

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendant.

No. 1:13-cv-01363-EGS

**NON-PARTY HILLARY RODHAM CLINTON'S OPPOSITION
TO PLAINTIFF'S MOTION TO COMPEL**

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INTRODUCTION

As this Court has recognized, discovery in FOIA cases “is the exception, not the rule.” Feb. 23, 2016 Hr’g Tr. at 8:20–21. Within that framework, this Court took the unusual step of permitting Judicial Watch to take “limited discovery” in this case relevant to the question of whether former Secretary of State Hillary Rodham Clinton’s use of a private e-mail account to conduct State Department business was “a deliberate intent to thwart FOIA.” Dkt. #124, at 1, 12. Discovery of former Cabinet officials is rarer still, requiring a showing of “exceptional circumstances.” *Id.* at 17–18 (internal quotation marks omitted). Applying this test, this Court permitted Judicial Watch to pose interrogatories to Secretary Clinton, although it cautioned Judicial Watch “to propound questions that are relevant to Secretary Clinton’s unique first-hand knowledge of the creation and operation of clintonemail.com for State Department business.” *Id.* at 19 (internal quotation marks omitted).

Of the 25 interrogatories posed by Judicial Watch, Secretary Clinton answered 22 of them. Judicial Watch tellingly does *not* challenge the adequacy of Secretary Clinton’s answers to those 22 interrogatories. It could not credibly do so: Secretary Clinton answered the interrogatories to the best of her knowledge in good faith, and her answers are consistent with the voluminous public record.

Since the time the Court authorized Judicial Watch to pose interrogatories, even more information regarding Secretary Clinton’s e-mail has entered the public domain. In particular, the FBI released Form 302 summaries of Secretary Clinton’s interview and other interviews, as well as its July 2016 investigative report. As the public record related to Secretary Clinton’s e-mail

expanded, one conclusion remained constant: there is still no evidence indicating, or even suggesting, that Secretary Clinton used a private e-mail account with the intent to thwart FOIA. No amount of discovery will change that conclusion.

Notwithstanding this immense record, Judicial Watch has moved to compel Secretary Clinton to answer three interrogatories—Interrogatories Nos. 1, 14, and 24—that undersigned counsel instructed her not to answer on the basis of counsel’s objections. Counsel’s objections are well-founded and should be sustained. Interrogatories Nos. 1 and 14 do not seek information related to Secretary Clinton’s use of the clintonemail.com system for State Department business; for that reason, they are irrelevant and outside the scope of permitted discovery. As for Interrogatory No. 24, Secretary Clinton cannot answer that interrogatory without divulging privileged attorney-client communications. In any event, counsel to Secretary Clinton has already disclosed to the Benghazi Select Committee information relevant to Interrogatory No. 24; that disclosure, attached hereto as Exhibit D, should resolve any further dispute regarding that interrogatory. Counsel to Secretary Clinton respectfully request that the Court deny Judicial Watch’s motion to compel.

ARGUMENT

I. INTERROGATORY NO. 1 IS IRRELEVANT AND OUTSIDE THE SCOPE OF PERMITTED DISCOVERY.

Interrogatory No. 1 asks Secretary Clinton to describe the creation of the clintonemail.com system, which Judicial Watch defined in the definitions section of its interrogatories as the system, server, provider, and infrastructure used to host her clintonemail.com account. *See* Dkt. #137-1, at 4. Interrogatory No. 2, by contrast, asks Secretary Clinton to describe the creation of her clintonemail.com account, including the reason for its creation. *Id.* at 5. Secretary Clinton answered Interrogatory No. 2, stating:

In the Senate, when Secretary Clinton began using e-mail, she used a personal e-mail account for both work-related and personal e-mail. Secretary Clinton decided

to transition from the account she used in her tenure at the Senate to the clintonemail.com account. She recalls that it was created in early 2009. Secretary Clinton did not set up the account. Although Secretary Clinton does not have specific knowledge of the details of the account's creation, her best understanding is that one of President Clinton's aides, Justin Cooper, set up the account. She decided to use a clintonemail.com account for the purpose of convenience.

Id. Judicial Watch has not challenged the adequacy of that response.

As is apparent from the FBI's summary of Secretary Clinton's interview, the "system" (or server) that hosted Secretary Clinton's clintonemail.com account during her tenure as Secretary of States was a "system used by her husband's [*i.e.*, former President Clinton's] personal staff." Ex. A at 5. The FBI's summary further states that, in approximately January 2009, Secretary Clinton decided "to move onto [the] system maintained by her husband's staff." *Id.* at 4. Counsel's objection to Interrogatory No. 1 reaffirms that "[t]he clintonemail.com system . . . consisted of equipment set up to host e-mail for President Clinton's staff." *See* Dkt. #137-1, at 4.

Information regarding the creation of the clintonemail.com system—a system created to host e-mail for former President Clinton's personal staff—is not relevant to this FOIA lawsuit. This Court permitted discovery of Secretary Clinton on the topic of "the purpose for the creation and operation of the clintonemail.com system *for State Department business.*" Dkt. #124, at 14 (emphasis added).¹ The reasons why former President Clinton's personal staff set up an e-mail server, and the technical details surrounding the creation of that server, do not bear on that narrow question. The relevant question under this Court's order is how and why *Secretary Clinton* used

¹ The Court also permitted discovery of Secretary Clinton on the topics of "the State Department's approach and practice for processing FOIA requests that potentially implicated former Secretary Clinton's and Ms. Abedin's emails and State's processing of the FOIA request that is the subject of this action." Dkt. #124, at 19 (internal quotation marks omitted). Judicial Watch does not argue that Interrogatory No. 1 is relevant to these topics.

that system “for State Department business.” *Id.* Secretary Clinton answered that question in Interrogatory No. 2.

