



# JUDICIAL WATCH SPECIAL REPORT

Recently, Judicial Watch hosted an education panel on the latest Clinton email scandal developments that brought in distinguished Washington attorney and former U.S. prosecutor Joseph di Genova, fearless investigative reporter Jason Leopold of Vice News (who has successfully pursued his own FOIA requests for Clinton documents from the State Department), and our own Michael Bekesha, the Judicial Watch attorney helping lead our discovery. The panel participants bring into sharp focus likely criminal activity by Hillary Clinton, her top aides and senior State Department officials.

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## Hillary Clinton's Continuing Email Scandal



(L-R) Jason Leopold, investigative reporter, Vice News, Joe diGenova, attorney and former U.S. attorney, Tom Fitton, president, Judicial Watch, Michael Bekesha, attorney, Judicial Watch

### Introduction by Judicial Watch president Tom Fitton

**Mr. Fitton:** Welcome everyone. I'm Tom Fitton, President of Judicial Watch. Judicial Watch is a conservative, nonpartisan educational foundation dedicated to transparency, integrity, and accountability in government, politics and the law. And through our educational activities, we advocate high standards of ethics and morality in our nation's public life and seek to ensure that public officials do not abuse the powers entrusted to them by the American people. Judicial Watch strongly believes in the rule of law and, to that end, a government that adheres to the limits imposed upon it by the United States Constitution.

The Hillary Clinton continuing email scandal is a serious matter, even if the former First Lady doesn't think so. The developments continue to break fast and furious. Complicating the situation is the misinformation Mrs. Clinton and her allies are feeding the American people through a willing media. All are intended to leave Americans confused, at best. So, Judicial Watch is hosting this special panel to provide what the Clinton/media alliance has not: accurate and honest information and

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analysis. And that is a rarity from inside the Beltway.

Last week there were several important new revelations on the Clinton email scandal. A *Washington Post* analysis that revealed that Mrs. Clinton composed and sent “over one hundred” classified emails. That is “over one hundred” more than she has admitted to. Then there is the revelation that Bryan Pagliano, an IT official directly under Secretary Clinton, who evidently helped set up and maintain a so-called private server for Mrs. Clinton, has been granted some type of immunity by the Obama Justice Department in exchange for cooperation in the criminal investigation of Hillary Clinton.

Judicial Watch has been in the eye of the Clinton email storm from the beginning. I am convinced that it was our litigation that helped uncover and, in turn, press the State Department to eventually disclose, more information. You may recall that under the Freedom of Information Act, we sued for documents in the Benghazi matter.

We noticed there were no Clinton emails in the documents we received. And we thought that was odd. So we submitted another Freedom of Information Act request to be sure that we would get any Clinton emails. Then we sued, and at the end of 2014, they finally conceded that, well, there were other documents. But, they claimed they would first need to be reviewed.

In February of 2015, the State Department admitted to a court that additional searches for documents must be conducted, which meant that they had other documents. Just a few weeks later the *New York Times* reported the revelation that Mrs. Clinton had set up a separate email server and system to conduct all of her government business. Contrary to what we all have been led to believe, this email server on which government business was being conducted is something that had never been done before by any other government official.

And, of course, once those revelations occurred, we saw that the courts had been gamed, that Congress had been gamed — and, in fact, we all had been gamed.

However, we accepted the State Department’s representations, at least twice, that they had searched for records in Mrs. Clinton’s offices and found no documents in response to our Freedom of Information Act requests.

But, as a result of the email revelations, two federal court judges reopened two Judicial Watch Freedom of Information Act lawsuits. One case concerned Clinton personal aide, Huma Abedin, who had special government employment status. The other case was about advertisements that Mrs. Clinton and President Obama were running in Afghanistan and Pakistan apologizing for the video that actually had nothing to do with the Benghazi attack, but that they claimed caused it.

Never before, as best I can tell, has any court reopened Freedom of Information Act lawsuits, but this is the predicament that Mrs. Clinton put the courts and the country in as a result of her decision to use a separate system and not tell anyone. And, furthermore, our State Department was obviously complicit.

There is a certain irony to all of this. The fact is, this cover-up occurred in what is known here in Washington as “Transparency Week.” This is the week when all the good government groups try to highlight the issue of government transparency. Ironically, we now face

a State Department that thwarted the Freedom of Information Act with such unprecedented energy — a State Department that caused so many lawsuits and so much waste of taxpayer resources in its effort to stall accountability and the proper disclosure of the records.

It should be noted that in spite of State's efforts to block us, the largest number of revelations about the Clinton email scandal have come forward from Judicial Watch's litigation. Frankly, in my view, much of our court action has pressured — maybe even forced — the Department of Justice, or the FBI, to publicize the actions they're taking. And our court action may have forced them to take the actions as well.

In one of the Judicial Watch cases, Judge Emmet Sullivan demanded that the State Department ask Mrs. Clinton, and top Clinton aides Huma Abedin and Cheryl Mills, to certify that they turned over all the records that they had taken from the government when they left the agency.

Mrs. Clinton then tried to certify that she had complied. She did that under penalty of perjury. Judge Sullivan also requested the Justice Department to ask the FBI what they had. The FBI didn't answer much.

It was that activity by Judge Sullivan that precipitated, in my view, the launching of the official inquiry by the Justice Department and the FBI into Mrs. Clinton's conduct. It is said that their inspector general referrals were the approximate cause. But I have no doubt those agencies would not have acted until they saw that Judge Sullivan was authorizing Judicial Watch, through our litigation, to try to get answers regarding where the records were and what the status of them was.

And, as I said, Mrs. Clinton filed a statement under penalty of perjury. My colleague, Michael Bekesha, who is one of our attorneys on the case, can discuss the deficiency of Ms. Clinton's statement. But it is the measure of accountability that only Judicial Watch was able to get. Congress simply did not bother with it.

And there are other key revelations as well. We found out that as secretary of state, Mrs. Clinton had not gone through the classified email training that was required by presidential executive order, *and by federal law*. We asked for the records of the training. The State Department gave us a "no records" response. So, that's yet another area of the law where Mrs. Clinton didn't have to follow the rules.

But let's get back to the emails themselves. We found a nearly five-month total gap in Mrs. Clinton's emails. And keep in mind: these are in the emails she decided to turn over. We also found that one key State Department official did not want a written record of issues about the Clinton emails. There's an email talking about keeping this Clinton email discussion "offline" because this Freedom of Information Act official knew that the emails would be subject to disclosure under the Act.

And now, let's talk about the so-called personal emails versus government emails: If Mrs. Clinton had been at the State Department and was doing things right, she could have set up a lunch date with her daughter and then deleted the email. But, once she decided to leave government, she could not take any of those existing emails with her. Yet, that is what she did. All of those emails are the government's property. And, that's the issue right now.

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Judicial Watch, in the course of our litigation, found that the government seems to agree with us. They conducted a page-by-page analysis of a select few of her “personal papers” and this is what the State Department and National Archives concluded:

*“This record series contains instances of personal communications that relate solely to Secretary Clinton’s personal and private affairs.”*

But, these messages were interspersed within significant documentation relating to Haiti, Mexico, Israel, Afghanistan, Russia, and South Africa. And since the National Archives possesses the legal authority to make the file determination of record status under the Federal Records Act, all final decisions must be made by the National Archives at the time of archival processing.

What does that mean? Mrs. Clinton says, “I returned even personal emails to the State Department.” But, the State Department doesn’t support that. It said that these personal emails are government emails and are just as subject to disclosure and archiving as any other government record would be under law. That language tells you just how reckless Mrs. Clinton’s activities were in using her personal system to do all of her business.

Now, it is absurd that Mrs. Clinton pretends to be a babe in the wood when it comes to the mishandling of the classified information. She thought she was doing something quite normal — or so she says.

But we learned that in 2009, a security official said to her chief of staff in an email, “I cannot stress too strongly, however, that any unclassified BlackBerry” is highly vulnerable in any setting to remotely and covertly monitoring conversations, retrieving emails and exploiting calendars.”

Leaving no doubt that Mrs. Clinton was fully aware of the deep security concerns surrounding the BlackBerry security issue, the email records included one expressing the concerns of the State Department security officials. And Mrs. Clinton said that she read the message and she gets it. And, she specifically was drawn to the sentence indicating that the security department had intelligence concerning the vulnerability of her BlackBerry and personal devices during her recent trip to Asia.

So she was warned repeatedly. And yet there was this push, despite these warnings, to use the Blackberries, these personal digital devices that supposedly were only personal and weren’t issued by the government on the State Department’s Mahogany Row.

