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Transcript of James Patrick Bair, Esquire

Date: November 26, 2019

Case: Judicial Watch, Inc. -v- U.S. Department of State

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Transcript of James Patrick Bair, Esquire
Conducted on November 26, 2019

1	3
1 IN THE UNITED STATES DISTRICT COURT	1 A P P E A R A N C E S
2 FOR THE DISTRICT OF COLUMBIA	2 ON BEHALF OF PLAINTIFF:
3 ----- x	3 RAMONA COTCA, ESQUIRE
4 JUDICIAL WATCH, INC., :	4 LAUREN M. BURKE, ESQUIRE
5 Plaintiff, :	5 PAUL J. ORFANEDES, ESQUIRE
6 v. : Case No.	6 JUDICIAL WATCH, INC.
7 U.S. DEPARTMENT OF STATE, : 14-cv-1242 (RCL)	7 425 Third Street, SW
8 Defendant. :	8 Suite 800
9 ----- X	9 Washington, DC 20024
10	10 (202) 646-5172
11 Videotaped Deposition of	11
12 JAMES PATRICK BAIR, ESQUIRE,	12 ON BEHALF OF DEFENDANT:
13 Washington, DC	13 JOSHUA E. GARDNER, ESQUIRE
14 Tuesday, November 26, 2019	14 STEPHEN M. PEZZI, ESQUIRE
15 10:01 a.m.	15 U.S. DEPARTMENT OF JUSTICE
16	16 FEDERAL PROGRAMS BRANCH
17	17 1100 L Street, NW
18	18 Washington, DC 20005
19	19 (202) 305-7583
20 Job No.: 270438	20
21 Pages 1 - 226	21
22 Reported by: Debra A. Whitehead	22
2	4
1 Videotaped Deposition of JAMES PATRICK BAIR,	1 A P P E A R A N C E S C O N T I N U E D
2 ESQUIRE, held at the offices of:	2 ON BEHALF OF DEFENDANT:
3	3 MICHAEL LIEBERMAN, ESQUIRE
4 PLANET DEPOS - DC	4 ELIZABETH GROSSO, ESQUIRE
5 1100 Connecticut Avenue, NW	5 UNITED STATES DEPARTMENT OF STATE
6 Suite 950	6 2201 C Street, NW
7 Washington, DC 20036	7 Washington, DC 20520
8 (888) 433-3767	8 (202) 647-6371
9	9
10	10
11 Pursuant to notice, before Debra A. Whitehead,	11 ALSO PRESENT:
12 an Approved Reporter of the United States District	12 JEREMY DINEEN, Video Specialist
13 Court and Notary Public of the District of Columbia.	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22

5

1 C O N T E N T S

2 EXAMINATION OF JAMES PATRICK BAIR, ESQUIRE, PAGE

3 By Ms. Cotca 8

4

5 E X H I B I T S

6 (Attached to the Transcript)

7 BAIR DEPOSITION EXHIBIT PAGE

8 Exhibit 1 E-mail, Document No. C06289525 114

9 Exhibit 2 E-mail string, DOC 0000050_001 116

10 Through 0000050_004

11 Exhibit 3 Memorandum, Bates DOC 119

12 0000077_002 - 0000077_0008

13 Exhibit 4 E-mail string, Bates DOS 132

14 0000720_0001, with Attachments

15 Exhibit 5 4/18/16 Letter from Mr. Stein to 150

16 Ms. Bailey, with Attachment

17 Exhibit 6 E-mail Document No. C05831334 157

18 Exhibit 7 E-mail String, Document No. 169

19 C06124616

20 Exhibit 8 E-mail String 176

21 Exhibit 9 E-mail String 179

22

6

1 E X H I B I T S C O N T I N U E D

2 BAIR DEPOSITION EXHIBIT PAGE

3 Exhibit 10 January 16, Office of 193

4 Evaluations and Special Projects,

5 Evaluation of the Department of

6 State's FOIA Processes for

7 Requests Involving the Office of

8 the Secretary

9 Exhibit 11 E-mail String, Bates DOS 200

10 0000672_0001 - 0000672_0003

11

12

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

2 VIDEO SPECIALIST: Here begins Disk

3 Number 1 in the videotaped deposition of James

4 Patrick Bair in the matter of Judicial Watch,

5 Inc., V the U.S. Department of State, in the U.S.

6 District Court for the District of Columbia, Case

7 Number 14-CV-1242.

8 Today's date is November 26, 2019. The

9 time on the video monitor is 10:01. The

10 videographer today is Jeremy Dineen, representing

11 Planet Depos. This video deposition is taking

12 place at the offices of Planet Depos, 1100

13 Connecticut Avenue, Northwest, in Washington, DC.

14 Would counsel please voice-identify

15 themselves and state whom they represent.

16 MS. COTCA: Ramona Cotca, representing

17 plaintiff.

