My point is that the central question here is: Was there evidence to thwart FOIA, enough to justify either Secretary Clinton giving a deposition or even answering interrogatories?

Now, Your Honor pointed to the footnote in our papers. I said to my colleague, Ms. Saharia, "Can we put it in very tiny type?" And she said, "No, we've got to do it like this."

THE COURT: You know, we look out for footnotes and ellipses.

MR. KENDALL: All right. We did put it in a footnote, Your Honor.

But I think my point here is that there is abundant evidence that the system was set up for the purpose of convenience. It turned out not to be convenient. The other -- and that's, by the way, the six questions, the only relevance.

THE COURT: Can I interrupt you for a second? Your responses are brilliant, and I expected them to be. My sense is that she would -- that the former secretary would like to put this issue behind her as soon as she could and move on to other things. So why not answer a few questions under oath, maybe interrogatory questions under oath, and be done with it?

MR. KENDALL: Your Honor, because there's no legal justification for it. You set up a procedure, you gave them -- you identified the very narrow issue at stake here: Was this search invalid because it was an attempt to thwart FOIA?

They've had seven depositions. They've had interrogatories. They have documents. There's nothing there, and --

THE COURT: But is that the standard, though? Is that the standard, though, that should persuade the Court, there's no need to at least allow the plaintiffs to propound a few interrogatories that can be answered at her leisure? Is that the standard, the fact that there's not been anything heretofore discovered of any evidence that might tend to show or demonstrate that there was an effort to thwart FOIA?

MR. KENDALL: Your Honor, she said on her Website, she said at interviews, in terms of the FBI investigation, you have Director Comey's testimony summarizing what she said subject to 1001.

The question -- and, again, in a FOIA case, discovery is rare. It takes extraordinary circumstances.

THE COURT: Right.

MR. KENDALL: There is not the extraordinary circumstance, because if you look at Mr. Bekesha's other five questions, you know, they simply don't even bear on thwarting FOIA. I mean, did she continue to use the system because it was convenient or because there were problems? There were problems. There were a lot more problems in the State Department system.

Did she archive? Your Honor pointed out that the AT&T system was not archived, certainly. None of this has any reference to the central question, which again, in a discovery is just very rare in FOIA cases. Your Honor has given eight weeks of discovery, and there's no -- there's no scintilla of evidence here that anybody tried to thwart FOIA. I'm not arguing that people should be given, you know, the purple ribbon or the gold medal for, you know, records management, but there's no evidence of an attempt to thwart FOIA.

THE COURT: Right. But consistent with the apex line of cases, though, Mrs. Clinton has unique firsthand knowledge that's not been stated under oath, period.

She's got unique firsthand knowledge and no one else does.

MR. KENDALL: Your Honor, she --

THE COURT: Mr. Comey, you know, maybe his answer would have been stronger had he said "Secretary Clinton told us the following," but he didn't. And that's second -- and that's hearsay anyway, right?

MR. KENDALL: Well, the FBI director testified under oath as to what his investigation found, so I don't think it's hearsay, technically. Again, the --

THE COURT: But you don't dispute that she would have -- former Secretary Clinton would have unique firsthand knowledge about the reasons why?

MR. KENDALL: I do not dispute that, and I think she's expressed that again and again and again. And it's not going to be any different in another -- in another question. And in a FOIA case, you simply don't get that infinite ability, a look back.

Your Honor mentioned the campaign. The elephant in the room -- and by that, I mean politically. It's not a zoological metaphor. There is an elephant in the room. They want to take deposition, and it's simply not justified on the basis of the evidence in the record.

They had these seven depositions.

THE COURT: At the end of the day, I might agree with you, but then -- but then, you know, persuade me why answers to a few

questions that fundamentally get back to question 1, "why was this set up," would not be -- would be inappropriate, especially since she had that unique firsthand knowledge?