Judicial Watch offers no real argument defending the relevance of Interrogatory No. 1. It states in bare-bones fashion that “[u]nderstanding the basic facts surrounding the creation of the system is an integral part of understanding how and why it came to be used for State Department business,” Mot. To Compel (Dkt. #141) at 3, but it provides no articulation of why that is so. The relevant facts are those surrounding Secretary Clinton’s decision to have an account on the server, not those surrounding the creation of the server itself. Nor does Judicial Watch identify in any detail what information it desires to know that is not answered by Secretary Clinton’s response to Interrogatory No. 2. It argues vaguely that it wants to know details relating to the system itself as opposed to Secretary Clinton’s account on the system, *see id.*, but it does not explain why such information is relevant to its (incorrect) assertion that Secretary Clinton used the system in an attempt to thwart FOIA. In any event, the FBI’s summary of Secretary Clinton’s interview makes clear that she has no personal knowledge of the details surrounding the creation of the “system.” *See Ex. A* at 5 (“CLINTON had no knowledge of the reasons for selecting to install it in the basement of CLINTON’s New York residence or the hardware, software, and security protocols used to construct and operate the server.”). The Court should deny Judicial Watch’s motion to compel a response to Interrogatory No. 1.

II. INTERROGATORY NO. 14 IS IRRELEVANT AND OUTSIDE THE SCOPE OF PERMITTED DISCOVERY.

Interrogatory No. 14 involves a March 6, 2009 Information Memo from Assistant Secretary of State for Diplomatic Security Eric Boswell to Secretary Clinton’s Chief of Staff, Cheryl Mills, regarding unclassified Blackberry use. The memo, attached hereto as Exhibit B, recommended

against using Blackberries inside the Secretary's office (which was a Secure Compartmented Information Facility ("SCIF")) and further advised that "any unclassified Blackberry is highly vulnerable in any setting to remotely and covertly monitoring conversations, retrieving e-mails, and exploiting calendars." In Interrogatory No. 14, Judicial Watch asks whether Secretary Clinton reviewed this memorandum and, if so, why she continued to use an unclassified Blackberry to access her clintonemail.com account to conduct official State Department business. *See* Dkt. #137-1, at 10–11.

Judicial Watch's question is completely irrelevant to "the purpose for the creation and operation of the clintonemail.com system for State Department business." Dkt. #124, at 14. The memorandum that is the basis for the question addresses the cybersecurity risks associated with use of unclassified Blackberries—whether used to access personal *or* state.gov e-mail. This is precisely the type of "cybersecurity issue[]" that this Court expressly carved out of the scope of permitted discovery in this case. Dkt. #73, at 13.

Undersigned counsel appreciate that cybersecurity issues could be relevant to the reasons why Secretary Clinton continued using a personal e-mail account if Secretary Clinton had been advised about cybersecurity risks associated with using personal e-mail or cybersecurity threats related to her account or server in particular. For that reason, Secretary Clinton's counsel permitted Secretary Clinton to answer Interrogatories Nos. 17, 18, and 19, notwithstanding that those interrogatories relate to cybersecurity issues. Interrogatory No. 14, by contrast, does not relate to cybersecurity threats associated with use of personal e-mail. It instead concerns threats associated with using unclassified Blackberries, and in particular using unclassified Blackberries within a SCIF. It thus does not bear on this case.

Although undersigned counsel reiterate that Interrogatory No. 14 is irrelevant, counsel note that the FBI asked Secretary Clinton about this Information Memo, and the FBI's summary of her response is included in the released Form 302. *See* Ex. A at 4 (“After reviewing a memo written for CHERYL MILLS by ERIC BOSWELL, CLINTON stated she never brought her unclassified Blackberry into her SCIF for the reasons outlined in the memo. She would keep her Blackberry outside of the SCIF and check it in non-SCIF areas of State, when traveling to her office, at speeches, and other occasions outside of the office.”). For this reason as well, Secretary Clinton should not be compelled to answer this irrelevant interrogatory.

III. INTERROGATORY NO. 24 CALLS FOR INFORMATION THAT IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE.

Interrogatory No. 24 asks Secretary Clinton for the basis for her statement during her October 22, 2015 testimony before the U.S. House of Representatives Benghazi Select Committee that 90 to 95 percent of her e-mails “were in the State’s system” and “if they wanted to see them, they would certainly have been able to do so.” Dkt. #137-1, at 18. Counsel objected to Interrogatory No. 24 on the ground that it calls for information protected by the attorney-client privilege.

Secretary Clinton cannot answer this interrogatory without disclosing privileged communications from her attorneys that were made for the purpose of providing legal advice related to Secretary Clinton’s e-mail in advance of her testimony to the Benghazi Select Committee. “The attorney-client privilege protects confidential communications made between clients and their attorneys when the communications are for the purpose of securing legal advice or services.” *A.N.S.W.E.R. Coalition v. Jewell*, 292 F.R.D. 44, 47 (D.D.C. 2013) (internal quotation marks omitted). The privilege protects communications from an attorney to a client so long as the communications are “based, *in part at least*, upon a confidential communication to the lawyer from the client.” *Id.* at 47–48 (internal quotation marks omitted); *see also Upjohn Co. v. United States*, 449

U.S. 383, 390 (1981) (holding that the privilege protects both “the giving of professional advice” by lawyers and “the giving of information to the lawyer to enable him to give sound and informed advice”). This principle reflects the fact that attorneys’ advice is typically informed by “the client’s disclosures” as well as other information, and that it is often impossible to separate the one from the other. *See In re Sealed Case*, 737 F.2d 94, 99 (D.C. Cir. 1984).

To require Secretary Clinton to disclose the basis for her testimony during the Benghazi Select Committee would require her to disclose privileged attorney-client communications that were based, at least in part, on confidential information that she provided to her attorneys. Judicial Watch argues that the attorney-client privilege protects only communications, not the underlying facts. Mot. at 6. But Judicial Watch already knows the underlying fact: that 90 to 95 percent of Secretary Clinton’s work-related e-mails were in the State Department system. Its interrogatory asks Secretary Clinton to identify the “basis for that statement,” as well as how and by whom she was made aware of that fact. Secretary Clinton cannot answer those questions without identifying the communications themselves.

Secretary Clinton’s privileged communications with her attorneys remain confidential. Counsel note, however, that undersigned counsel David Kendall disclosed information relevant to Interrogatory No. 24 to the Benghazi Select Committee following the hearing. At the conclusion of Secretary Clinton’s testimony, Chairman Gowdy asked her to identify “the source for the 90 to 95 percent [figure].” *See* Ex. C at 425. In response to that question, on November 13, 2015, Mr. Kendall sent a letter to Chairman Gowdy stating in relevant part:

In December 2014, the Secretary provided the State Department with 30,490 emails – consisting of all of the potentially work-related emails in her possession. Of these emails, more than 27,700 had a government email in an address field – including more than 27,350 that were sent to or received from a State Department email address.