18 MS. BURKE: Lauren Burke, for Judicial

19 Watch.

20 MR. ORFANEDES: And Paul Orfanedes, for

21 Judicial Watch.

22 MR. GARDNER: Josh Gardner, with the

8

1 United States Department of Justice, on behalf of

2 the State Department.

3 And the witness will read and sign.

4 MS. PEZZI: Stephen Pezzi from the

5 Department of Justice, on behalf of the defendant

6 the Department of State.

7 MS. GROSSO: Elizabeth Grosso, for the

8 Department of State.

9 MR. LIEBERMAN: Michael Lieberman, for

10 the Department of State.

11 VIDEO SPECIALIST: The court reporter

12 today is Debbie Whitehead, representing Planet

13 Depos.

14 Would the reporter please swear in the

15 witness.

16 JAMES PATRICK BAIR, ESQUIRE,

17 having been duly sworn, testified as follows:

18 EXAMINATION BY COUNSEL FOR PLAINTIFF

19 BY MS. COTCA:

20 Q Good morning, Mr. Bair.

21 A Good morning.

22 Q Could you please for the record state

9
1 your full name and spell it.
2 **A Sure. My name is James Patrick Bair,**
3 **B-A-I-R.**
4 Q And James is J-A-M-E-S?
5 **A Yes, it is.**
6 Q Okay. Are you familiar with this
7 lawsuit?
8 **A I have some familiarity with it, yes.**
9 Q Okay. And just for the record, this is a
10 FOIA litigation that deals with a FOIA request
11 that was submitted to the State Department back in
12 2014 for records from Secretary Clinton's office
13 in regards to communications or records about
14 talking points that were provided to Ambassador
15 Susan Rice in relation to the Benghazi attacks.
16 Is that your understanding?
17 **A Yes, it is.**
18 Q Okay. And have you been deposed before?
19 **A I have not.**
20 Q Okay. You're an attorney, though, I
21 understand. Correct?
22 **A Yes, I am.**

10
1 Q Okay. I'll just go briefly through some
2 of the instructions and rules that we'll have
3 guide us today.
4 One is, you've been -- you -- you've
5 sworn to tell the truth. Is there any reason that
6 you will not be able to answer any of my questions
7 truthfully today?
8 **A No, there is not.**
9 Q Okay. We do have a court reporter who is
10 transcribing everything that's being said today.
11 So I just ask, so we avoid speaking over each
12 other and make her job as easy as possible, that
13 you, even if you may anticipate at times that you
14 know what I'm about to ask, that you just let me
15 finish asking my question, and then I will do my
16 very best to let you finish answering your
17 questions so we don't speak over each other.
18 Is that fair?
19 **A Yes, it is.**
20 Q Okay. If there are -- if there is any
21 question that you did not understand or you need
22 clarification for, please let me know. If you

11
1 don't, I will assume that you had understood the
2 question and that you answer the question that was
3 being asked.
4 Is that fair?
5 **A Yes, it is.**
6 Q Okay. And you're doing very well with
7 the verbal responses.
8 **A Thank you.**
9 Q There may be also -- your attorneys may
10 object on the record. I would just also ask that
11 you let your attorney finish his objection on the
12 record before answering the question unless he
13 instructs you not to answer the question. Okay?
14 **A Okay.**
15 Q All right. And if there are any breaks
16 that you need at any point, let us know and we're
17 happy to take them.
18 Mr. Bair, have you been interviewed by
19 the FBI in connection with its investigation of
20 Secretary Clinton's e-mails?
21 **A No, I have not.**
22 Q Okay. How about, have you been

12
1 interviewed by the State Department's OIG
2 office -- and OIG is the Office of Inspector
3 General -- in regards to the FOIA report that it
4 issued in January 2016?
5 **A I'm sorry, I'm not familiar with which
6 report that would be.**
7 Q Okay. Back in January of 2016 the State
8 Department OIG office issued a report in regards
9 to a FOIA processing at the State Department.
10 Are you familiar with that report?
11 **A It's been quite a while since I've
12 consulted any of those, so I'm not particularly
13 familiar with that one specifically.**
14 Q Can you, sitting here today, do you
15 recall if you were interviewed by the State OIG?
16 **A I did speak with the inspector general,
17 but I don't recall in connection with which
18 report, and I believe there were several.**
19 Q Okay. And then there was also a May 2016
20 report issued by the State OIG, and that was in
21 regards to Secretary Clinton's e-mail use during
22 her time at the State Department.

13

1 Are you familiar with that?

2 **A I recall that there was a report on that**

3 **topic. I -- I don't recall when exactly it was**

4 **issued.**

5 Q Okay. And the same question, do you --

6 do you recall whether you were interviewed in

7 connection with that report?

8 **A Again, I do recall that I spoke to the**

9 **inspector general. I don't recall specifically**

10 **with which report it was connected. I'm not sure**

11 **I was told at the time.**

12 Q Okay. How many times were you

13 interviewed by the inspector general?