MR. KENDALL: Well, she's given -- again, Your Honor, if I could just cite back to our Exhibit D, her Q&A about the e-mails is what is out there publicly. She has testified under oath before the Benghazi committee, and they asked her -- you know, if they could have thought of any more questions, they would have asked them.

And then in the FBI interview, again, the very questions were put. Now, you're correct, we just have Director Comey's testimony. But he gave testimony on the critical issue here: Was there any evidence that she set up the system to thwart the public and the government? He didn't say thwart it, but he meant the same thing, and his answer is no.

THE COURT: All right. Anything else? And, again, and I've said this a couple of times, no one should read anything into the questions. But assume I disagree with you and say that because of the unique firsthand knowledge, the Court's not going to order a deposition, but will allow the plaintiff to propound interrogatories. How much time would be appropriate for answers?

MR. KENDALL: Thank you, Your Honor.

THE COURT: I'm sorry? I was standing away from the microphone.

MR. KENDALL: Oh, I beg your pardon.

THE COURT: The rhetorical question was: Suppose I agree with you that, pursuant to the apex line of questions, a deposition should not be ordered, but I disagree about interrogatories -- and, again, I'm just telling people, don't read too much into this -- how much time would be appropriate to afford Mrs. Clinton an opportunity to respond to appropriate interrogatories?

MR. KENDALL: I would say, two weeks after the interrogatories are served. That's half the time.

THE COURT: That's less than what the rules require.

MR. KENDALL: Correct.

THE COURT: And, in fact, it's an accommodation. If the Court were inclined to do that, the Court would be inclined to give her more time if she wanted to, but you would not be asking for more time?

MR. KENDALL: Your Honor, again, I think -- I understood the Court's desire to expedite this. We obviously would like as much time as we could --

THE COURT: Tell me what you would want.

MR. KENDALL: Thirty days. Thirty days, Your Honor.

THE COURT: You get that under the rules.

MR. KENDALL: Yes.

THE COURT: Do you need any more time?

MR. KENDALL: I don't think so, Your Honor.

THE COURT: Okay. All right.

MR. KENDALL: We'll get back to you if we do, but I don't think so.

THE COURT: All right. All right. And, again, don't -- I'm just asking the questions so I know everyone's position. All right?

MR. KENDALL: Understand, Your Honor.

THE COURT: All right. Okay.

MR. KENDALL: Thank you.

THE COURT: But I'm not going to lose sight of that footnote, either. Thank you, Counsel.

Anything briefly, very briefly? I think we've covered just about everything.

MR. BEKESHA: I don't think so, Your Honor, unless you have any additional questions that I could answer.

THE COURT: I've run out of questions. Just one second.

(Brief pause in proceedings.)

THE COURT: We've exhausted all of our questions. Thank you very much, Counsel.

MR. BEKESHA: Thank you, Your Honor.

THE COURT: All right. Well, I'm sorry. I can't let you go. Mr. Kendall just gave me all the reasons why, and he mentioned, more than once, Director Comey's under oath -- I assume he was under oath before Congress, I assume, but even if he wasn't -- his public statement and his testimony before Congress about the lack of evidence showing any bad faith in

setting up this e-mail system.

Why isn't that -- why doesn't that carry the day? Why isn't that sufficient?

MR. BEKESHA: I think there are two questions on the issues that we highlighted in the briefs. One was directly asked of Director Comey if they investigated -- and it wasn't to thwart FOIA effort, but it was something similar. You know, "was the reason she set up the system" -- and he said, "We didn't investigate that."

And then his answer to the question in the testimony that Mr. Kendall was just speaking about, he started off with, "I don't know." And of course, I don't stand here knowing what the FBI investigated, but based upon all public statements, they were investigating Mrs. Clinton's e-mail usage as it relates to classified information.

You know, we are here in a FOIA case talking about Mrs. Clinton's motivation, how she used this e-mail system as it relates to FOIA and federal recordkeeping laws, not how she was transmitting classified information. So we don't believe, based on Mr. -- Director Comey's statements, that the questions were asked in a way to give sufficient answers on the issue that's before the Court.