And then came perhaps the biggest revelation of all — one that is most relevant in some ways to Judicial Watch’s litigation. Recently, we received from the State Department an email chain showing that in 2009, when Mrs. Clinton became secretary of state, there was an immediate effort to try to set up a computer network system that was not run out of the State Department, so that she could access her emails outside of the State Department network system.

And in this email chain, there is also a reference to setting up a stand-alone personal computer across the hall from her office, in her counselor’s office. And who was her counselor? It was Cheryl Mills.

If that doesn't show there was an effort to thwart the Freedom of Information Act, I don't know what does. The emails show that Mrs. Clinton and her staff specifically wanted a separate personal computer that could access her emails through the non-Department of State computer systems. And that is an extraordinary revelation.

And then, you have the Obama Office of Inspector General, run by an Obama administration appointee who is now being attacked by the Clinton cadre. In January, the inspector general confirmed in a report what Judicial Watch had been arguing all along. Hillary Clinton and the Obama State Department thwarted specific Judicial Watch Freedom of Information Act requests with “inaccurate” and “incomplete” responses. And yet, as revealing as the State Department OIG report is, it still is, in many ways, incomplete. My experience is that inspectors general reports tend to be both exposés and cover-ups at the same time. This was no exception.

But, even so, it was devastating in laying out the violations of law and regulations by Mrs. Clinton and her then-chief of staff Cheryl Mills. The OIG admits it still doesn't know the extent of the inaccuracies and other violations of Freedom of Information Act. And the OIG correctly suggests that officials could be held in contempt of court over the FOIA fraud.

So you could imagine why, looking at all of those email revelations, the courts might be upset, and why the State Department's effort to shut down our litigation, without looking at all of Mrs. Clinton's emails, might be met with some skepticism.

In fact that is specifically what happened in one of the lawsuits that I said was reopened by Judge Sullivan. In this case, concerning Huma Abedin's special government employee status, the government wanted to shut down the lawsuit without searching all the emails that may be responsive. Remember, Mrs. Clinton turned over just half the emails.

We wanted a full reckoning, and Judge Sullivan essentially agreed with us in this direct quote from the hearing from just three weeks ago:

*“Here you have Mrs. Clinton and Abedin, Huma Abedin, and her private counsel deciding after Mrs. Clinton and Mrs. Abedin were government employees, what emails are federal records and what emails are not. It just boggles the mind the State Department allowed this circumstance to arise in the first place. It's just very, very, very, very troubling.”*

Remember, that is a federal court judge describing the mindboggling activities of the State Department and Mrs. Clinton.

Simply put, Judicial Watch wants to know the facts about Mrs. Clinton's, and the Obama State Department's, purpose for thwarting a Freedom of Information Act inquiry intended to make sure that all of the emails from her illicit email system are reviewed and released to the public as the law requires. In the end, that's what the Freedom of Information Act is about. We have a legal right to know where all of the records are. And whether they are they being reviewed and searched and protected for disclosure to the public as the law requires.

So, with that, there's a lot to be said by our panelists because once again, we have been blessed with an excellent group of panelists.

To my far right is Jason Leopold, the Emmy-nominated investigative reporter for Vice News, where he covers national security. His aggressive use of the Freedom of Information Act includes suing the FBI and Defense Department and forcing those agencies to change their FOIA policies. Plus he filed the Freedom of Information Act request with the State Department that I think it's fair to say resulted in the release directly of the emails that Mrs. Clinton has thus far turned over. And that is the famous *Leopold vs. Department of State*. Jason also forced the National Security Agency for the first time to release all financial disclosure forms of its top officials. And he pried loose the highly classified Justice Department white paper granting the CIA the authority to kill a U.S. citizen abroad.

Also, joining me is Joe diGenova. Joe is a founding partner of the Washington D.C. law firm of diGenova and Toensing, which represents individuals, corporations and other entities before the federal courts, Congress and government agencies on criminal, civil, and administrative and investigative matters. He possesses extensive experience both as a litigator and investigator having served both as a U.S. attorney for the District of Columbia where he managed more than 400 federal attorneys, and as an independent counsel in the Clinton passport file search matter. And in 1997, he worked as special counsel for the U.S. House of Representatives to probe the International Brotherhood of Teamsters. And he even worked up in New York to investigate Eliot Spitzer in his Troopergate matter. Joe worked at the Senate Rules Committee and was counsel to Senate Judiciary Governmental Affairs and Select Intelligence Committee.

And Michael Bekesha, on my left, is one of Judicial Watch's excellent staff attorneys. He joined us in 2009. He's a graduate of the University of Missouri Columbia Law School, went to Northwestern undergrad, and he's litigated dozens of Freedom of Information Act cases in both states and federal courts on behalf of Judicial Watch, as well as our individual clients, media organizations and other not-for-profit organizations. Judicial Watch doesn't just represent itself in court, but we represent others seeking access to information and who can only get it when they sue the government in court. Most recently, Michael argued before U.S. District Court Judge Emmet Sullivan our motion for discovery. So this is his case that he was running into seeking whether the State Department and former Secretary of State Hillary Clinton deliberately thwarted the Freedom of Information Act for six years. And that motion for discovery was granted a few weeks ago.

We will start this important panel discussion with one of our guests, Jason Leopold.

**Mr. Leopold:** I come at this as a journalist who is a fierce proponent of transparency. And I want to make the point that for me and for my organization, Vice News, this is in no way partisan. I happen to pursue records from the federal government on a wide range of individuals, no matter their party affiliation.

And in this particular case, with Hillary Clinton, I actually filed a Freedom of Information Act request for all of her emails. I'm not actually quite sure why I asked for all of her emails when I originally did, in November of 2014. But I knew that she was going to be the Democratic presidential candidate, the frontrunner. And in order to provide the public with information about how she performed as secretary of state, what better way to do that than to provide them with a wide range of documents, including emails?

So I filed this request for all of her emails and then sued the State Department in January, 2015 — knowing that they were not going to respond within that 20-day timeframe and turn

anything over.

But, I had no idea at the time that Hillary Clinton exclusively used private email, that there was a private email server. I had filed several requests some years earlier for emails and just never received a response from the State Department.

We filed this FOIA request for all of her emails, litigated — and then the *New York Times* broke the story about the exclusive use of private email. Then shortly after that, the *Associated Press* broke the story about the server.

Again, as a journalist who depends heavily on records from the government, this was disturbing. Actually, it seemed to me initially like an attempt to thwart the Federal Records Act and the Freedom of Information Act and to deprive journalists and historians with important records about how Hillary Clinton performed during her tenure as secretary of state.

So the case obviously was the first case that the judge heard to determine whether or not these records should be released. And the State Department fought us at every step of the way. Initially, they wanted to release all of the emails in January of 2016. We fought for rolling releases. We argued that there was a public interest here, that there was a presidential election and releasing 30,000 emails — and dropping them all at once — would deprive the public of important information.

During the course of the litigation, we found out that the emails were turned over in BANKERS BOXES, hard copies, double sided. I don't know if this was actually a State Department sob story in a sense by basically saying that it took them so long to scan them and review them because they had to flip it over in order to do that.

So they were trying to argue that, look, we are short staffed and we're going to need a lot of time to review all of this. And as well, during the course of the litigation, there were several declarations filed by the chief FOIA officer revealing that the intelligence community officials were involved in the release or in the review of emails.

So we learned a lot during the course of this litigation. We learned about how these emails were turned over — the fact that Hillary Clinton's lawyers reviewed them and then made the determination as to what to delete based on what they said was personal, which is not how the Freedom of Information Act works. It's not how the Federal Records Act is supposed to work. It's not how officials in government are supposed to be making that determination on their own. This is supposed to go through reviewers.

And, during the course of this litigation what I felt was truly important was what I was really learning about the disastrous situation concerning FOIA operations at the State Department. It was stunning to me and really explained why requests would linger for many, many years without any response.

But when these emails started to come out, again, I felt that they are very important in terms of providing the public with a picture of a top official — the nation's top diplomat — how she



Tom Fitton, president, Judicial Watch

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Jason Leopold, investigative reporter, *Vice News*

performed her job, and how that could possibly provide the public with information as to how she would perform as president.

I should add that I have a separate FOIA case against the FBI for information related to the server. The FBI is saying, well, we've got an active investigation going on. Now that all the emails that were turned over have been released, we are now at the process of asking the judge to force the State Department to turn over a *Vaughn Index* so we can get some insight as to what those emails that have been withheld contain, a little summary of that.

**Mr. Fitton:** Could you explain for our readers, listeners, and viewers what a *Vaughn Index* is?

**Mr. Leopold:** The Vaughn Index would basically be identifying all of the emails that have been withheld, the ones that had been classified, providing us with an explanation as to why they've been classified, and a summary about what they pertain to. And that I think would be quite revealing.