14 **A It was a single interview, to the best of**

15 **my recollection, and this is about five years ago**

16 **now. It was a single interview that was continued**

17 **over to a second day just because folks had a few**

18 **hours available on one day and a few the next.**

19 Q Okay. And can you provide -- and I'm not

20 looking for a specific date, but the time frame of

21 when you were interviewed, and either by year?

22 **A I -- I don't have a specific recollection**

14

1 **of that.**

2 Q Was it after Secretary Clinton had

3 returned her copies of her e-mails to the State

4 Department in December of 2014?

5 **A I believe that it was, yes.**

6 Q Okay. All right. And you're familiar --

7 are you familiar with the court's discovery order

8 in this case?

9 **A I've only recently reviewed it. But,**

10 **yes, I've seen it.**

11 Q Okay. And just for background

12 information a little bit, you were an attorney at

13 the State Department back in 2014. Correct?

14 **A That is correct.**

15 Q Okay. And were you handling or working

16 on the litigation in this lawsuit?

17 **A So over the course of my time in that**

18 **particular office, the Office of the Legal**

19 **Advisor's office of management, I handled**

20 **something on the order of 100-plus FOIA cases.**

21 **This was one of them.**

22 Q And when you say you handled 100-plus

15

1 FOIA cases, would all of those cases be in

2 litigation?

3 **A That's correct. So our office typically**

4 **would only become involved with cases that were in**

5 **litigation, as opposed to simple requests.**

6 Q Okay. Thank you. And I want to focus

7 on -- on 2014 time frame. If we move away from

8 that time frame, I'll specify.

9 But back in 2014, did you work on

10 congressional requests seeking Benghazi-related

11 documents?

12 **A I did have some involvement with those**

13 **requests at some point in 2014.**

14 Q Okay. Can you tell me what requests?

15 **A I don't specifically recall which**

16 **requests. I joined the office in April of 2014,**

17 **so it wouldn't cover the entire year. And I don't**

18 **have a specific recollection of particular**

19 **requests.**

20 Q Okay. Do you recall the committees where

21 the requests came from?

22 **A So at some point I believe there had been**

16

1 **a request from the House Oversight Committee.**

2 Q Okay.

3 **A I don't recall the nature of it. It was**

4 **something that was underway at the time that I**

5 **joined the department.**

6 **And then at some point in 2014, again the**

7 **date isn't something that I recall, the House**

8 **established the Select Committee on Benghazi,**

9 **which took I believe sole jurisdiction over those**

10 **matters.**

11 Q Okay. And did you assist with the State

12 Department's responses to the Select Committee on

13 Benghazi?

14 **A I had some involvement with those**

15 **responses, but it was not my primary**

16 **responsibility.**

17 Q Okay. Well, for background purposes, in

18 summer of 2014 what was your primary

19 responsibility?

20 **A So summer of 2014 I had just arrived as I**

21 **said in late April, so was sort of getting up to**

22 **speed on the State Department generally, and had a**

17

1 docket of FOIA cases. I don't recall at this
2 point what the volume of them would have been,
3 having just ramped up. And did have some
4 involvement as well in reviewing documents related
5 to the investigations of the Benghazi attacks.
6 But precisely in the summer I -- I'm unable
7 sitting here today to pinpoint which committee
8 would have been making those requests.
9 Q Okay. In regards to the requests in the
10 State Department's response to the Benghazi Select
11 Committee, were you aware in or around August of
12 2014 that the State Department had produced a
13 batch of documents that included e-mails either to
14 or from Secretary Clinton?
15 A To the Select Committee?
16 Q To the Select Committee.
17 A Okay. And remind me of the time frame?
18 Q Summer of 2014.
19 A I believe that there was a production
20 that would have included documents that included
21 that e-mail address on them, yes.
22 Q Okay. Did you review those documents?

18

1 A I can't say that I reviewed all of them.
2 It was a large team, and I forget the volume of
3 the production.
4 Q Were you on the team that reviewed the
5 documents that were produced?
6 A I was involved in the review. I think it
7 was a sort of evolving process in terms of, you
8 know, what the -- the central team for that would
9 have been.
10 Q Okay. And just to get a sense of the
11 makeup of the team, who else from the Office of
12 the Legal Advisor was part of that team?
13 A Okay. Can you specify time period,
14 please?
15 Q Yes. Still speaking about August 2014.
16 A Okay. So by August 2014 I think there
17 was some flux.
18 When I arrived in April of 2014, my
19 immediate supervisor was a gentleman by the name
20 of Matt Burton, who would have been the assistant
21 legal advisor in the legal advisor's office of
22 management, which I'll refer to today as L/M for

19

1 short.
2 Q Okay.
3 A L/M. And he was in charge of what --
4 what seemed to be an as-needed group of
5 individuals, both lawyers and subject-matter
6 experts, who were involved in reviewing those
7 documents.
8 At some point over the course of the
9 summer Mr. Burton left for the private sector. I
10 don't recall exactly when. And then I believe
11 somewhere around August, it may have been just
12 before, it may have been just after the production
13 that you referred to, there were two other
14 attorneys who joined the State Department who
15 ultimately took the lead for congressional
16 oversight on that matter.
17 I -- when they initially joined, I don't
18 know if they were assigned to the Office of the
19 Legal Advisor, but their names were Kate Duval and
20 Austin Evers.
21 Q Okay. And Ms. Duval's name, her first
22 full name is Catherine Duval?