We have been advised by the Department that at least 1,240 of these emails are not federal records (*i.e.*, they are personal records); leaving no more than 29,250 work-related emails.

Consistent with this information, between 90 to 95 percent of Secretary Clinton's work-related emails were to or from a State Department email address and therefore would have been captured in the State Department's recordkeeping system.

Ex. D. This letter should resolve any further dispute regarding this interrogatory.

It bears reminder that Secretary Clinton is not a party to this action. This Court took the rare step of permitting discovery in a FOIA action and the even rarer step of allowing questioning of a former Cabinet Secretary. Given that Exhibit D provides information relevant to Interrogatory No. 24, Judicial Watch cannot demonstrate that "exceptional circumstances" justify further inquiry on this subject matter. Dkt. #124, at 17–18 (internal quotation marks omitted). It would be highly inappropriate for this Court to demand further details regarding a Cabinet Secretary's privileged communications with her counsel in these circumstances.

CONCLUSION

Counsel to Secretary Clinton respectfully request that this Court deny Judicial Watch's motion to compel.

Respectfully submitted,

/s/ David E. Kendall

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Counsel for Non-Party Hillary Rodham Clinton

November 21, 2016

CERTIFICATE OF SERVICE

I, David E. Kendall, counsel for Non-Party Hillary Rodham Clinton, certify that, on November 21, 2016, a copy of this Opposition to Plaintiff's Motion To Compel was filed via the Court's electronic filing system, and served via that system upon all parties required to be served.

/s/ David E. Kendall

David E. Kendall

EXHIBIT A

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FD-302a (Rev. 10-6-95)

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FEDERAL BUREAU OF INVESTIGATION

Date of transcription 07/02/2016

(U//FOUO) On July 2, 2016, HILLARY RODHAM CLINTON, date of birth [redacted] was interviewed by Federal Bureau of Investigation (FBI) Special Agents (SA) [redacted] and [redacted] at the J. Edgar Hoover Building located at 935 Pennsylvania Avenue NW, Washington, DC 20535. Present for the interview were CLINTON's attorneys David E. Kendall, Katherine M. Turner, Cheryl D. Mills, Heather Samuelson and [redacted]. Also present was FBI Section Chief Peter P. Strzok, as well as David Laufman, [redacted] and [redacted] from the Department of Justice (DOJ). Prior to the interview, Kendall, Turner, [redacted] and Samuelson agreed to sign a non-disclosure agreement in anticipation of viewing documents during the interview that were classified as part of a Special Access Program (SAP). After being advised of the identities of the interviewing agents, and the purpose of the interview, CLINTON provided the following information:

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(U//FOUO) Upon taking office as the Secretary of State (SecState) at the U.S. Department of State (hereafter, State) in January 2009, CLINTON recalled her office on the seventh floor at State headquarters had one black phone capable of unsecure and secure communications, one yellow phone for secure communication only, and one white phone capable of direct calls to certain government officials. CLINTON did not have a computer terminal of any kind or a facsimile machine in her office at State. Additionally, State outfitted CLINTON's residences in Washington, DC and Chappaqua, New York with a Sensitive Compartmented Information Facility (SCIF). Each SCIF had a combination lock that only CLINTON knew the combination to. The SCIFs in both residences were outfitted with secure video teleconference equipment, and the same phone systems as in her office at State. CLINTON did not have a computer terminal of any kind in the SCIFs at her residences, but did have a facsimile machine capable of secure and unsecure transmission. CLINTON rarely used the SCIF in her residence in DC, primarily due to her preference to use her office at State. It was CLINTON's practice to lock the SCIF every time it was vacated. When in her residences, CLINTON would receive classified information through diplomatic pouch via courier, secure phone call or secure fax. After consuming hard copy classified documents at her residence, CLINTON would place the documents in a "burn bag."

(S//NF) When traveling domestically, CLINTON had no technical support traveling with her as it related to secure communications. [redacted] CLINTON recalled verbal briefings on the security of her communications [redacted]. For instance, CLINTON [redacted]

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Investigation on 07/02/2016 at Washington DC
File # [redacted] Date dictated N/A
By SA [redacted] SA [redacted]

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This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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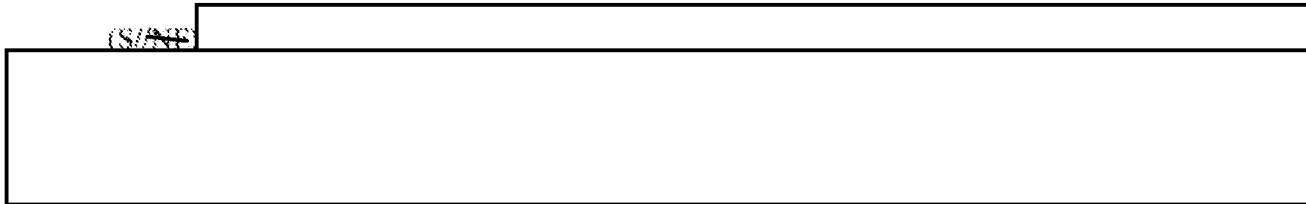
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Continuation of FD-302 of Interview of Hillary Rodham Clinton , On 07/02/2016, Page 2

CLINTON stated that Diplomatic Security would handle communication infrastructure in certain instances in which classified information could be communicated.

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(U//FOUO) After reviewing an email dated July 1, 2012 with subject line "Fw: Congratulations!," CLINTON stated she received no particular guidance as to how she should use the President's email address @who.eop.gov. Since the foregoing email was sent from Russia, CLINTON stated she must have sent it from the plane.

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(U//FOUO) After reviewing an email dated March 22, 2009 with subject line "Re: Follow up," CLINTON stated this email pertained to how her "files" were going to be treated at State. CLINTON relayed while in the Senate, she maintained a personal and official paper file. This process was not implemented through Senate procedure or guidance but through CLINTON's own personal process. CLINTON was not aware how other State staff maintained their records and was unaware of State's State Messaging and Archive Retrieval Toolset (SMART).