**Mr. Fitton:** Well, thank you, Jason. And the judge in your case is not Judge Sullivan, but Judge Contreras.

**Mr. Leopold:** Contreras, yes. Rudolph — Judge Rudolph Contreras, U.S. District Court. And, again, it's odd to have a judge in a Freedom of Information Act case that does not defer to the government. And that certainly did not happen in this case. He found this to be a very important case. He said as much. And those rolling releases that he ordered, I thought were very, very important. As I indicated, the State Department wanted to dump it all out at once. And that would have been a big problem at this point.

**Mr. Fitton:** Well, allow me to highlight the fact that none of the disclosures that we're talking about were voluntary. They were all the result of litigation. Mrs. Clinton only turned her emails over after repeatedly being requested and demanded to do so by the State Department over the course of nearly a year, in 2014.

**Mr. Leopold:** Right. And that's an important point. So the State Department received a notification from the National Archives in September, 2013, if I'm not mistaken. And it wasn't until a year later when any of these emails were turned over.

And one thing that we hear quite a bit from Hillary Clinton's aides and officials is that she was not the only one who had the practice of using private email. But that's not true because this is entirely unique to Hillary Clinton. Yes, Colin Powell, Condoleezza Rice and Madeleine Albright apparently used private email, but it was not the same way. It was not exclusive, and none of them set up a private server in their home. So that was entirely unique to Hillary Clinton.

And, the other claim or numerous statements that these emails are being released because she asked for it, that's not how it works either. No government official comes out and says, "I want you to release all my records." And then, the government responds, "okay, we'll release them." If it were not for the litigation, this would not have been released the way it

has been. And that's just a fact.

**Mr. Fitton:** As you know, Judicial Watch is generally known as a conservative organization, Jason. But, you wouldn't put yourself as a creature of the right, certainly.

**Mr. Leopold:** No. But that's a point I want to make. I wouldn't put myself as a creature of the right. I wouldn't put myself as a creature of the left. I feel that it's very, very important and crucial to provide the public with information no matter who it may hurt in a sense politically, and perhaps it's embarrassing. That's important. That's the way democracy is supposed to work.

And, that has certainly been the case for me as an investigative journalist who has a very, very difficult time obtaining information — certainly from this administration. And it was the case with the last administration as well. But this administration came into office promising transparency and a new era of open government. And that certainly has not been the case.

But, as I said, I'm doing this and, frankly, if Bernie Sanders was secretary of state, I would have done the same thing, and Ted Cruz, Rubio, exactly same thing. This in no way, from where I sit, that it is partisan. This is just simply my job as a journalist to provide you and the public with information that you otherwise may not be able to obtain.

**Mr. Fitton:** Well said. And it should be noted that as part of the system, the members of the Senate and the House will complain about the lack of transparency in government. But, by design, the Freedom of Information Act does not apply to Congress.

**Mr. Leopold:** Yes. It was very smart by exempting themselves from FOIA.

**Mr. Fitton:** Thank you, Jason. Joe DiGenova, please.

**Joseph DiGenova:** I was here a year ago [during a Judicial Watch Clinton email panel] and I was here to praise Caesar in the form of Judicial Watch. And let me do it again because as a result of the indefatigable activities of Tom Fitton and Judicial Watch, we have learned some amazing facts about the conduct of official business by the United States government and particularly the secretary of state and her entourage.

Some of the most revealing and astounding bits of information about the conduct of government at the highest levels, so disturbing in their extent and in their implications, has to really put into question whether or not a person who did what Hillary Clinton did should ever be president of the United States.

Let's settle a few things at the outset. Mrs. Clinton continues to say that this is a security review that the FBI is doing. That is nonsense. It is also false. Mrs. Clinton, by the way, has given mendacity a bad name. It hardly seems possible for anyone to have lied so much about so many things of such import. But she continues to do so and she does so with vigor and impunity. And you have to ask yourself whether or not the type of Nixonian paranoia, which led her to set up the private server, really disqualifies her from the highest office in the land.

The second thing is the criminal probe is underway. And when I was here last year, I said

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there would be one. I also said there would be a grand jury. There is a grand jury. I also discussed Mr. Pagliano, the guy that worked for her at the State Department also worked for her privately. And, of course, as you know, he never told the State Department that he was working for her privately, and that's one of the reasons he's been given immunity — because he lied on his forms to the State Department about what his relationship was with the Clintons.

There is a damage assessment underway in the intelligence community about all of the emails that are classified. But, more particularly, there is an official damage assessment underway, which you have to do before you bring the cases that are going to be brought in the criminal investigation. That damage assessment is to determine exactly what you're supposed to do when you know that very, very valuable classified information has been compromised.

And make no mistake about it. The secretary, her entourage — Cheryl Mills, Patrick Kennedy, the undersecretary for administration — and all of her staff engaged in a conspiracy to withhold information from the American people, Congress and the federal courts under the Freedom of Information Act, under congressional subpoenas, and under general litigation. They engaged in a conspiracy to obstruct the administration of justice in federal courts. That is now coming to light.

Last year, I predicted that declarations and affidavits from Mrs. Clinton and her staff would ultimately be insufficient. That has now come to pass. She is going to have to testify. And her staff members are going to have to testify. Needless to say, they've already lawyered up for other reasons. But they're going to need them even more.

She has continued the lie that Colin Powell, Condoleezza Rice and Madeleine Albright all used private emails. What's the fuss? And, as Jason has said, the fuss is that she set up a private email in her home, in the basement of her house in Chappaqua, New York, to conduct all her government business. That has never been done by anybody in the history of the United States government. And for her to continue to float the nostrum that everybody did it is truly pathetic. It also tells you something about the ineptitude of the American mass media, which continues to report it uncritically.

Let's put it this way. Last year, I said that the purpose of the private email server was to destroy history. Hillary Clinton wanted to hide, delete, evade, and prevent the disclosure of official government activity. The way she did it and the people who did it with her, who lied to federal courts about whether or not they had information, is a crime. There were crimes committed in front of Judge Sullivan in the form of false statements, and, ultimately, that will be part of the criminal case that the Justice Department has to review.

And let me just say something now about that process. On December 28<sup>th</sup>, I gave my New Year's predictions on my regular legal commentary on WMAL [a talk radio station in Washington, DC]. And on that date, I predicted that Hillary would never make it to the finish line. I mean, it doesn't matter to me whether she does or not, but as a legal matter she won't make it to the finish line.

And the reason is that no honest FBI will ever not bring criminal charges in this case. There are going to be referrals for a series of criminal charges involving violations of the espionage statutes, the grossly negligent mishandling of classified information, and the grossly

negligent storage of classified information.

Remember, her server was unencrypted. It had nothing to do with the United States government. It had no software in it to protect it from foreign intrusions or any hackers. A fourteen year old in Se-caucus could have gotten into that computer. All of the devices that she and her staff used to communicate with that server were un-encrypted. That means wherever they were in the world, when they were talking with one another or to other people, any intelligence service worth its salt was inside those machines and those devices.

Michael Hayden, the former director of NSA and former director of Central Intelligence, said — and I like his phrase — the original sin of this case was the placing of that server, unencrypted, in a base-ment in Chappaqua, New York, for the conduct of all of her business and that of her staff.

There is no doubt that the information — especially the information on the 25 top secret emails that no one will ever see because they're so sensitive — went through that server, was in those devices, and foreign governments got them.

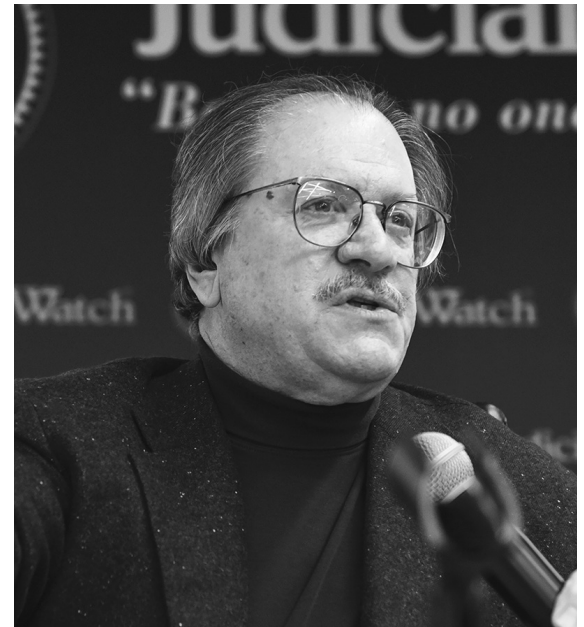
As Michael Hayden said, if I were running a foreign intelligence service and I found out that Hillary Clinton had a private server, the next day I would have everything that was in that server on my desk. And don't you believe that a number of foreign intelligence services didn't do exactly that.