20

1 A I believe that's right.
2 Q Okay. And do you know what office they
3 were assigned to when they first joined the State
4 Department?
5 A I'm honestly not sure. I was myself new
6 to the bureaucracy, and everything has an acronym.
7 Q Yes, it does.
8 Do you know where they came from prior to
9 joining the State Department?
10 A I believe they had both come from private
11 practice, but I don't recall more than that.
12 Q Okay. And Mr. Evers came from the law
13 firm of Williams & Connolly? Is that correct?
14 A I -- I'm not sure.
15 Q Okay.
16 A That may be correct. I just don't have a
17 recollection of it.
18 Q Okay. And other than the individuals
19 either from the legal -- the Office of the Legal
20 Advisor or Ms. Duval or Mr. Evers, were there any
21 individuals from IPS or the GIS who were involved
22 or who were on the team of doing the review for

21

1 the Benghazi-related documents?
2 MR. GARDNER: Objection. Form.
3 **A Can you specify a time period, please?**
4 Q Again, we're still talking about August
5 2014.
6 **A Okay. Could you restate the question?**
7 Q Yes. Was there anybody from IPS who was
8 part of the team reviewing the documents relating
9 to the Benghazi production?
10 **A I don't know the answer to that question,**
11 **sitting here today.**
12 Q Was Mr. Hackett involved in the review
13 process of those documents?
14 **A I don't know the answer to that question.**
15 Q Do you know, are you familiar with John
16 Hackett?
17 **A I am, yes.**
18 Q Okay. And how -- how did you know
19 Mr. Hackett?
20 **A Mr. Hackett worked in IPS, which was one**
21 **of the client bureaus during the time that I was**
22 **in L/M.**

22

1 Q Okay. And, I'm sorry, what bureaus did
2 you say?
3 **A I'm not sure I did. I said client**
4 **bureaus. Is that what you meant?**
5 Q "Client"? Is that what you said
6 "client"?
7 **A I believe so, yes. So he was in a -- in**
8 **a client bureau of L/M.**
9 Q Okay. And what do you mean by "client
10 bureau"?
11 **A So within the Office of the Legal Advisor**
12 **there's something like 20 offices, some of which**
13 **have regional responsibilities, some of which have**
14 **functional responsibilities. And then L/M itself,**
15 **which is mainly management issues, there are a**
16 **number of other subcomponents of the State**
17 **Department for whom L/M is their primary point of**
18 **contact within the Office of the Legal Advisor.**
19 **So the Bureau of Administration, of which**
20 **IPS is a subcomponent, their primary interlocutors**
21 **with the Office of Legal Advisor were in L/M. So**
22 **by virtue of the fact that he was in what we refer**

23

1 **to as the A bureau, the Bureau of Administration,**
2 **he would have been in a client bureau that I was**
3 **responsible for.**
4 Q Okay. And how about Eric Stein; are you
5 familiar with Mr. Stein?
6 **A I am.**
7 Q Okay. And how do you know Mr. Stein?
8 **A Same way.**
9 Q Mr. Stein, was he part of the A bureau,
10 the Bureau of Administration, at the time?
11 **A Yes, ma'am.**
12 Q Okay. And did he work with Margaret
13 Grafeld at the time?
14 **A I'm not entirely clear on what the**
15 **organizational structure within the A bureau was.**
16 **But I believe they were both in the A bureau at**
17 **the time.**
18 Q Okay. And was Mr. Stein on the team
19 doing the review process of the Benghazi-related
20 documents, again in August 2014?
21 **A Again, I was relatively junior and wasn't**
22 **in charge of the process, so I don't have a full**

24

1 **recollection, sitting here today, of -- of how**
2 **that team was comprised. I simply don't know.**
3 Q Okay. Did you engage and have
4 communications with Mr. Stein in regards to the
5 documents relating to the Benghazi production in
6 or around August of 2014?
7 **A I don't recall.**
8 Q Okay. And how about with -- same
9 question with respect to Margaret Grafeld?
10 **A I don't recall.**
11 **And, again, I'm not -- I'm not trying to**
12 **be difficult, but it was, you know, five years**
13 **ago, and I had about a hundred-plus cases. And,**
14 **you know, that investigation evolved over the**
15 **course of the time that I was there. So for that**
16 **time period and those individuals, I can't -- I**
17 **simply don't have a recollection of interactions**
18 **with them at that time.**
19 Q Okay. In preparation for your deposition
20 today, did you review any of your e-mail
21 correspondences from the State Department relating
22 to this FOIA request and litigation or relating to