(U//FOUO) CLINTON could not recall when she first received her security clearance and if she carried it with her to State via reciprocity from her time in the Senate. CLINTON could not recall any briefing or training by State related to the retention of federal records or handling of classified information.

(U//FOUO) CLINTON was aware she was an Original Classification Authority (OCA) at State. CLINTON could not recall how often she used this authority or any training or guidance provided by State. CLINTON could not give an example of how classification of a document was determined. CLINTON stated there was a process at State before she arrived and she relied on the career foreign service professionals she worked with to appropriately handle and mark classified information.

(U//FOUO) CLINTON recalled being briefed on Special Access Program (SAP) information but could not recall any specific briefing on how to handle information associated with SAPs. CLINTON was certain she signed an agreement memorializing her access to SAP material, but she could not recall specific detail. CLINTON recalled all SAP related information was delivered to her by paper in her office, through courier at her residence, or through conversation in her office or in the Situation Room at the White House. In general, CLINTON knew SAP information was of great importance and needed to be handled carefully.

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[redacted] CLINTON could not recall a specific process for nominating a target for a drone strike and recalled much debate pertaining to the concurrence process. CLINTON knew there was a role for DOD, State and the CIA but could not provide specifics as to what it was. Due to a disagreement between these agencies, CLINTON recalled having many discussions related to nominating an individual for a drone strike. [redacted]

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When CLINTON exchanged classified information pertaining to the drone program internally at State, it was in her office or on a secure call. When CLINTON exchanged classified information pertaining to the drone program externally it was at the White House. CLINTON never had a concern with how classified information pertaining to the drone program was handled.

(U//~~FOUO~~) CLINTON was not issued a mobile device by State, but continued to use the password protected BlackBerry she used during her time in the Senate. This device was connected to her AT&T BlackBerry address which was used for both personal communications and official business. CLINTON made this decision out of convenience and noted she had spoken to former Secretary of State COLIN POWELL, who used a private email account, as had other Secretaries of State before him.

(U//~~FOUO~~) After reviewing an email dated February 12, 2009 with the subject line "Re: New cell," CLINTON stated she was familiar with the phone number ending in [redacted] referenced in the email. She believed the number was that of her BlackBerry because she did not recall using a flip phone during her time at State, only while in the Senate.

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(U//~~FOUO~~) When CLINTON's BlackBerry device malfunctioned, her aides would assist in obtaining a new BlackBerry. After moving to the new device, her old SIM card was disposed of by her aides. CLINTON did not recall how any data stored on the device was destroyed. CLINTON's aides would also assist in setting up the new BlackBerry and implementing any security features.

(U//~~FOUO~~) While on international travel, CLINTON never suspected her BlackBerry was tampered with, nor did she ever lose a BlackBerry while traveling. There were a few occasions where

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CLINTON's staff was provided with a secure cell phone, but CLINTON did not recall the circumstances or frequency with which this event occurred.

(U//~~FOUO~~) CLINTON requested a secure BlackBerry while at State, but could not recall why they were unable to provide one. She was aware President Obama had one and it seemed convenient. Her request was not out of concern for the sensitivity of the information on her then-current device. CLINTON wanted the secure BlackBerry to deal with any future contingencies and thought it would be a good idea to have a secure cell. After reviewing a memo written for CHERYL MILLS by ERIC BOSWELL, CLINTON stated she never brought her unclassified BlackBerry into her SCIF for the reasons outlined in the memo. She would keep her BlackBerry outside of the SCIF and check it in non-SCIF areas of State, when traveling to her office, at speeches, and other occasions outside of the office.

(U//~~FOUO~~) CLINTON did not recall receiving any emails she thought should not be on an unclassified system. She relied on State officials to use their judgment when emailing her and could not recall anyone raising concerns with her regarding the sensitivity of the information she received at her email address. CLINTON had frequent in-person meetings with State personnel where classified information was communicated, including a daily 8:30 AM staff meeting and numerous other walk-in and walk-out meetings during the day.

(U//~~FOUO~~) CLINTON used a private email address with AT&T during her time in the Senate for official and personal use. CLINTON recalled knowing her husband, WILLIAM J. CLINTON, had private email addresses for his aides. CLINTON did not recall her specific conversations regarding the creation of the clintonemail.com domain, but around January 2009, directed aides to create the email account. It was a matter of convenience to move onto a system maintained by her husband's staff. CLINTON was aware there was a server in her basement at Chappaqua, but did not know of the various server systems until being made aware recently. CLINTON did not recall receiving guidance from State regarding email policies outlined in the Foreign Affairs Manual. CLINTON advised everyone at State knew she had a private email address because it was displayed to anyone with whom she exchanged emails; however, she did not explicitly request permission to use a private server or email address. During her tenure, no one at State raised concerns regarding CLINTON's use of a private server or email address.

(U//~~FOUO~~) After reviewing an email from POWELL with the subject line "Re: Question," CLINTON stated she did not want to guess precisely what POWELL was trying to say in paragraph three, but understood it to mean any communications of official business would be government records. This email did not factor into her decision to use a personal email account.

(U//~~FOUO~~) After reviewing an email dated February 1, 2009 with the subject line "Re: Follow up," CLINTON stated she did not continue to receive email at her AT&T address after transitioning to her clintonemail.com address. Some aides had access to CLINTON's BlackBerry and email accounts, but she did not recall specifically who had access. Additionally, CLINTON did not recall any specific routine for deleting email from her account while Secretary of State, nor did she recall ever receiving any messages

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Continuation of FD-302 of Interview of Hillary Rodham Clinton, On 07/02/2016, Page 5 indicating her account was reaching a storage limit. CLINTON was not aware of the specific details regarding the hardware, software, or security of the server hosting clintonemail.com. She occasionally received odd looking email, but never noticed an increase in these types of emails that would be a cause for concern. HUMA ABEDIN also had an account on clintonemail.com because she frequently assisted CLINTON with personal matters. CLINTON did not recall any other individuals being offered an account on clintonemail.com.