When this is over, the FBI will make a recommendation to the attorney general that Mrs. Clinton and her entourage be charged with a series of federal crimes. They may not recom-mend felonies as a courtesy to a woman who was the first lady for eight years, a senator, and secretary of state. They may as a courtesy try to do what they did with General Petraeus and recommend misdemeanors.

But make no mistake — they are going to recommend that she and others be charged with crimes. It will then be up to Loretta Lynch, the attorney general, to decide what to do. If she's smart, and she appears to be, she will appoint a special counsel to make that decision rather than take it on herself because if she were to decline to bring a prosecution based on the publicly available information, she would either have to resign or she would be im-peached. And I don't use the word "impeachment" lightly.

This is a very serious matter. We have the person in line to be president of the United States who as secretary of state set about at the beginning of her tenure, in 2009, to subvert the transparency of the United States government, to compromise national security, and then to lie about it repeatedly and laughingly. This woman is not fit to be president of the United States.

And if the FBI recommends, as I know they will, criminal charges, the attorney general has an absolute duty to pursue the matter and to bring criminal charges. We shall see what hap-pens.



Joseph diGenova, attorney and former U.S. attorney

**Mr. Fitton:** Thank you, Joe. Just so it's clear, Judicial Watch doesn't take a position either as to whether Mrs. Clinton should or should not be president of the United States. I personally share your views that there will be some type of indictment or prosecution.

**Mr. Leopold:** Perhaps I'm cynical because I have yet to see any accountability for anyone, but I don't think that will happen.

**Mr. DiGenova:** Let me just say this about what Jason said. He is right in the sense that if history is prologue, the IRS investigation is the best example of how this Justice Department — the most politicized in 50 years — handles serious allegations of government misconduct. I think this will be different. And the reason is that was then, and this is now.

**Mr. Fitton:** Thank you, Joe. We'll talk more about this after Michael Bekesha's presentation. Michael is now charged with pursuing a plan of discovery, a narrowly tailored plan of discovery, as Judge Sullivan four times mentioned during the hearing. And he'll describe how we got there and where we might be going.

**Michael Bekesha:** Thanks, Tom. As Tom mentioned early on our case, this was one of two cases that were reopened for revelations that Mrs. Clinton used the non-State Department email account to conduct all of her official business. It started off as a revelation, but when we were in front of Judge Sullivan about a month ago, at the beginning of the hearing, he said, "I don't think revelation is the correct word because everybody at the State Department knew about her email address and other people in the government knew, including President Obama and other individuals in the White House."

So, Tom mentioned revelations. Jason mentioned revelations. But it was only revelations to the American people. It wasn't a revelation to anyone within the government. As Joe mentioned, there's a good chance that foreign intelligence, foreign countries had access to this information. So really for six years — four years that Mrs. Clinton was secretary of state, as well as two years after the State Department — Mrs. Clinton was keeping the public in the dark. They were keeping this email system secret, private so that the public did not have access to her records.

And a lot of the information that Tom's already talked about, as well as what Jason talked about, we guided Judge Sullivan down a path. We started providing him with evidence on why it looked as though Mrs. Clinton and the State Department deliberately thwarted FOIA. It was more than just for mere convenience.

We saw that she hired Bryan Pagliano, who is an IT person, for her campaign. And she had him hired on as a Schedule C [political appointee] employee at the State Department. She then started paying him separately, so that he had two jobs. One, he was supposed to run the IT systems at the State Department. Second, he was supposed to make sure that her email system was always working. Occasionally, her email system would go down, and there would be problems.

And we've now seen through emails we've received in other FOIA requests that when there were problems, her senior advisers — Cheryl Mills, Huma Abedin — would email the State Department senior management, the career folks, and say, "Her email is down, we're having problems." And one of the solutions that came up was, "We should provide Mrs. Clinton with a Blackberry, a State Department Blackberry." Also in that email, they said, we could

mask her identity so people wouldn't know who was sending the emails from that email account.

**As Joe mentioned, there's a good chance that foreign intelligence, foreign countries had access to this information.**

And then, the last part was that Blackberry, and that email account, would be subject to the Freedom of Information Act. Judge Sullivan saw that email and he said, well, that raises some questions. Why would a senior official have to make a point of saying that a Blackberry was subject to FOIA if from the beginning, all of her emails would be subject to FOIA? Of course, in response to that email, Huma Abedin responded something along the lines of, "I don't think that would be a good idea." Of course, we don't know exactly what she was thinking, what she was referring to. But it's probably pretty safe to say that she and Mrs. Clinton were going to be unhappy if all of her emails would now be subject to the Freedom of Information Act.

So we provided all this information to Judge Sullivan. And in the end, Judge Sullivan agreed with us that all the evidence, all the information, already public demonstrated that there's a reasonable suspicion that Mrs. Clinton and the State Department, by creating, using and covering up this email system for six years were deliberately thwarting FOIA.

So this isn't just Tom saying it. It's not just Jason. It's not just Joe saying it. A federal judge appointed by President Clinton said that to him it looks as though the purpose of the email system and the purpose of covering up this system was to deliberately thwart FOIA so that the public, and the investigative reporters, wouldn't have access to Mrs. Clinton's records. So because of that, Judge Sullivan granted our motion for discovery.

So what that means is we can start collecting information, start to find out additional answers to some of the questions that still exist. We've learned a lot, but, there's a lot more out there. We have questions about why the account was set up in the first place, as well as who helped Mrs. Clinton and the State Department set up the account.

Also, we have questions about what career managers at the State Department said when Mrs. Clinton and her team came in in January of 2009 and said, I'm going to use this other email system. I'm going to use my Blackberry. Did anybody tell her no? Did anybody help facilitate the use of that system? We don't know yet. The State Department refuses to answer any questions, so now we get to ask some of those questions to current State Department employees.

We also want to know about how many individuals at the State Department knew about her email address. When somebody wanted to email the secretary, what were they told to do? What email address were they given to email her? Another question is when her system went down, if there needed to be maintenance, if there needed to be management, was somebody at the State Department involved in conducting that work?

We also want to know when FOIA requests came in. Jason said he sent a few FOIA requests to the State Department during her tenure. Well, what happened? I mean, practically speaking, when the FOIA Office gets a FOIA request in, it asks for Mrs. Clinton's email on any topic. They then send a message to the secretary's office that says, "We just got a FOIA request in for Mrs. Clinton's emails. Please review them, search them, and let us know which ones we can produce."

Well, at that point, what happened? There were no emails there. Did somebody in the sec-

**We have questions about why the account was set up in the first place, as well as who helped Mrs. Clinton and the State Department set up the account.**

retary's office tell the FOIA office, well, we don't have any of her emails because it's on this parallel off-grid system? Or did they just say there was no responsive records? Was the FOIA Office being lied to, or was the FOIA Office part of the cover up?

**Mr. Leopold:** So just to be clear, if I can just interject on that. The State Department didn't respond at all, they just completely ignored it? When you asked specifically for her emails back, say, four years ago, you got no response.

**Mr. Bekesha:** Right. So we really don't know what happened — what the processing looked like. We want answers to that. Those are a couple of questions we're still looking for answers to. As Tom said, we have a discovery plan due today. We're going to lay out what type of questions we're going to be asking, who we're going to ask those questions of. The State Department is going to have three weeks to file some type of response. As Jason saw in his cases, they are probably going to fight over what we're looking for, what we're asking for, but the judge has already granted us discovery.

So, right now, it's simply laying out what our proposed plan is. And as we told Judge Sullivan already, there are a couple of key people we think are important. One has already been mentioned today. That's Patrick Kennedy. He's the undersecretary for management. He would be the State Department employee that would have the authority to tell the secretary of state no, you can't do that, or yes, you can do that. So if there were concerns, if there were questions about using this off-grid parallel email system, he would have been the individual there that essentially would have given the blessing of the State Department.

We're also thinking about asking for depositions in order to ask questions about some of the individuals that help set up the stand-alone computer, or suggested the stand-alone computer, or individuals that wanted to provide a State Department Blackberry to her so that her emails were subject to FOIA.

We also have interest in asking questions and deposing former government employees Cheryl Mills, Huma Abedin, Bryan Pagliano. They were three people that were key and essential in helping run, creating, using and concealing Mrs. Clinton's email account. So, those are people we've told the court we may be interested in seeking depositions of. So we're still finalizing that plan. It will be filed later today. And that's where the case is right now.