25

1 Secretary Clinton's e-mails in -- from 2014?
2 **A So I did meet with counsel --**
3 MR. GARDNER: Objection. Form.
4 **A -- with the Justice Department.**
5 THE WITNESS: I apologize. I spoke over
6 you.
7 MR. GARDNER: That's okay. I said
8 objection, form.
9 **A I did meet with counsel from the Justice**
10 **Department. But I believe that, you know,**
11 **anything with respect to what was discussed or**
12 **reviewed there is likely privileged.**
13 Q Okay. Let me just ask you, any documents
14 that you reviewed, did you review -- because we
15 received a lot of documents in this -- in the
16 discovery in this case.
17 Did you review unredacted versions of
18 your e-mail communications?
19 MR. GARDNER: You can answer that
20 question.
21 **A I did, during the course of -- of the**
22 **review see some e-mails that were unredacted, yes.**

26

1 MR. GARDNER: That -- that's not correct.
2 We did not show him any documents that
3 were unredacted in any fashion that was not
4 unredacted the same way for you.
5 **A I -- let -- let me clarify. There were**
6 **documents that I saw that did not have redactions**
7 **on them. Anything that did appear that it had a**
8 **redaction at any point that was apparent on the**
9 **face of it was redacted in the form that I saw it.**
10 **So I don't know the full scope of what**
11 **may or may not have been redacted in terms of what**
12 **was produced to you. I can tell you that I did**
13 **not see anything, for example, that had a**
14 **gray-scale redaction box where it was clear that**
15 **something had been redacted and yet one could see**
16 **through it. I never saw anything like that.**
17 **Anything that indicated that a redaction**
18 **had ever been placed on the document remained**
19 **redacted. So I can only assume that if I was**
20 **shown something that related to this case that had**
21 **no indication that there had ever been a**
22 **redaction, that likely that was the way that**

27

1 **others had seen it. But again, I just don't have**
2 **specific knowledge of that.**
3 Q Did reviewing the documents help refresh
4 your recollection of the events? And I understand
5 that we're going back five years to 2014.
6 **A They did not.**
7 Q They did not in any way.
8 **A Not particularly, no.**
9 Q Okay. When were you first assigned
10 duties involving FOIA for the State Department?
11 **A It would have been somewhere in the late**
12 **April to early May of 2014 time period, shortly**
13 **after arriving. There was a couple of days of**
14 **onboarding, at then at some point someone let me**
15 **know what I was going to be working on.**
16 Q Okay. When did you start at the State
17 Department?
18 **A Late April of 2014. I don't recall the**
19 **specific date.**
20 Q Okay. Going back to the review process
21 of the Benghazi document production in August of
22 2014.

28

1 Was Richard Visek also on the team
2 working on that production?
3 **A So, again, as a relatively junior person,**
4 **I sort of did what I was asked. I -- I don't know**
5 **what the full scope of the team was. I wasn't in**
6 **charge of it.**
7 **But Mr. Visek I believe at some point had**
8 **supervisory authority over some of the individuals**
9 **who were working on that review.**
10 Q Okay. Mr. Visek, what office was he in
11 in 2014?
12 **A 2014, he was in the -- what we call the**
13 **front office for the Office of the Legal Advisor.**
14 **His title shifted I think a few times. But if I**
15 **am not mistaken, he was likely the principal**
16 **deputy assistant or principal deputy legal advisor**
17 **at the time.**
18 Q And are you familiar with Clarence
19 Finney?
20 **A I am.**
21 Q Okay. And how do you know Mr. Finney?
22 **A I know Mr. Finney through the course of**

29

1 **my work in L/M.**
2 Q Okay. But Mr. Finney was not working in
3 the Office of the Legal Advisor. Correct?
4 A **No, he was not.**
5 Q Okay. What office was he working back in
6 2014?
7 A **So I believe the entire time that I**
8 **interacted with Mr. Finney, he was working in what**
9 **is abbreviated as S/ES, which I believe is the**
10 **executive secretariat.**
11 Q Would it be through a hyphen and then C
12 for correspondence?
13 A **I believe that the full acronym, if I**
14 **recall it correctly, would have been S/ES-EX.**
15 Q EX.
16 A **Although I don't sitting here today fully**
17 **recall what that all stood for.**
18 Q Okay. But was it your understanding that
19 in August of 2014 that Mr. Finney was in charge of
20 records for the Secretary's office?
21 A **He had involvement with those. I think**
22 **the ultimate responsibility for records ultimately**

30

1 **rested with the agency records officer. But that**
2 **Mr. Finney in the course of his duties would have**
3 **dealt with records within the Office of the**
4 **Secretary.**
5 Q Okay. But that was his primary role, was
6 dealing with records from -- with the Office of
7 the Secretary?
8 A **I can't speak to the full scope of his**
9 **responsibilities. That's the reason that I would**
10 **have interacted with him.**
11 Q Okay. And are you familiar with Jonathon
12 Wasser?
13 A **Yes, I am.**
14 Q Okay. And how do you know Mr. Wasser?
15 A **Mr. Wasser worked for Mr. Finney.**
16 Q Right. So my question, again, it's
17 similar to the previous questions. With respect
18 to Mr. Finney and Mr. Wasser, were they involved
19 or did they interact with you or anybody else on
20 the team, as far as you know, with respect to
21 reviewing the Benghazi-related production in
22 August of 2014?

