

1 MR. PEZZI: Right. Well, his testimony is a bit
2 more equivocal than that. He thinks that he recalls such a
3 directive. He wasn't --

4 THE COURT: That's not what I read. I mean, I've
5 had dozens of affidavits from that guy over the course of my
6 career here. He was State Department's primary guy. I got
7 affidavits from him all the time. I know who he is.

8 MR. PEZZI: That's right, and he was deposed in
9 this case. We have looked for that directive. We have not
10 found it. Obviously, were there to be additional discovery
11 in this case and were Judicial Watch to serve that request,
12 we would do additional searches to confirm it, but as of
13 today --

14 THE COURT: So maybe, it was never done? Well, it
15 should have been done, shouldn't it?

16 MR. PEZZI: Well, I don't think that's right, Your
17 Honor. I think --

18 THE COURT: Why? She could do this and State
19 could rely on her doing it and pretending like these records
20 never were in State's custody?

21 MR. PEZZI: I --

22 THE COURT: I'll tell you another thing I didn't
23 like in your brief. I'll tell you right now upfront. You
24 put in your brief -- the most preposterous thing, I thought,
25 in your brief was the very idea that -- let me read you the

1 line. Competitive Enterprise Institute was a case of first
2 impression and that some District Judge bought that and the
3 Court of Appeals reversed it. Now, that wasn't a case of
4 first impression at all. The first impression with me was a
5 case I had involving Ron Brown and the travel records of
6 whether or not, in the Commerce Department -- and it was a
7 Judicial Watch case -- whether or not the Commerce
8 Department was selling seats on trade missions, and I had a
9 Deputy Under Secretary of Commerce who took a box of records
10 home and then they gave a no-records response and, in the
11 course of that, I found out he had taken the records home
12 and they said they had no records. I sent the marshals over
13 and they got the box at his house, and I ordered them -- the
14 marshals -- to seize the records, and then I ordered
15 Commerce to process the records. That was the first case.

16 So Competitive Enterprise is not the first case of
17 somebody taking the records out of the agency and pretending
18 like they didn't have them and giving a no-records response
19 like what State did here. It's really a preposterous notion
20 that Competitive Enterprise, in 2006, is the first one of
21 these. It's offensive to me that you would call that the
22 first case of first impression in Competitive Enterprise.
23 The Ron Brown situation -- and what happened there when they
24 finally got the records was, it turned out the Democratic
25 National Commission -- Committee had to get a certain level