**Mr. Fitton:** What's the process for the judge approving the plan? What's the timing of the approval, do you think?

**Mr. Bekesha:** We have something due today. The government has three weeks. We then get a period of time to file a reply. So all of that briefing in front of the court, all the papers, are going to be concluded April 15<sup>th</sup>. You never know what a judge's schedule is, how quickly he's going to act, but I would say by early May discovery should start.

**Mr. Fitton:** The judge mentioned about his willingness to subpoena all the emails from Mrs. Clinton's server and he said he was going to do it at that hearing, but he might do it later. Could you talk a little bit about that?

**Mr. Bekesha:** Sure. Tom quoted Judge Sullivan earlier. The judge was very concerned that we sent a FOIA request in, other individuals sent FOIA requests in, and then Mrs. Clinton in our case, and Ms. Abedin, had personal lawyers go through their emails and decide which

ones may be responsive to the FOIA request, which records may be federal records.

As Tom mentioned, they were not federal government employees at that time. Essentially, what they did was the State Department received a FOIA request after employees had left the employment of that agency and they said, “Come on back. We’ll let you review your records, feel free to delete what you want, feel free to keep what you want — you know, have fun, go at it. And then we’ll review the records to see if they’re responsive.”

If you’ve ever worked in the government or known somebody that worked in the government and left, that’s not what happens. That’s not generally what happens. It probably never happens. They received special treatment here. And the judge is concerned about that.

So apparently Judge Sullivan was thinking, why don’t I just subpoena or ask the State Department to subpoena, all of the emails from the parallel off-grid system — all of the emails that Mrs. Clinton sent during her four years? We know Ms. Abedin also had an email account on that system. So what if I subpoena all of her emails from that system for the four-year period?

That’s the ultimate relief. The point of FOIA is to get access to federal records. So the idea would be for the court to subpoena the records; the records all would then be returned to the State Department. So in Mrs. Clinton’s case, it wouldn’t be just the 55,000 pages that her attorneys decided they were willing to turn over to the State Department. It would be the approximately 50,000 more pages that they did not turn over. Whether or not she deleted the records, no one has said. All her attorneys have said was they didn’t turn over those records. My guess is that they didn’t delete any records. The Clintons would like to keep everything in their possession. You never know what happens when you try to delete something.

So Judge Sullivan in the end could subpoena the records. The State Department would then produce the records, and they would have to review the records to see if they were responsive to our FOIA request. And with respect to Jason’s request, they would have to start posting those pages online at some point in a similar fashion as they did for the 55,000.

**Mr. Fitton:** So there are a bunch of other emails that we want to get access to. Thank you, Michael.

If I could just make the point about the role of the State Department and their lawyers at the Justice Department civil division that is representing the agency. There’s no such thing as “retroactive classification.” There could be marking after the fact of material that’s already classified and the marking recognizes its classified nature. But the State Department receiving “retroactive classification” and using that repeatedly is deplorable because not only is it obviously at odds with what the 4.5 million people with security clearances know to be the law, it undermines that law.

And the Civil Division at the Justice Department, representing the agency that presumably is a position of the administration, comes in and defends Ms. Clinton’s conduct.



Michael Bekesha, attorney, Judicial Watch

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Everything that Michael and Jason and Joe said was problematic about her use of that system, the Justice Department has justified and said there was nothing inappropriate about what Ms. Clinton did. She should have been able to do what she was doing and there should be no other question beyond this. And they've said outright that what Ms. Clinton did was perfectly fine.

Imagine you're a prosecutor in the Justice Department and you're working with 150 FBI agents on this national security investigation — this public corruption investigation — looking into also reportedly whether she transformed her public office into a private one in terms of using it to raise money for the foundation and herself personally. And then, you have lawyers at the Justice Department Civil Division working with the State Department agency, saying that everything Ms. Clinton did was good, was fine. There was nothing inappropriate about her handling of documents. How does that fit in with a Justice Department that's supposedly conducting a criminal investigation into the same practice?

**Mr. DiGenova:** This is a complex problem for the Justice Department. The Civil Division of the Justice Department is known to be rough-and-tumble. They don't view themselves as prosecutors. They view themselves as lawyers with clients. Like if you're a big law firm down the street here, their job is to protect their client. They do not have the same sense of ethics and concern that a criminal prosecutor has in the Criminal Division or in a U.S. Attorney's Office.

The Civil Division people run rough shot over everybody on the other side of the case and they defend vigorously to the point of, in my opinion, improper conduct, some of the things that they say and do in court. Let's remember, when that private email server was set up in Chappaqua, everything that went into it became the property of the United States government, whether it was a personal email, a government email, classified, national — whatever it was, it belonged to the United States government. When Ms. Clinton ordered the deletion of over 30,000 emails that was a crime. She stole government property.

Now, it is my understanding that those deleted emails are being recovered. They're not even part of this litigation. Nobody knows what's in those 30,000. She has said they were personal. Guess what? She considers the Clinton Foundation to be personal. That's what's in there. It's Clinton Foundation stuff. And the fact that when FBI agents are now assigned to this case, the first thing they're told is read "Clinton Cash," the book, and then come and start your investigation. Start looking at Boeing and what Boeing did to get a multibillion-dollar contract.

It is very important to understand that the people in the Criminal Division, if they're doing their job, will not care what the Civil Division said. And when the FBI shows up at their doorstep with a prosecution memorandum, recommending charges, they will have to make an independent judgment. But it will not be clouded by the type of representations made by the Civil Division in court.

What the Civil Division is doing in your case and others, they're gaming. This is what lawyers call gaming. They say things because they have to. They don't say things because they believe them. They'll go to the edge. In these cases, though, with you, there's a duty at a certain point as a civil lawyer to know whether or not your clients are lying. And you don't turn in your brain at the door when you become a Civil Division lawyer. And all of your instincts about why clients lie and how they lie are supposed to be brought to bear on judg-

ments about a case.

When Jason didn't get answers, four years ago, from some inquiries, remember that the State Department was asked to answer some questions. Do you have these records? They didn't provide any answer. Now, why do you think they didn't provide an answer? Because they didn't want to lie. Because they knew about the server. People, all over the State Department knew about the private server.

Believe me, when you're looking for the bad guy in this story, there's only one bad guy. It's Patrick Kennedy, the undersecretary of management. He's the hit man. He's the guy who destroys people's lives in the State Department if they become whistleblowers. He ruins people for a living. That's what he does. And he hooked on to the Clinton train and he did everything he could to protect her. I would love to be present for his deposition. I would love to be present.

**Mr. Leopold:** I know we're obviously focused here on Hillary Clinton's emails, but it was very interesting to me, last year, when the revelations unfolded, I actually also had a FOIA request out to the Department of Defense for some emails from Chuck Hagel. And the Department of Defense responded to me by saying, we don't have any records because Chuck Hagel just did not use email. Then, my FOIA lawsuit went through. And I got an email from the FOIA office at the Department of Defense. And they said, "Oh, we just want to let you know that actually Chuck Hagel uses a private email. And it's a Gmail account." So, what I started to notice is that certainly, as I said, this is very unique, this particular situation to Hillary Clinton. But this use of email and trying to kind of fool the Freedom of Information Act was widespread.

Just recently, I obtained some records, unrelated to a sort of an email request, but it was documents that were turned over from the Justice Department. And in the production letter, there was a note from an attorney at the Justice Department saying that all emails in this production that have the name Lew Alcindor are actually Eric Holder. So Eric Holder was using Kareem Abdul-Jabbar birth name as his official government email address. And it was just mindboggling that this was happening.

So I don't mean to digress, but it's significant how widespread this is and how that makes it incredibly difficult for me as a journalist to do my job.

**Mr. DiGenova:** And remember this. This is really important for purposes of government accountability. This administration began its life saying it was going to be the most transparent administration in history. That has become a very bad nightclub joke. The point is that two EPA administrators and two deputy EPA administrators use nothing but personal emails to conduct government business. This is rampant.

Can you imagine a Cabinet meeting with this administration, where they didn't worry about government business? They shared information about how to use private emails to avoid the Freedom of Information Act. There was a plan afoot from the beginning of this administration to avoid disclosure. It was rampant in the cabinet.

And what is really fascinating about this, putting aside the hypocrisy is the arrogance and the lack of fear, the total lack of fear that anything would be done when it was discovered. This is very disturbing for anybody who cares about government or a journalist who's try-

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ing to inform the American people about what's happening. It's pretty serious stuff. I don't count on historians to eventually talk about this truthfully because current historians are just as goofy as the people writing government right now. But I do count on the new historians to make it out.