31

1 MR. GARDNER: Objection. Form.
2 A **I'm sorry, could you ask it again?**
3 Q Yes. Were Mr. Finney and Mr. Hackett --
4 Mr. Wasser, were they on the team reviewing the
5 Benghazi-related production back in August 2014?
6 MR. GARDNER: Same objection.
7 A **So I think there's -- there's a question**
8 **there with respect to each of the individuals. So**
9 **with respect to each of them, I don't have a**
10 **recollection, sitting here today, of either**
11 **Mr. Wasser or Mr. Finney having been involved in**
12 **that process. But again, I was a junior attorney**
13 **in the department, and didn't have, nor would I**
14 **have expected to have, a full 360-degree view of**
15 **what the process was.**
16 Q Do you recall having any communications
17 with either Mr. Finney or Mr. Wasser with respect
18 to the Benghazi-related document production in
19 August of 2014?
20 MR. GARDNER: Objection. Form.
21 A **Could you restate, please?**
22 MS. COTCA: Do you mind reading it?

32

1 (Pending question read.)
2 MR. GARDNER: Same objection.
3 A **I do not, sitting here today, have a**
4 **recollection of communicating with either**
5 **Mr. Wasser or Mr. Finney specifically in regard to**
6 **the production of documents to Congress regarding**
7 **Benghazi in August of 2014.**
8 Q Okay. And I want to go back to the work
9 you were doing on FOIA litigations in this time
10 frame of August 2014.
11 By August of 2014, were you the attorney
12 assigned in handling the FOIA litigation at issue
13 in this case?
14 A **I don't recall the exact time period.**
15 **But I believe that at the time that this lawsuit**
16 **was filed, as opposed to when the request itself**
17 **was submitted, that I would have been the attorney**
18 **assigned to this case when it first came in.**
19 Q Okay. So I'll represent to you that the
20 lawsuit was filed in July of 2014. Is it your
21 testimony, then, that shortly thereafter you were
22 the attorney assigned to handle the lawsuit?

33

1 A Again, I -- I don't -- if you have a
2 specific document with respect to the filing date,
3 I can verify that.
4 But I can tell you that I recall -- and I
5 don't recall the time period -- that a case with
6 the subject matter and this specific request came
7 in, and that it was assigned to me. I just don't
8 recall exactly when.
9 Q Do you recall handling a FOIA lawsuit
10 with respect to WikiLeaks back in 2014?
11 A I do not.
12 Q Do you recall working on any other FOIA
13 lawsuits in 2015 that related to Secretary
14 Clinton's e-mails?
15 A I believe that there would have been such
16 lawsuits in 2015. As I said, I worked on about
17 100-plus cases over my time at L/M, which spanned
18 2014 until late 2016. And a number of them did in
19 some form or fashion, either specifically by the
20 language of the request or because of the subject
21 matter request, involve at some point e-mails to
22 or from former Secretary Clinton.

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1 Q Okay. So I want to focus, though, I
2 believe you, in your answer you stated in 2015. I
3 want to just focus on 2014, prior to Secretary
4 Clinton providing copies of her e-mails to the
5 State Department.
6 A Okay. I'm sorry. I think your question
7 initially was what did I do in 2015, which is why
8 I tried to give you a time period.
9 Q Then perhaps there was miscommunication
10 there.
11 The question is, in September -- in 2014,
12 did you work on any other FOIA lawsuits relating
13 to Secretary Clinton's e-mails?
14 A I don't recall. As I said, there were a
15 number of lawsuits that would have touched on
16 those e-mails at some point. But specifically
17 with respect to whether or not I, personally, was
18 involved in any in the calendar year 2014, I don't
19 have a recollection other than, you know,
20 certainly the -- the suit that we're here today to
21 discuss requested -- and I don't recall if it was
22 in the initial language of your request or if it