(U//~~FOUO~~) CLINTON stated at least a hundred, if not several hundred, State employees had her clintonemail.com address. Some communicated directly with her, while others went through her top level staff. When her top staff received information, the recipient would determine if the information should be forwarded to her. None of CLINTON's staff ever expressed a concern regarding the sensitivity of the content of these emails. CLINTON's practice was to email State staff at their state.gov accounts, but would sometimes send email to a staff member's personal account if state.gov was down.

(U//~~FOUO~~) After reviewing an email dated June 4, 2011 with the subject line "RE: Google email hacking and woeful state of civilian technology," CLINTON stated she did not recall the compromise of State employees' Gmail accounts. However, CLINTON did recall the frustration over State's information technology systems.

(U//~~FOUO~~) After reviewing a State communication dated June 28, 2011 with the subject line "Securing Personal E-mail Accounts," CLINTON stated all cables of a certain policy nature went out under her name and she did not recall this specific cable. Additionally, CLINTON did not recall this cable correlating with BRYAN PAGLIANO upgrading the clintonemail.com server. CLINTON did not consider switching to a state.gov account at this time, but did recall reports of compromises to state.gov systems. CLINTON understood the email system used by her husband's personal staff had an excellent track record with respect to security and had never been breached.

(U//~~FOUO~~) CLINTON was not involved in the decision to move from the Apple server managed by JUSTIN COOPER to a server built by BRYAN PAGLIANO. Therefore, CLINTON had no knowledge of the reasons for selecting to install it in the basement of CLINTON's New York residence or the hardware, software, and security protocols used to construct and operate the server. Furthermore, CLINTON did not have any conversations with regard to using the server to avoid the Freedom of Information Act (FOIA), and specifically denied using the server to avoid Federal Records Act (FRA) requirements. Based on her practice of emailing staff on their state.gov accounts, CLINTON assumed her communications were captured by State systems. CLINTON was not aware of State employee [REDACTED] [REDACTED] expressing concerns CLINTON's email server was not compliant with the FRA.

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(U//~~FOUO~~) When CLINTON had technical issues with her email account, she contacted COOPER to resolve the issues. She could not recall ever contacting PAGLIANO for technical support. CLINTON recalled having issues with email during Hurricane Irene because cell phone systems were

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Continuation of FD-302 of Interview of Hillary Rodham Clinton, On 07/02/2016, Page 6

down; however, she could still receive email on her iPad. She did not recall using an iPad mini until after her tenure as Secretary of State and has never used a Macbook or other computer to access her email.

(U//~~FOUO~~) SIDNEY BLUMENTHAL is a longtime friend of CLINTON who frequently sent information he thought would be useful. CLINTON sometimes read and forwarded the information to appropriate personnel, but in other instances did not have the time to read his email. After reviewing an email dated January 31, 2011 with the subject line "hrc memo intel egypt 013111.docx," CLINTON stated [redacted] was a retired CIA officer, but she had no concerns regarding the sources of the memos being classified. CLINTON viewed the content as journalistic because BLUMENTHAL did not have a clearance and was not in government at that time. CLINTON did not request the memos, but commented BLUMENTHAL is a prodigious writer whose information was sometimes accurate and sometimes not. After reviewing an email dated June 24, 2012 with the subject line "Re: H: Here it is: latest, latest, intel on MB/SCAF inside deal. Sid," CLINTON commented it was a confusing time in Egypt and State was trying to obtain all of the intelligence it could on Egypt. However, she had no concerns regarding the classification of the email.

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(S//~~AF~~) After reviewing an email dated October 13, 2012 with subject line "This am Green on Blue," CLINTON stated she did not remember the email specifically. CLINTON advised [redacted] was working at the DOD at the time of this communication, but had previously worked for the [redacted] was someone who was well acquainted with handling classified information and CLINTON described him as someone she held in high regard. Moreover, CLINTON relied on [redacted] and had no concern over his judgment and ability to handle classified information. CLINTON believed she would be speculating if she were to state what [redacted] meant when he referred to [redacted]

b3
b7E

b1
b3

[redacted] After reviewing an email dated [redacted] with subject line [redacted] CLINTON stated she did not remember the email specifically. CLINTON stated deliberation over a future drone strike did not give her cause for concern regarding classification. CLINTON understood this type of conversation as part of the routine deliberation process. Moreover, she recalled many conversations about future strikes that never occurred.

b1
b3

[redacted] After reviewing an email dated [redacted] with subject line [redacted] CLINTON stated she did not remember the email specifically. [redacted] CLINTON thought any attempt she made to determine [redacted] meaning would be speculation. After mentioning the names of the individuals on the displayed email, CLINTON stated they were experienced foreign service professionals and she had no reason to doubt their judgment and ability to handle classified information.

b1
b3

(S) [redacted]

b1
b3

~~TOP SECRET~~ [redacted] ~~FOUO~~

b1
b3

~~TOP SECRET~~ [redacted] ~~(OC/NF)~~

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b1
b3

Continuation of FD-302 of Interview of Hillary Rodham Clinton, On 07/02/2016, Page 7

[redacted]

b1
b3

[redacted] CLINTON viewed the email as a typical deliberation document and had no concerns the displayed email contained classified information. As it relates to classification, CLINTON stated the displayed email was forwarded to her and she relied on the judgment of the career foreign service officers and others in the "thick" of what was happening. CLINTON had no reason not to rely on the people she worked with at State. CLINTON did not recall JACOB SULLIVAN using his Google email account for official business and could not say why it was used in this instance.