And the new historians will have Judicial Watch and Jason to thank when the real information comes out. But this was a government policy. This wasn't an accident. By the way, do you know how many inspectors general this administration didn't appoint purposely so they would only have acting inspectors general? Because they knew, once an inspector general gets confirmed by the Senate, they become very independent. So guess what? They didn't nominate people. They had acting inspectors general in a whole bunch of agencies, including — guess where — the State Department.

**Mr. Bekesha:** One thing I glossed over before when talking about our case before Judge Sullivan, something else we learned that was rather startling, was that it wasn't just Ms. Clinton using this private email system. The same system was being used by her deputy chief of staff and her longest time aide, Huma Abedin. So, this was even more unique than the example of Defense Secretary Hagel, of the EPA, because in those cases individuals may have been using a Gmail account. And with respect to former secretaries of state, they may have occasionally used personal email accounts. In this case, you not only had Ms. Clinton exclusively using this off-grid parallel email system, but also her employees were doing so too.

So we know based on another FOIA request and a lawsuit we have that Huma Abedin had about 28,000 pages of emails from this clintonemail.com server that she was using. The *New York Times*, I believe, has reported that other individuals in her office may have had an email account as well on that system. So it wasn't Ms. Clinton just setting up a system for her to use. She was setting up a system for her and all of her closest aides to use, so that they could communicate without the concern that these records would be made public eventually.

**Mr. Fitton:** Ms. Clinton pretends that she's all new to computer emails and that after she became secretary of state, she discovered emails. But, we sued Ms. Clinton personally on behalf of those whose FBI files were, we believe, mishandled and taken during the Filegate scandal during the Clinton presidency.

We had a whistleblower come to us from the White House. And it finally became clear that there was a problem in the White House computer system, where a good number of emails, basically emails from people with the letter D in their name — first or last name — weren't being archived. And if they weren't being archived, it means they weren't put into the system that was searched in response to our document requests and our litigation, in response to the document requests from the Office of Legal Counsel.

And the contractors involved were very nervous about this. And they were told by senior White House administrator staff, you tell anyone about this, you'll be fired to go to jail. So that's the Clinton way.

We brought this to the court's attention. Unfortunately, they didn't rule in our favor, but there was a six-month long evidentiary hearing involving top Clinton staff that had to come in and go under oath before Judge Royce Lamberth. John Podesta, Cheryl Mills — all were put under oath before Judge Lamberth about this email scandal during the Clinton years.

And Judge Lamberth, despite not ruling in our favor — because he thought it was just a failure to communicate between the computer people and the political people — singled out Cheryl Mills and said that her participation in the matter was loathsome and that she made the most critical error in this entire fiasco.

In essence, what Mills did was, once she figured out something was wrong, she didn't tell anyone else about the problem, including those on the outside asking for all this information. And Ms. Clinton had her lawyers at this hearing, too. So she was paying these lawyers personally, obviously. My point being that Ms. Clinton was personally involved in litigation over the withholding of emails in response to document requests. And Ms. Mills, then the chief of staff, was personally held out for misconduct by a federal court judge over this mishandling issue.

So this is nothing new in terms of a Clinton scandal. This is just another Clinton email scandal. There was another one years ago over which a federal judge excoriated one of the key figures, Cheryl Mills.

So this is kind of the history that I think is necessary for Americans to know about when they're looking at this. And just quickly, before I open up to questions, how outrageous is it that Judicial Watch is doing this work? Or that the reason we have this email investigation, over the objections of the State Department, is because one single reporter, on his own, checked the box to make sure that since we have a prominent person running for office who was a secretary of state, we need to make sure we at least have access to all of her emails? You don't even remember why you asked, but you knew you had to ask.

**Mr. Leopold:** I asked for everything.

**Mr. Fitton:** That's just the sort of thing you need to cover as you're covering these people. Where has Congress been? Congress has not investigated the email scandal to any great extent. There have been a few halfhearted queries by the Benghazi Select Committee that have been obstructed. And, to the degree they've asked any questions, they've been barely competent.

For example, the Benghazi Select Committee neglected to ask for all of the records for the time Hillary Clinton was in office. And we noticed that discrepancy. One of our lawyers here, Ramona Cotca, pushed hard on the State Department. "First of all, give us all these records you've supposedly given the Benghazi Select Committee. By the way, there's another month you didn't search for. Go back and search."

Based on our inquiries and pressure in our litigation, the State Department realized they had done a terrible search for the Benghazi Select Committee and went back and did a re-search on the Benghazi records. And it was that re-search that produced, for instance, the email that Ms. Clinton wrote to her daughter the night of the attack acknowledging it was an al Qaeda attack. And that was the centerpiece of the Benghazi Select Committee email hearing at which she testified. But it was a document that wouldn't have been disclosed but for our litigation.

It is wonderful that we had that success. But, isn't it frightening and outrageous that it would not have been disclosed or at least in a timely way but for our activity? And you have to wonder where Congress is: And where is the rest of the establishment in Wash-

ington? The State Department's refusal to go out and protect the classified information that Ms. Clinton took — simply saying, "Please return the classified records. Please return them. Please return them, once, twice, three times."

This is an indictment not only literally or figuratively of Ms. Clinton, but really of the process of government accountability here in Washington. Congress wasn't doing it. The agencies weren't doing it. And it is independent groups like Judicial Watch or lone reporters doing more work than Congress has been able to do.

**Mr. DiGenova:** One of the fascinating things about the private server is the House of Representatives — the Senate didn't do anything — but the House of Representatives has the Armed Services Committee, Foreign Affairs Committee, Government Oversight, and the House Intelligence Committee conducting four investigations.

Now, they subpoenaed and asked for records. They got stonewalled. Some of them didn't even subpoena records. They just sent letters requesting the documents. Not one of those committees, prior to the Benghazi Select Committee, knew that Hillary Clinton conducted her business from her private email server in her house.

Now, what do you think of the quality of that investigation? Can you imagine John Dingell or Henry Waxman not finding out about the private server while they were dragging people up in front of their committees, or in public grand juries? The incompetence of the House Republicans in conducting these investigations about Benghazi and related matters is a disgrace. Every one of those chairmen should be embarrassed by the work that they didn't do.

It's apropos of Tom's comments. Is it any wonder we're just finding out about this? These people aren't fit to govern. They're unbelievable.

**Mr. Fitton:** Let's open it up to questions. If you could identify yourself briefly and ask a question or a comment, and please keep your questions or comments brief.

**Q:** Hi, Alana Goodman from the Washington Free Beacon. My question's for Joseph. Can you explain the significance to you of Bryan Pagliano being granted immunity? Like what do you think that this indicates?

**Mr. DiGenova:** First of all, I've investigated espionage cases with classified information. I did the Pollard spy case. So this is not complex stuff. The guy who set up the server is the first guy you talk to. He's also not going to be the last guy. He's also not going to be the mastermind. He did what he was told. He's like one of the soldiers in there. He's not a capo in the mob.

The Clinton mob had this guy at the bottom. You immunize him, number one — no thought — doesn't even take five minutes to figure out you're going to immunize this guy, and you have to. What happened was his lawyers went in and they made what's call a proffer. The prosecutor said, yes, we'll give him immunity, but you've got to give us a proffer, off the record, about what he's going to tell us. They heard it. They gave him immunity.

Now, in all likelihood, he got statutory immunity, which means they went before a federal judge, they got immunity. And you do that when you have a grand jury. If there's not a grand jury in this case, I mean, I don't know what these people are doing.

**Q:** Can you explain statutory immunity?

**Mr. DiGenova:** Statutory immunity grants you complete immunity. Ollie North got statutory immunity from the committee. Remember when he testified? And Brendan Sullivan, his lawyer said, whatever you do, say as much as you can because once it comes out of your mouth under statutory immunity, they can't use it for leads. They can't do anything. And as you know, Ollie North was subsequently prosecuted by an independent counsel, convicted, and his prosecution was later thrown out because the court said, there's no way after giving that testimony that he could be prosecuted.

That statutory immunity protects Bryan Pagliano from everything, he can never be prosecuted, state or federal, unless he lies, and then he can be prosecuted for perjury. The immunity is vitiated, and he can be prosecuted for everything up to that point. So if Bryan is a smart little boy, he'll tell the truth and he'll tell everything and not try to hide or protect anybody.

**Q:** Hi. Andrew Harris from Bloomberg News. My question is for Michael. You laid out some of the people that you're hoping to depose subject to Judge Sullivan's order. Those of us in the room of a certain age can remember that when Bill Clinton was president, he was subject to a famous deposition. I'm wondering, are you building up to seeking the deposition of Secretary Clinton or are you not going to seek that?