THE COURT: All right. Excuse me one second.

(Brief pause in proceedings.)

THE COURT: I just wanted to clarify something before I

spoke. I didn't want to misspeak. So I'm looking at the Benghazi testimony, ECF Number 102 at page 5, and apparently it's page 401 of the Congressional Record. And it's the answer of Mrs. Clinton, under oath, to a question, "Well, Congressman, I've said repeatedly" -- and this is under oath -- "that I take responsibility for my use of personal e-mail. I've said it was a mistake. I've said it was allowed, but it's not a good choice. When I got to the department, we were faced with global financial crisis, major troop decisions on Afghanistan, preparing to rebuild our alliances in Europe and Asia, an ongoing war in Iraq and so much else. E-mail was not my primary means of communication. I did not have a computer on my desk. I described how I worked."

And that's under oath testimony. I mean, what else are you going to learn? That's under oath.

MR. BEKESHA: It was under oath, Your Honor.

THE COURT: And, again, I mean, Mr. Kendall makes a good point. The testimony at the Benghazi hearing was 11 hours or so or something like that.

MR. BEKESHA: It was long.

THE COURT: Yeah. I take it on his word, he was there.

MR. BEKESHA: I was fortunate enough I didn't have to sit there, so...

THE COURT: I mean, and you have to know that -- the congressmen asked every question they could possibly think of.

You have to assume that.

MR. BEKESHA: I wouldn't assume that, but it seems as though they did.

THE COURT: You talked about assumptions, didn't you? All right.

MR. BEKESHA: I did. We're investigating for -- you know, the discovery in this case is on a very specific issue. This issue wasn't before Congress. It wasn't before the FBI. There may have been -- she may have answered some general questions about motivation at the beginning, but as I said, we've learned a lot of additional evidence that we believe raises questions about motivation and deliberately thwarting FOIA, not only when she decided to use the e-mails sometime in January of 2009, but also again when she was having problems, again during her use and at the end of her term. And none of those questions have been asked. They weren't asked of the Benghazi select committee. We don't believe they've been asked by the FBI. We don't know that. Director Comey's testimony hasn't talked about those other issues, and they just --

THE COURT: He's the chief law enforcement officer, I guess, investigatory officer of the United States, the FBI, and he's testified under oath.

MR. BEKESHA: He did, but he's also specifically said that they did not investigate FOIA and federal recordkeeping. He had a very limited, narrow focus. He didn't explore other potential

statutes that may have been violated or, you know, any other issues except for what was before him.

THE COURT: He had enough on his plate, so --

MR. BEKESHA: He did, Your Honor, and so we are very -- you know, we have a limited focus about her firsthand knowledge. We tried to get it elsewhere. We weren't able to. If we had asked -- you know, we did what we think is appropriate. We were hoping to get answers, as we said in our brief, in our motion. We assumed. We hoped. We thought that her chief of staff, her deputy chief of staff, senior State Department officials could have answered these basic questions. They weren't able to, and that's why we're before the Court today, because we weren't able to get this additional information.

And just one last point raised by the government about Mr. Bentel. The government said that Mr. Bentel won't provide any testimony about motivation. My focus on motivation today was in response to the Court's questions about why Mrs. Clinton's deposition is necessary. They're also questions, as the Court has identified and as we said, of the State Department and whether or not they deliberately thwarted questions, and so questions beyond just the motivation of the State Department, and Mr. Bentel can provide answers, because it appeared as though he knew the information. We don't think he'll have information about Mrs. Clinton's motivation, but more about what the State Department knew, thought, believed, at that time.

THE COURT: All right. I'm sorry. There's one area that the Court did not get into, but I can get an answer from you before I ask government counsel.

The government's asked for a stay of any further discovery pending its receipt of and examination of additional documents.

What's wrong with that request?