[redacted] After reviewing an email dated [redacted] with subject line [redacted] CLINTON stated she did not remember the email specifically [redacted] CLINTON identified the portion of the email where [redacted] writes "let me know what you can via this channel" as being representative of the emphasis he placed on handling information appropriately. CLINTON had no concerns the displayed email contained classified information. CLINTON viewed this email as the State deliberation process to determine how to respond to a news report. During her tenure, CLINTON stated State did the best they could to not confirm drone strikes and were as careful as possible, but had to deal with a "rash" of news reports on drones. CLINTON did not recall a State policy on confirming classified information in media reports.

b1
b3

(S/[redacted]) After reviewing an email dated August 25, 2010, with subject line "Fw: NY Times article on Salehi," CLINTON stated she did not remember the email specifically. CLINTON stated she was not concerned the displayed email contained classified information [redacted] but stated she had no reason to doubt the judgment of the people working for her on the "front lines."

b1
b3

[redacted] After reviewing an email dated [redacted] with subject line [redacted] CLINTON stated she did not remember the email specifically. CLINTON thought [redacted] was a competent professional who served in some of State's most difficult posts. CLINTON relayed State did the best they could while considering the "constant barrage of press" trying to confirm drone strikes. CLINTON stated [redacted] must have believed this email was "SBU" because that was how he marked it. CLINTON understood SBU to mean Sensitive But Unclassified. CLINTON stated foreign-based US Embassies would have a SCIF with secure computers and phones to communicate sensitive information. [redacted]

b1
b3

(S/[redacted]) After reviewing an email dated December 27, 2011, with subject line "FW: (SBU)," CLINTON stated she did not remember the email specifically. CLINTON was not concerned the displayed email contained classified information. CLINTON stated no policy or practice existed related to communicating around holidays and it was often necessary to communicate in code or do the best you could to convey the information considering the system you were using [redacted]

b1
b3

~~TOP SECRET~~ [redacted] ~~(OC/NF)~~

b1
b3

~~TOP SECRET~~ [redacted] ~~(S)~~

FD-302a (Rev. 10-6-95)

b1
b3

Continuation of FD-302 of Interview of Hillary Rodham Clinton On 07/07/2016 Page 8

[redacted]

b1
b3

[redacted] CLINTON did not see how this email would have "added more fuel to an already big fire." CLINTON believed the individuals sending the email thought the classification to be SBU and she trusted them to handle the information appropriately.

[redacted] After reviewing an email dated [redacted] with subject line [redacted] CLINTON stated she did not remember the email specifically. CLINTON was not concerned the displayed email contained classified information. CLINTON relied on the judgment of the people that worked for her to handle information appropriately. [redacted]

b1
b3

[redacted]

(U//FOUO) After reviewing an email dated June 17, 2011, with subject line [redacted] [redacted] CLINTON stated she did not remember the email specifically. CLINTON stated a "nonpaper" was a document with no official heading, or identifying marks of any kind, that can not be attributed to the US Government. CLINTON thought a "nonpaper" was a way to convey the unofficial stance of the US Government to a foreign government and believed this practice went back "200 years." When viewing the displayed email, CLINTON believed she was asking SULLIVAN to remove the State letterhead and provide unclassified talking points. CLINTON stated she had no intention to remove classification markings. CLINTON had no recollection of actually receiving a "nonpaper" or a secure fax in this instance. [redacted] talking points are typically classified, but CLINTON did not recall in this instance.

b5 per DOS

(U//~~S~~) After reviewing an email dated April 9, 2012, with subject line "Call to President Banda," CLINTON stated she did not remember the email specifically. When asked what the parenthetical "C" meant before a paragraph within the captioned email, CLINTON stated she did not know and could only speculate it was referencing paragraphs marked in alphabetical order. CLINTON could not say for sure if the parenthetical "C" is used for portion marking classified documents. CLINTON understood the top of the email is marked "Confidential" and asked the interviewing Agents if that was what "C" referenced. [Agent note: Email was marked as classified at the Confidential level by the FBI based on a determination by the OCA] When asked of her knowledge regarding Top Secret, Secret, and Confidential classification levels of US government information, CLINTON responded that she did not pay attention to the "level" of classified information and took all classified information seriously. CLINTON was not concerned the displayed email contained classified information. CLINTON believed the email amounted to a "condolence call" and questioned the classification level.

~~TOP SECRET~~ [redacted] ~~(S)~~

b1
b3

~~TOP SECRET~~~~FOUO~~

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b1
b3

Continuation of FD-302 of Interview of Hillary Rodham Clinton On 07/02/2016, Page 9

[REDACTED] CLINTON believed information should be classified in the case of covert military action, the use of sensitive sources and where sensitive deliberations took place. When asked whether CLINTON believed information should be classified if its unauthorized release would cause damage to national security, she responded, "yes, that is the understanding." CLINTON believed the classification level of future drone strikes depended on the context. CLINTON believed drone strikes to be an "important tool" but also a program frequently in the press [REDACTED]

b1
b3

[REDACTED]
CLINTON believed the people at State did the best they could to deliberate about future strikes and respond to foreign governments and media after a strike occurred.

(U//~~FOUO~~) CLINTON stated she received no instructions or direction regarding the preservation or production of records from State during the transition out of her role as Secretary of State in early 2013. However, in December of 2012, CLINTON suffered a concussion and then around the New Year had a blood clot. Based on her doctor's advice, she could only work at State for a few hours a day and could not recall every briefing she received. CLINTON did not have any discussions with aides about turning over her email records, nor did anyone from State request them. She believed her work-related emails were captured by her practice of sending email to the state.gov email addresses of her staff. CLINTON was unaware of the requirement to turn over printed records at that time. Her physical records were boxed up and handled by aides.

(U//~~FOUO~~) After reviewing an email dated December 11, 2012 with the subject line "FW: Significant FOIA Report," CLINTON stated she did not recall the specific request and was not aware of receiving any FOIA requests for information related to her email during her tenure as Secretary of State. State had a FOIA department and CLINTON relied on the professionals in that department to address FOIA matters.

(U//~~FOUO~~) Shortly after leaving State, representatives from State came to her residence and removed communications and other equipment they had installed to facilitate her duties as Secretary of State. CLINTON did not recall being read-out of her clearance or any SAPs by State personnel.

(U//~~FOUO~~) CLINTON's email address was publicly disclosed in March 2013 when BLUMENTHAL's email account was compromised. As a result, CLINTON was advised to change her email address and did so, but she did not recall specifically who made this recommendation.

(U//~~FOUO~~) Regarding the transition from the Pagliano server to a server operated by Platte River Networks (PRN), CLINTON recalled her husband's staff wanted a higher level of service than could be provided by the Pagliano server. This transition was likely handled by one of her husband's aides, JUSTIN COOPER.