**Mr. Bekesha:** Right now, we want to get answers from people that were involved in either approving her server, setting up the server, or creating the server. That's where we are right now. We may come to a point where we need Ms. Clinton's testimony because individuals can't answer the questions that Judge Sullivan asked. But right now, we're starting with other individuals.

**Mr. DiGenova:** By the way, just so you know, the last person in the world you ever want to interview is Mr. or Ms. Big. They're the last person. You never talk to them first. They're the last people because if they are prone to lie, which may be the case here, you want to have talked to everybody first, gotten them under oath, gotten their information, and then talk to the big kahuna.

**Q:** Thank you, Laura Koran with CNN. Actually, I have two questions. The first is for Joseph. Since you're making predictions today, I wonder if you could speak about how widespread you see these indictments, these potential indictments being, given that, as we saw with the *Washington Post* report, Clinton herself sent, I believe, 104 of these now classified emails, but there's hundreds of other officials who sent encryption — classified as well. And then, if I could, just one other question for the entire panel, which is how much of this: if we go beyond the Clinton email specifically, is this an issue of FOIA regulations struggling to keep up with new technologies? And you know, the laws not explicitly pertaining to not just email, but even newer technologies that are emerging and that aren't necessarily being incorporated into the archiving regulations. And I guess sort of how this can be exploited by government officials to circumvent FOIA.

**Mr. DiGenova:** Well, let me just say, the circle of figures at the center of the investigation includes Ms. Clinton, Mr. Pagliano, Huma Abedin, Patrick Kennedy, Cheryl Mills, and several other people in the immediate circle. Those people all would have been privy to the fact that there was a private server and nothing else. They would have known that the private server was not encrypted. Because they were using private, unencrypted devices

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to communicate with Ms. Clinton through the server. Every one of those people who has a high level security clearance is a potential criminal target in that inner circle.

Beyond that circle, as you get farther away, people's culpability goes down. Because they're not going to have the type of knowledge about the original sin. They may see a Clinton.com. But, they don't know about that server in Chappaqua. If you know about that server in Chappaqua, you're dead meat. You are criminally responsible for the mishandling or the improper storage of classified information. That doesn't mean it's a felony. I want to underscore, if I were the FBI, I would recommend felony prosecutions for everyone in that inner circle. But I would expect a misdemeanor plea or a workout. And that would be my assumption.

Once you get beyond that core, it's much more difficult to accuse people of mishandling when they're being sent emails from the inner circle. What do they know, how much do they know? Now, I have to tell you something. If I'm communicating with the secretary of state and her entourage, four or five people tops, and it doesn't have a ".gov" on it, the first thing I'm thinking is, what's this all about? You don't have to be an expert. You don't have to have a degree in technology. You don't have to be somebody who sets up systems, who can write code and software. That is a fundamental.

Let's say you're getting sensitive information about what's happening in East Berlin after an attack. And you're on the periphery. You may be in the security people at the State Department who provide protection for Ms. Clinton. And you get a, you get a dot com email with some information about an attack. You know the first thing you do? You call somebody up and say what the hell is this? Why is this not coming to me on a ".gov?"

It would have been rudimentary for people to ask the question, what is this email stuff? And a lot of people didn't. And so the question is why. Because they were afraid to. Because you never crossed the secretary, and you never crossed Patrick Kennedy.

**Mr. Fitton:** Jason, do you have any response to the issue of the — I guess like texting or Snapchats or things like that?

**Mr. Leopold:** The National Archives has explicit guidelines for email retention and the changing technologies. National Archives are not the greatest. Clearly they did not do a good job with this issue, with regard to the private email. But they do have these guidelines. And these guidelines have been issued and they even include text messages. There are guidelines about retaining those. The problem is, it's not so much that the agencies are unable or incapable of getting that information. It's that the Office of Information Policy within the Justice Department, that's supposed to enforce these guidelines, is just not doing it. They not doing their job. It's the status quo.

So the guidelines are there. There are even guidelines for the use of alias emails, which is rather widespread. There's nothing that prohibits it. But the National Archives said they frown upon it because when requesters are trying to seek emails or other information, it's going to make it difficult to locate that.

So the problem is about policing. And the office that's in charge of policing for the most part is just not doing it.

**Mr. Fitton:** Michael, about the new Internet communication programs.

**Mr. Bekesha:** I think part of your question talked about or mentioned struggling to keep up with the changing technology. I take a step back and say agencies aren't doing a good job producing paper records. So I think part of Jason's request — correct me if I'm wrong — was not just for emails, but a lot of her records that she created, including calendar entries, including memos, letters she wrote. So we're not just talking about email, texts and messages, Snapchats. Agencies are failing to process even paper records. And as you know, paper records are decreasing in amount these days. And they're still having trouble producing those.

And I think, as Joe said, it's because it's the Justice Department OIP not enforcing. We know from experience that if you don't sue over a FOIA request, it's going to take a year, two years, or three years. I get responses to FOIA requests four years later, asking if I'm still interested because maybe now they'll start processing the FOIA request.

**Mr. Leopold:** I got one of those yesterday, where the Department of Defense just sent me a response of records four years later. And I was thinking to myself, I could have gotten another degree. (Laughter.)

**Mr. DiGenova:** By the way, the one thing people in these agencies are not doing is struggling with their consciences.

**Mr. Fitton:** Well, the law has kept up in the sense that no emerging technology is a reason not to keep a government record as you're supposed to under the law. So if you're a government employee and you're using these systems knowing that it's not being captured, knowing you're avoiding disclosure, the law covers that sort of misconduct. And it is misconduct. The most famous texting version of this is Lois Lerner asking if the IRS kept text messaging. I think it was Lois Lerner or one of her colleagues who said, "It was good that they weren't tracking texting."

So employees are knowingly doing this and, of course, so is every government — every employee out there who uses an email system with their company. This is why Ms. Clinton's having such a problem politically, in my view. Everyone knows immediately. Who are they fooling? You know that you do your personal business on your personal accounts and your work business on your work accounts. And the two shouldn't mix.

So anyone, any office — government or non-government — understands what the email system is about. And I think Mr. Carville, a few weeks after the story came out in March, told us why she did this. He said, you know why Ms. Clinton did this? Because she didn't want Louie Gohmert, the conservative Republican congressman from Texas going through all of her material. She thinks that those who disagree with her or those on the outside — and you don't have to be Republican or conservative, you can be an enemy of Ms. Clinton for other reasons — should not be able to go through her emails. And she wanted to be the guardian. And this cover-up and this obstruction and this effort to shield this information was blown up. The desire was to never have this material public, but it was blown up.

And sure enough — it's like James Cagney, in one of the old movies — she said that everyone who's asking you a question is a dirty rat. (Laughter.) The right wing, Judicial Watch — James Comey is being attacked as a Republican, yet he was okay when he was a Republican covering up the IRS scandal. But now he's a Republican because he's asking questions of Ms. Clinton.

**The OIG investigators, the appointees of President Obama, the inspector general for national intelligence community, the inspector general for the State Department — all are being attacked by the Clinton operation.**

The OIG investigators, the appointees of President Obama, the inspector general for national intelligence community, the inspector general for the State Department — all are being attacked by the Clinton operation. They are attacking the law and those charged with enforcing the rule of law. And if that doesn't tell you what the mentality is and whether she was operating in good faith, I don't know what will.

**Q:** Pat Swan, I'm retired, over 32 years in NIC. My question — I gather you said she did not have a dot gov account either on the classified, unclassified systems. And have they given an explanation on how the top diplomat, the secretary of state did her daily work with classified information?

**Mr. Fitton:** This is one symptom of, I think, the underlying transparency crisis that has been building. But this administration really in some ways is second to none in terms of its refusal to obey the Freedom of Information Act. And I think the courts have reacted in many ways appropriately. You never get everything you want when you're litigating against government. My perception had been that the stonewall often extended from the White House to the courthouse.

And the government — the district courts, the government courts, the federal courts here in the District of Columbia — have often been terribly over deferential to the federal government and the executive branch. And this goes for Clinton, Bush, and Obama. I think that's changed. It's not going to be a sea change, but there's a bit more skepticism. And in answer to your first question about how did she conduct classified work on her system. I think your question almost answers itself. Obviously, all of her work involved classified information, or much of her work involved classified information just simply by virtue of her position.

**Mr. Leopold:** Sure, I mean, in terms of transparency, I testified before Congress last year, in front of the House Oversight Committee that was looking into FOIA. Journalists don't normally like to testify about things, unless they're subpoenaed. And even then, no. But this was about the Freedom of Information Act, and how it's doing. And unfortunately, it was discussing how difficult it was to obtain information. And one of the questions was how was the Bush administration compared to the Obama administration. And you know, the difference is that this administration signed a presidential memorandum promising a new era of transparency and open government.