MR. BEKESHA: I guess the first answer, as you've indicated, is we don't know how long that's going to be. We don't know what the process is. Government counsel talked about that it includes Ms. Abedin's e-mails. That wasn't in Director Comey's testimony, so that's new information that we just learned. I'm not sure how government counsel knows that, but it's additional information.

The process they've identified of when the rolling production from the FBI to the State Department's going to happen. They haven't identified yet what the conclusion would be. But even if that process took place, even if the Court stayed or I think delayed ruling on the question before the Court today, if the Court delayed two months, four months, six months, one year, as long as the process takes, Judicial Watch still believes that the record is not complete to allow the Court to determine whether or not the search was adequate. So even with the return of records, even with the voluntary return of records, the legal question, the legal posture, still exists. It still remains. It's not going to change, so we would be delaying this

answer for two months, six months, a year, and we would still be before the Court with the same question.

THE COURT: One other issue that I'm just thinking about as well. There was a request that -- and I can't recall who filed this. There was a request to stay further briefing on the summary judgment motion.

MR. BEKESHA: The summary judgment was originally because the government moved for summary judgment. We moved for discovery. It was stayed.

THE COURT: Right.

MR. BEKESHA: I believe you've -- the Court's denied the motion, without prejudice, on summary judgment.

THE COURT: All right.

MR. BEKESHA: And so there isn't a summary judgment motion still pending.

THE COURT: All right. I thought there was another motion for -- just one second.

(Brief pause in proceedings.)

THE COURT: Maybe it's the one other case on my calendar that I'm confusing it with. All right. I thought there was -- no, I recall clearly now that the Court did deny the motion for summary judgment. All right.

And it would be premature then -- because of unanswered questions before the Court, it would be premature to even talk about a continuation of the briefing process for that motion for

summary judgment?

MR. BEKESHA: That's correct, Your Honor.

THE COURT: All right.

MR. BEKESHA: Thank you.

THE COURT: All right. Thank you. Let me hear from government counsel. I'm sorry, Mr. Kendall, you wanted to respond?

MR. KENDALL: Could I just respond quickly --

THE COURT: Yeah, sure.

MR. KENDALL: -- as to what Director Comey testified to?

I read you Representative DeSantis' question, but Representative Mulvaney -- and this is in Exhibit C to our appendix. Mr. Mulvaney asked him, "What was former Secretary Clinton asked?"

Mulvaney, "More importantly, I think, did anybody ask her -- in this three-and-a-half hour meeting, did anybody ask her why she set up the e-mail system as she did in the first place?"

"Yes."

Mulvaney, "And the answer was convenience?"

Comey, "Yeah, it was already there. It was a system her husband had, and so she just jumped onto it."

So she was asked the very question, Your Honor.

THE COURT: What's the record, the cite for that?

MR. KENDALL: It's in our appendix, it is Exhibit C. It's the unofficial transcript, at 74.

THE COURT: All right. Thank you.

What about that, Counsel?

MR. BEKESHA: Again, I think the focus is on what was before the FBI, what questions they were asking, how the motivation played out. Not only, as I said earlier, the initial motivation -- I'm not saying it was just for convenience, but it's possible that prior to her taking office, she decided to use the system, she thought it would be convenient, but then she took office and she had federal recordkeeping and FOIA obligations. And was there any discussion? Was there any thinking? Was there any change at that point?

So all the testimony that Director Comey provided was a moment in time, you know. When this was created, I guess, on January 13th, before confirmation hearings started. There's also this discussion -- so it may have been. She may have decided on January 13th she was going to use this system for convenience, but that doesn't mean that's what she thought when she took office, once she fully became aware of her FOIA obligations. What she thought when the system wasn't working and two State Department employees reminded her staff that if she got a State Department BlackBerry or a State Department e-mail account that they would be subject to FOIA. And it doesn't answer the question of what her motivation was and what she was thinking when she did not place her e-mails in the box when she left, e-mails to leave. So that's one point in time, you know.