(U//~~FOUO~~) In the Fall of 2014, CLINTON recalled receiving a letter from State which was also sent to former Secretaries of State COLIN POWELL, CONDOLEEZZA RICE, and MADELEINE

~~TOP SECRET~~~~FOUO~~b1
b3

~~TOP SECRET~~~~FOUO~~

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b1
b3Continuation of FD-302 of Interview of Hillary Rodham Clinton, On 07/02/2016, Page 10

ALBRIGHT. From the letter, CLINTON understood State was concerned there were gaps in their records and requested CLINTON's assistance in filling those gaps. CLINTON wanted to assist State, so she directed her legal team to assist in any way they could. CLINTON expected her team to provide any work-related or arguably work-related emails to State; however, she did not participate in the development of the specific process to be used or discussions of the locations where her emails might exist. Additionally, CLINTON was not consulted on specific emails as to their content being work-related or not. CLINTON did not have any conversations regarding procedures if any potentially classified information was discovered during the review of her emails because she had no reason to believe classified information would be found in her email account.

(U//~~FOUO~~) After reviewing an email dated November 26, 2010 with the subject line "MbZ call -- 7:15am," CLINTON stated she recalled the time period of the WikiLeaks disclosures because it was a difficult time for State. She spent long hours on the phone with foreign diplomats addressing the WikiLeaks disclosures and ensuring no one was in danger as a result of the disclosures. Regarding the specific email, CLINTON did not know why it was not in the approximately 30,000 emails produced to State and, based on its content, would expect it to be considered work-related.

(U//~~FOUO~~) In December 2014, after her staff completed their response to the request from State for her email records, CLINTON was asked what she wanted to do with her personal emails. She told her staff she did not need them anymore. In or around this same timeframe the retention policy for her email was changed as part of her move to a new personal office account.

(U//~~FOUO~~) CLINTON transitioned to an email address on the hrcoffice.com domain because she had a small number of personal staff, but no physical office or common email domain. To address these issues, she moved to a common email domain and physical office space. After this move, CLINTON did not recall any further access to clintonemail.com.

(U//~~FOUO~~) CLINTON never deleted, nor did she instruct anyone to delete, her email to avoid complying with the Federal Records Act, FOIA, or State or FBI requests for information. Concerning the Congressional preservation request on March 3, 2015 for email and other records, CLINTON trusted her legal team would comply with the request.

(U//~~FOUO~~) CLINTON had no knowledge regarding the following topics:

- The creation, storage, transfer, or access to an archive of her email created by MONICA HANLEY in the Spring of 2013
- The specific processes and procedures used by CLINTON's legal team and PRN to separate her work and personal email
- Discussions of federal records related to the Apple, Pagliano, or PRN servers

~~TOP SECRET~~~~FOUO~~b1
b3

~~TOP SECRET~~ [REDACTED] ~~OC/NF~~

FD-302a (Rev. 10-6-95)

b1
b3

Continuation of FD-302 of Interview of Hillary Rodham Clinton, On 07/02/2016, Page 11

- The existence of any copies of her clintonemail.com emails, other than what has been provided to the FBI and State
- March 2015 deletions by PRN

~~TOP SECRET~~ [REDACTED] ~~OC/NF~~

b1
b3

EXHIBIT B

Obtained by Judicial Watch, Inc. via FOIA



RELEASE IN PART
B1, 1.4(G), 1.4(E), B7(C), B6, 1.4(C)

FILE COPY

United States Department of State

Washington, D.C. 20520

www.state.gov

MAR 6 2009

~~SECRET/NOFORN~~

DECL: 03/02/2019

INFORMATION MEMO FOR CHERYL D. MILLS - S

FROM: DS - Eric J. Boswell

1.4(E)
1.4(G)
B1

SUBJECT: Use of Blackberries in Mahogany Row

We have worked closely [redacted] to review all options that would allow Secretary Clinton, you, and a small number of staff to use Blackberries [redacted]

[redacted] Our review reaffirms our belief that the vulnerabilities and risks associated with the use of Blackberries in the Mahogany Row [redacted] considerably outweigh the convenience their use can add to staff that have access to the unclassified OpenNet system on their desktops. [redacted]

1.4(E)
1.4(G)
B1

[redacted] We also worry about the example that using Blackberries in Mahogany Row might set as we strive to promote crucial security practices and enforce important security standards among State Department staff.

As an alternative, we suggest that DS work with S/BS-IRM to make access to the Secretary's OpenNet account on her desktop workstation as easy and convenient as possible. For example, we are happy to work with IRM to lengthen or even eliminate the time-out function to allow the Secretary's Special Assistant to log-on to review her emails and schedules.

While we cannot recommend using Blackberries inside the Mahogany Row [redacted] we do not want to stand in the way of issuing Department Blackberries to the Secretary and her senior staff for use outside Mahogany Row. These Blackberries can be synchronized with your OpenNet Microsoft Outlook accounts, provide full cellular, e-mail, and internet functionality, and provide unclassified mobile technology when you are away from Mahogany Row.

1.4(E)
1.4(G)
B1

I cannot stress too strongly, however, that any unclassified Blackberry is highly vulnerable in any setting to remotely and covertly monitoring conversations, retrieving e-mails, and exploiting calendars. I am attaching reports from DS's

~~SECRET/NOFORN~~

Classified by: DS - Eric J. Boswell

E.O. 12958, Reasons: 1.4 (c), (d), and (e)

0535

~~SECRET/NOFORN~~

- 2 -

Office of Computer Security's Cyber Threat & Analysis Division that give further background on these risks. [redacted]

1.4(E)
1.4(G)
B1

If, after considering the vulnerabilities that I describe above and the alternatives that I propose, the Secretary determines that she wants a limited number of staff to use Blackberries in the Mahogany Row [redacted]

1.4(E)
1.4(G)
B1

Attachments:

Tab 1 - Excerpts from DS/CS/CTAD Reports on Blackberry Vulnerabilities;

Tab 2 - [redacted]

1.4(C)

Tab 3 - New York Times Article: "Obama's Phone Security and Yours"

1.4(E)

Tab 4 - Washington Post Article: "Your Cell and Your Berry: Tools for the Enemy"

1.4(G)
B1

~~SECRET/NOFORN~~

Drafted: DS/SI/IS - [redacted]
DS/C/ST - [redacted]

B6
B7(C)