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1 was negotiated with counsel, but eventually was
2 scoped to the Office of the Secretary during a
3 time period when former Secretary Clinton was
4 Secretary of State.
5 Beyond that, I don't have a recollection
6 of specific cases in 2014 that would have involved
7 her e-mails.
8 Q Okay. Do you recall call -- calling Eric
9 Stein in June through August of 2014, asking him
10 to search for Secretary Clinton's e-mail addresses
11 in Philip Reines' PST file from a separate FOIA
12 request?
13 MR. GARDNER: Objection. Form.
14 A I do not recall.
15 Q Do you recall any conversations you had
16 with Mr. Stein in the summer of 2014 asking him to
17 search Secretary Clinton's e-mail addresses?
18 A I just -- I just don't have a
19 recollection of that. It's about five years ago.
20 Q I'll represent to you that Mr. Stein
21 testified in this case that he received a call
22 from you during this time frame asking him to

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1 search for the e-mail address -- not the domain
2 name, but the specific e-mail address -- and the
3 various variations of it of Secretary Clinton's in
4 Philip Reines' PST file.
5 Sitting here today, do you have any
6 reason to dispute or to say that his testimony
7 was -- is not true?
8 MR. GARDNER: Objection. Form.
9 A I -- I don't have any familiarity with
10 his testimony. If there's something you'd like to
11 show me, I would be happy to take a look at it.
12 Q I just -- based on what I just
13 represented to you, do you have any reason to --
14 A I just don't have a basis one way or
15 another to know whether that representation is
16 correct.
17 Q Whether my representation is correct?
18 A That's correct.
19 Q Well, assume that my representation is
20 correct. I'll proffer that Mr. Stein testified in
21 this case on Friday of last week that you gave him
22 a call in the summer of 2014 asking him to search

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1 Philip Reines' PST file of the different
2 variations of Secretary Clinton's e-mails.
3 Assuming that my representation is
4 correct, do you have any reason to dispute or to
5 say that Mr. Stein's testimony is not -- was not
6 truthful?
7 MR. GARDNER: Objection. Form.
8 **A I simply have no recollection of that**
9 **incident one way or the other.**
10 Q And assuming Mr. Stein did not lie under
11 oath, why -- what would have precipitated you, if
12 you know, to make the call to Mr. Stein asking him
13 to search for Secretary Clinton's e-mail address
14 in the summer of 2014?
15 MR. GARDNER: Objection, form. Also
16 objection, lack of foundation.
17 **A Again, I have no recollection of such an**
18 **incident, and therefore would not speculate as to**
19 **what may or may not have motivated an incident**
20 **that I don't recall, if it occurred.**
21 Q How long have you known Mr. Stein?
22 **A I met Mr. Stein during the course of my**

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1 **work in L/M. I don't recall what year that was.**
2 **I rotated out of that position in October of 2016,**
3 **and I don't believe I've seen him since, except**
4 **perhaps in passing.**
5 **So I knew him professionally, you know,**
6 **over the course of two years or so, but I don't**
7 **believe I've had any subsequent contact with him**
8 **since 2016.**
9 Q Do you know that Mr. Stein is currently
10 the director of IPS?
11 **A I did not know that.**
12 Q Okay. At the time in 2014 did you know
13 that Mr. Stein was the deputy to Ms. Grafeld?
14 **A I do recall that they worked together. I**
15 **don't recall his exact title.**
16 Q From the time that you know -- that
17 you've known Mr. Stein and you worked with
18 Mr. Stein, did you have any reason to doubt his
19 truthfulness or honesty?
20 **A I don't believe I had any reason to doubt**
21 **his -- his truthfulness or honesty in the course**
22 **of my work. You know, mainly when I interacted**

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1 **with Mr. Stein it would be to get his clearance**
2 **and signature on declarations that would be filed**
3 **with the court. And so we were always very**
4 **careful to ensure that anything that was stated in**
5 **there was something that could be factually**
6 **established. I don't think that bears on**
7 **truthfulness or honesty as much as professional**
8 **responsibility as an attorney.**
9 Q Have you ever discussed with anybody
10 Mr. Stein's interview with the FBI?
11 **A Not that I recall.**
12 Q Have you ever reviewed any of the notes
13 that were made public by the FBI from its
14 interviews of State Department officials relating
15 to its investigation into Secretary Clinton's
16 e-mail use?
17 **A I'm sorry, what -- what do you mean by**
18 **"notes"?**
19 Q Yes. Are you familiar with FBI 302
20 notes?
21 **A I'm familiar with the concept, yes.**
22 Q Okay. So that's what I mean. The FBI

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1 302 notes that were made public by the FBI in
2 relation to its investigation into Secretary
3 Clinton's e-mails.
4 Have -- have you at any point reviewed
5 any such notes that were made public?
6 **A I believe I may have reviewed one or two**
7 **of the 302s at the time that they became public,**
8 **but I don't recall which, and I don't have a**
9 **particular recollection of the content.**
10 Q Did you know at the time whose 302 notes
11 it were that you reviewed?
12 **A I don't have a recollection of which ones**
13 **they would have been. I don't know what the**
14 **universe of 302 that were made public was or who**
15 **the FBI spoke to in toto.**
16 Q When did you review those, time -- and
17 I'm not looking for a specific date, but ...
18 **A I don't recall the answer to that**
19 **question. It would have been at some point while**
20 **I was still in L/M, so prior to October of 2016.**
21 **And obviously after they became public. So I**
22 **don't know when they became public, but it would**