We recognize the secretary has spoken a lot about it. She hasn't -- you know, it's still our belief that she hasn't fully answered the question under oath. We understand it's on her Website. She's talked about it in the campaign, but those aren't statements under oath, and so we believe it's necessary to ask those limited questions, to have an opportunity to ask her, directly under oath, a few questions about what she was thinking, why she made that decision and then why she made the decision each step of the way. Those are questions we asked of her chief of staff, her deputy chief of staff, and they didn't answer them or they couldn't answer them.

THE COURT: All right.

MR. BEKESHA: Thank you.

THE COURT: Okay. Counsel.

MS. WOLVERTON: Thank you, Your Honor. Briefly on that last point, as we pointed out in our papers, both Ms. Mills and Ms. Abedin talked about the fact that the staff of the secretary wished that they had thought about it more than they did. And we submit that as we set forth in our papers, there really is nothing other than speculation to believe that Secretary Clinton would add any new or different information, so we don't think that her deposition is warranted.

I did want to answer the Court's question about the status report. And, again, the documents are expected to arrive from the FBI at the State Department Friday, if not before. But the

State Department does want to be able to have a couple of days after it receives them to make sure that the transfer went through successfully. The concern isn't so much about the volume of documents, it's the compatibility of systems that are used at the FBI, the systems that are used at State, and make sure that because of differences, there aren't any glitches. And so we would request for the following Wednesday to submit a status report.

THE COURT: Why don't I just give you until the following Friday. That's a week from your receipt. All right. That's eminently reasonable. You don't know what you're going to get, so --

MS. WOLVERTON: Thank you, Your Honor.

THE COURT: All right. That'll be the following Friday by noon.

MS. WOLVERTON: Thank you.

THE COURT: What about the stay, your request for a stay? The government's filed a motion for a stay, correct?

MS. WOLVERTON: Your Honor, we did not file a separate motion, but we did ask in our opposition, the Judicial Watch motion in the alternative, that the Court just defer ruling on the motion for additional discovery, pending the receipt and processing of the retrieved materials for -- responsive materials to Judicial Watch's --

THE COURT: You understand plaintiff's position that they

say it's -- you know, it's uncertain, it's indefinite as to how long that process will take? And, again, not being critical, you don't know how long it'll take either, because you don't know how many documents you're going to get, other than thousands of documents?

MS. WOLVERTON: Your Honor, again, it's not so much the volume as just the system's compatibility, and we should have more information in the status report a week from this Friday that should -- our hope, and we'll do everything we can to get a time estimate and it should not be particularly long.

THE COURT: All right.

MS. WOLVERTON: And then I would also just like to address, briefly, a few other things, you know, just emphasizing the significance of this cache of documents that's going to be coming, the retrieved materials, that it should really move the case, because that is the end result of the Freedom of Information Act case and adequate search, and once the documents are available, then the State will complete that adequate search. And we have conceded that, you know, prior the search was not adequate, at a minimum, because it didn't include Huma Abedin's state.gov e-mail, so it's not like we have maintained that the search was adequate.

THE COURT: And the government -- the State Department has committed to prioritizing this search --

MS. WOLVERTON: That's correct, Your Honor.

THE COURT: -- right, Counsel?

MS. WOLVERTON: Yes.

THE COURT: All right.

MS. WOLVERTON: Thank you, sir.

THE COURT: All right. I think that's it.

(Brief pause in proceedings.)

THE COURT: All right. I've run out of questions. Thank you all. I'm going to take it under advisement, and I'll issue a ruling just as soon as I can. I appreciate the input from everyone. Thank you. And I'm going to adjourn this proceeding, so everyone have a nice day. All right. No need to stand. Thank you.

(Proceedings adjourned at 12:43 p.m.)

C E R T I F I C A T E

I, Scott L. Wallace, RDR-CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Scott L. Wallace — 7/19/16

Scott L. Wallace, RDR, CRR
Official Court Reporter

Date