Cleared: DS/DSS - G. Starr (ok)
DS/SI/CS - M. Holland (ok)
DS/SI - D. Reid (ok)
DS/C - P. Donovan (ok)
INR - [redacted] (ok)
M - [redacted] (ok)
IRM - [redacted] (ok)
S/ES-IRM - J. Bentel (ok)
S/ES-IRM - M. Horowitz (ok)

B6
B7(C)

EXHIBIT C

HEARING 4

HEARING 4

BEFORE THE
SELECT COMMITTEE ON
THE EVENTS SURROUNDING
THE 2012 TERRORIST
ATTACK IN BENGHAZI
HOUSE OF REPRESENTATIVES
ONE HUNDRED FOURTEENTH CONGRESS
FIRST SESSION

HELD IN WASHINGTON, DC, OCTOBER 22, 2015

Printed for the use of the Select Committee on the Events Surrounding the
2012 Terrorist Attack in Benghazi



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HOUSE SELECT COMMITTEE ON BENGHAZI

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JIM JORDAN, Ohio

PETER ROSKAM, Illinois

MIKE POMPEO, Kansas

MARTHA A. ROBY, Alabama

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TAMMY DUCKWORTH, Illinois

PROFESSIONAL STAFF

PHIL KIKO, *Staff Director*

SUSANNE SACHSMAN GROOMS, *Minority Staff Director*

425

Mrs. CLINTON. Well, one is a shorthand, Mr. Chairman.

Chairman GOWDY. Well, why not just tell the court, "I turned over everything"?

Mrs. CLINTON. Well, you know how lawyers are. They use more words, perhaps, than they need.

Chairman GOWDY. Trust me, I know that. And they charge you for every one of them.

Mrs. CLINTON. Yes. I'm well aware of that, Mr. Chairman. And the clock is ticking.

Chairman GOWDY. Well, one more. One more. And I will pay Mr. Kendall's fee for the last question. How's that?

Mrs. CLINTON. Oh, I don't think you want to do that, Mr. Chairman.

Chairman GOWDY. I probably can't do it.

You see my point, though? You are very definitive when you are talking to the American people that you turned over everything.

Mrs. CLINTON. That's right.

Chairman GOWDY. But there are those kind of lawyerly fudge words when you are talking to court, "on information and belief."

Mrs. CLINTON. Well—

Chairman GOWDY. And the reality is, even tonight, you cannot tell us that you turned over everything, because you didn't think you missed the 15.

Mrs. CLINTON. Well, I didn't have them. I turned over everything I had. Everything I had—

Chairman GOWDY. Which means the system you had—

Mrs. CLINTON [continuing]. Has been turned over to the State Department.

Chairman GOWDY [continuing]. Somehow missed those 15.

Mrs. CLINTON. Well—

Chairman GOWDY. Last question on your system. Mr. Cummings said that your email arrangement was inappropriate. I think the President may have said it was a mistake. You have said that it was a mistake.

My question to you, Madam Secretary, is, was it a mistake for the four years that you had that email arrangement? Was it a mistake for the almost two years that you kept the public record to yourself? Or has it manifested itself as a mistake in just the last six months?

Mrs. CLINTON. Well, since I believed that all of my work-related emails to dot-gov accounts were being captured and preserved, it wasn't until I was asked to help the State Department to fill in what they saw as some recordkeeping gaps, not just with me but with others.

I did the best I could during those four years and thought that everything that I was emailing that was work-related was being preserved.

Chairman GOWDY. If you can find the source for the 90 to 95 percent, I would be grateful for it, and we would probably have fewer questions. If there is a source that you can provide that 90 to 95 percent were on the State Department system, then I will know that I need to ask the State Department what took them so long.

EXHIBIT D

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EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

November 13, 2015

Sent by E-mail to Paige.Oneto@mail.house.gov

The Honorable Trey Gowdy
Congress of the United States
House of Representatives
Select Committee on Benghazi
1036 Longworth House Building
Washington, DC 20515-6090

Dear Mr. Chairman:

As requested in your letter dated October 28, 2015, I am enclosing an Errata sheet to former Secretary Clinton's testimony on October 22, 2015, before the Benghazi Select Committee. I have also initialed each proposed correction in the margin of the appropriate page and am faxing those pages to you herewith.

I also wanted to respond to your request at the conclusion of the October 22, 2015 hearing at which Secretary Clinton testified. In particular, you asked for information regarding the number of work-related emails Secretary Clinton sent to or received from government email accounts.

In December 2014, the Secretary provided the State Department with 30,490 emails – consisting of all of the potentially work-related emails in her possession. Of these emails, more than 27,700 had a government email in an address field – including more than 27,350 that were sent to or received from a State Department email address.

We have been advised by the Department that at least 1,240 of these emails are not federal records (*i.e.*, they are personal records); leaving no more than 29,250 work-related emails.

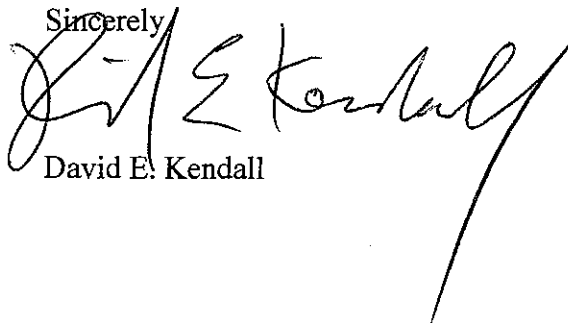
The Honorable Trey Gowdy

November 13, 2015

Page Two

Consistent with this information, between 90 to 95 percent of Secretary Clinton's work-related emails were to or from a State Department email address and therefore would have been captured in the State Department's recordkeeping system.

Sincerely,

A handwritten signature in black ink, appearing to read "David E. Kendall". The signature is written in a cursive style with a long, sweeping tail that extends downwards and to the right.

David E. Kendall

cc: Honorable Elijah E. Cummings

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendant.

No. 1:13-cv-01363-EGS

[PROPOSED] ORDER

Upon consideration of Plaintiff's Motion to Compel former Secretary of State Hillary Rodham Clinton To Answer Interrogatories, all oppositions thereto, and the entire record herein, it is hereby ORDERED that:

Plaintiff's motion to compel former Secretary of State to answer interrogatories is DENIED.

SO ORDERED.

Date: _____

The Hon. Emmet G. Sullivan, U.S.D.J.