Last week, I broke a story based on documents, ironically, that I had to obtain through FOIA that showed that the administration was scuttling reforms to FOIA that Congress was trying to pass. I mean, it's been horrendous. It's just been very, very difficult to obtain any records or any information short of litigation.

In the last administration, Ashcroft had a memo which we, more or less, knew that we weren't getting because they made it clear. And this new memo and these new guidelines that came through this administration were instructing agencies to act with the presumption of openness. And the administration fought the Congress's efforts to codify that into law. Currently, as a reporter with VICE News, I have about two dozen Freedom of Information Act lawsuits with a number of different agencies. A lot, a lot of, a lot of FOIA lawsuits.

But as I indicated, as a national security reporter, and somebody who is trying to get documents to report these stories, it's just been impossible to do that short of quoting anonymous sources. And I've been burned in the past by anonymous sources. I just don't want to go

down that road again.

**Mr. DiGenova:** So in answer to your question, how did Ms. Clinton conduct her government business, all of it, without having a dot gov account? And the answer is, when she did it with classified information, she did it illegally. That's how she conducted her business.

**Mr. Fitton:** Michael, do you have any thoughts on either the classified issue or the transparency generally? You've litigated more than your fair share of cases. Judicial Watch has now filed well over 3,000 Freedom of Information Act requests. And we only sue one out of every 10 requests at this point.

Oftentimes, with our litigation, the large majority of it is just to get them to give us a response one way or another and to get a schedule of the release of documents, which is often only obtained through court order. That's how derelict the Freedom of Information Act law is. It's only enforced through court orders these days in large measure on substantial matters, not voluntarily, by the administration and executive who've sworn to lawfully, faithfully execute the laws.

**Mr. Bekesha:** As Tom said, we file about 50 FOIA lawsuits a year. And of those lawsuits, it's several months if not several years later by the time Judicial Watch receives all the records. Sometimes we're representing investigative reporters, other individuals doing research for books or scholarly articles, and Judicial Watch is looking for information about investigations they're following.

Most of the time we get these records after the deadlines have passed, after the stories are cold, after reporters' deadline have passed and they've submitted their articles. So FOIA is a great tool, but as it is right now, it's really an imperfect tool. And I'm not sure what changes that. I don't think the new FOIA reform bill that looks like it's going to pass soon is going to make any significant changes. We're still going to have to sue to, as Tom said, to just get an answer about whether or not they're going to produce records.

**Mr. Fitton:** I think in sum, obviously, we're going to continue our work because, as Judge Sullivan said, the State Department thwarted our effort for discovery. So you have the Office of Inspector General, you have this FBI investigation, and I'm paraphrasing — you can look at the transcript on our website — Judge Sullivan said, "Well, that's good for the OIG and that's good for the FBI, but what about the public's right to know?"

And so to that end, no matter what the FBI and the Justice Department do, we're going to have this discovery and we're going to get information. And, I think much of that will be public, if not contemporaneously, but eventually with the court. And then, you have independent lawsuits like Jason's that are going to proceed. Because I am not confident about disclosures. Much of the disclosures we have about what went on in the system, as we pointed out and Jason's pointed out, have been the result of independent litigation, not by any official government action.

The ones charged with enforcing the rule of law of this town have been AWOL. And with respect to an indictment of Ms. Clinton, this is now a year since this disclosure. Several months ago, we had information Ms. Clinton sent that asked her colleague to delete classified markings and send her the material.

**This is one symptom of, I think, the underlying transparency crisis that has been building.**

**And we know that there are several dozen agents assigned to the Clinton Foundation, and whether or not their official acts were bought and paid for by donations to the Clinton foundation we don't know yet.**

If it were a regular person, a regular government employee, there would have been raids, there would have been this information review. What was the term you used, Joe?

**Mr. DiGenova:** Security review.

**Mr. Fitton:** The security review, or the spillage operations, would have involved going to every location where Ms. Clinton lived and worked, and taking every piece of paper and computer device in an FBI raid. And that would have happened if it was just a regular employee of the government. But in some way, she's already above the law. And I hope the law does catch up with her, and it is catching up with her in the litigation that we're talking about here. We only heard about the FBI activities with respect to Bryan Pagliano and that they wanted to talk to Ms. Clinton eventually. It was interesting that was leaked only a week after the judge, in our case, granted us the ability to talk to these same people in theory.

I'm hopeful that there is going to be accountability, but time and time again it looks like the Justice Department and the FBI, at least, move only publicly when prodded by independent action. And it's great that we're doing it, but it's no way to run a railroad. Any closing thoughts from any of you?

**Mr. Leopold:** I was just going to actually chime in with just a last note about what was very interesting in this last batch of emails that were released. There was an email from — I believe it was a Foreign Service officer, but don't quote me on that — who was using a private email to conduct business. And Hillary Clinton remarked that she was upset that this person would actually use a private email to conduct business. I was trying to read into this like surely, she must know that she's using a private email, but there's no self awareness. But it was really just remarkable to see her write, I can't believe you would use a private email to conduct official business. That doesn't seem right.

**Mr. Fitton:** Joe, how about the insights to the timing of any of the law enforcement action you suggest will occur?

**Mr. DiGenova:** Well, back in December, when I started talking about this and then everybody piled on and information started coming out as a result of that, I predicted 60 to 90 days for a recommendation from the FBI to the Attorney General. I have no idea what indictments might come, if any because that would require review. And the FBI could make a recommendation without a grand jury. But there's no way you give Bryan Pagliano immunity without having subpoenaed documents from a bunch of third parties. And you only do that with a grand jury subpoena.

So now they've gotten into the Clinton Foundation. And we know that there are several dozen agents assigned to the Clinton Foundation, and whether or not their official acts were bought and paid for by donations to the Clinton foundation we don't know yet. So, it could go on longer. But the pressure is on to decide sooner rather than later, so I would assume that by May there's going to be a recommendation from the FBI. Certainly before the Democratic National Convention, and there should be. I mean, she has a right to know whether or not she's in trouble. And the American people, who might be voting for her, especially Democrats in primaries, certainly have a right to know whether or not this is all for naught.

**Mr. Fitton:** Would a special counsel start from scratch if he or she were appointed?

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**Mr. DiGenova:** Well, if they appointed a good special counsel, in other words, someone who'd been a U.S. attorney before or a federal prosecutor before, these are not complex matters. I think the Clinton Foundation issue — whether or not official acts were bought and paid for with donations to the foundation — that's a more complex subject. But the evidence is already readily available. If you appoint a special counsel, that person has to get organized, get an office, hire staff. So it would obviously elongate the decision process about whether or not to charge her or anyone else.

**Mr. Fitton:** And assuming Judge Sullivan — on April 15<sup>th</sup> or so is when the briefing is done — assuming he rules in a month or so or within a month, we'll be taking discovery in May, and June, and July?

**Mr. Bekesha:** That's the plan.

**Mr. Fitton:** And in addition, we have another request for discovery on the Clinton email system before Judge Lamberth. And there is other litigation, Jason, about the emails Ms. Clinton said she had but didn't turn over because they were personal.

**Mr. Leopold:** Right.

**Mr. Fitton:** And there's been talk about deleting emails. Ms. Clinton never said she deleted any emails. She said I didn't keep them. And then, Mr. Kendall said they're not on her server. And I'm convinced that these emails are obtainable and are out there. The FBI, supposedly, has recovered some of them from the server they were removed from. But I have a feeling they're out there. And I think the law and the facts are on our side. It's a matter of time before those emails are obtained and reviewed and secured under the Freedom of Information Act at least.

**Mr. DiGenova:** Well, what's going to happen is because of your depositions and your questionings, obviously, this issue is going to come up. And the question, I would assume, would be asked, where are these other emails? Were they destroyed? Were they placed in another server? Were they printed out? Are they in electronic form? I mean, the notion of turning over to a journalist tens of thousands of pages of documents with no electronic format for searching is ludicrous. The only reason you do that is because you don't want the reporter to find anything. That's why you give him paper.

It's the old trick in litigation. You dump two million documents on your opponent and let them see if they can find anything. In this case, unless people are prepared to lie for their leader, I would assume that the answer to the question about where these other emails are and whether or not they are truly personal — I'm making quotation marks with my fingers — will come to light and no doubt, as a result of the varying litigations.

**Mr. Fitton:** So thank you everyone for attending and thank you, our guests, for sharing their experience and insight with those here and those viewing us on the Internet.

Once again, this video will be available in its entirety on the web for future viewing at JudicialWatch.org. And we'll have an edited transcript available in a month or two as well. So thank you very much.

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