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1 **be somewhere between those two dates.**
2 Q Do you know what led you to review the
3 few 302 notes that you reviewed?
4 MR. GARDNER: Objection.
5 To the extent you can answer that
6 question without divulging privileged information
7 or work product, you may do so.
8 Otherwise I will instruct you not to
9 answer.
10 **A I don't recall.**
11 Q Do you recall reviewing a 302 note in
12 which a discussion is referenced from August of
13 2014 about somebody in the Office of the Legal
14 Advisor asking that a search be done in a PST file
15 for Secretary Clinton's e-mails?
16 **A Again, I have no recollection of having**
17 **reviewed any of the 302s, and so logically would**
18 **not have recollection of any other specific**
19 **content.**
20 Q When did you first learn of Secretary
21 Clinton's e-mail address?
22 **A I think the first time that I ever saw**

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1 **that address was early in my tenure at the State**
2 **Department, so probably spring or summer -- I**
3 **don't recall exactly when -- during the course of**
4 **reviewing documents for production to Congress.**
5 Q And what was the e-mail address that you
6 learned from reviewing the documents that were
7 produced to Congress?
8 **A Sitting here today, I don't have a**
9 **specific recollection of it.**
10 Q Was it the `hdr22@clintonemail.com`?
11 **A It may have been.**
12 Q Were there any other e-mail addresses
13 that you learned of for Secretary Clinton during
14 that time frame?
15 **A I don't recall specifically when or**
16 **whether I had learned of any other e-mail**
17 **addresses during that time frame.**
18 Q Did you back in, again summer of 2014,
19 learn of Secretary Clinton's e-mail address
20 `hrc17@clintonemail.com`?
21 **A I don't believe that I was aware of that**
22 **address at that time.**

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1 Q Okay. And the same question for
2 `Hrod17@Clintonemail.com`?
3 **A I don't believe that -- and, again,**
4 **you're talking about the summer of 2014?**
5 Q Yes.
6 **A I don't believe I was familiar with that**
7 **address at that time.**
8 Q Okay. How about the e-mail address
9 `HR15@ATTBlackBerry.net`; were you familiar with
10 that e-mail address back in the summer of 2014?
11 **A At some point I became familiar with that**
12 **address, but I don't recall -- I don't recall**
13 **when.**
14 Q And just to try to narrow the time frame
15 of when you learned about the
16 `HR15@ATT.BlackBerry.net` e-mail address, was that
17 before Secretary Clinton provided copies of her
18 e-mails to the State Department in December of
19 2014?
20 **A I don't recall. It's something that I**
21 **would have seen in the course of -- of document**
22 **review. And I'm not sure exactly for what, so I**

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1 **don't know if it was a review in the spring or if**
2 **it was a subsequent review after those e-mails**
3 **were provided to the department.**
4 Q How about the e-mail address
5 `SSHRC@state.gov`; were you aware of that e-mail
6 address in the summer of 2014?
7 **A I do not have a particular recollection**
8 **of that specific address. But, again, it was five**
9 **years ago.**
10 Q And in the process of learning Secretary
11 Clinton's e-mail address in the spring or summer
12 of 2014, who else from your office learned of her
13 e-mail address?
14 MR. GARDNER: Objection, foundation.
15 Objection, form.
16 **A Yeah, I just want to clarify. I think**
17 **you said in the process of learning that address.**
18 **I don't believe that there was any such process**
19 **that was undertaken.**
20 Q Wasn't that in the process of responding
21 to congressional requests?
22 **A Yes, there was a process of responding to**

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1 requests.
2 Q Okay.
3 A **But your question posited that there was**
4 **a process of discovering particular addresses,**
5 **which I don't believe there was.**
6 Q Let me rephrase.
7 A **Yes, please.**
8 Q In the process of responding to the
9 congressional requests in the spring and summer of
10 2014, who else from the Office of Legal Advisor
11 learned of Secretary Clinton's e-mail address?
12 MR. GARDNER: Objection. Foundation.
13 A **I don't think I have any recollection or**
14 **I would have had a basis of knowledge at the time**
15 **for when particular people learned things or**
16 **through what process they learned them.**
17 Q Did you discuss Secretary Clinton's
18 e-mail address with anybody from the Office of the
19 Legal Advisor in spring or summer of 2014?
20 A **Yes, I did.**
21 MR. GARDNER: You can answer that
22 question with a yes or no.

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1 You beat me to it.
2 A **Yes, I did.**
3 Q Who did you communicate with about
4 Secretary Clinton's e-mail address in the spring
5 and summer of 2014 from the Office of the Legal
6 Advisor?
7 MR. GARDNER: And to be clear, you can
8 identify the individuals. The content of those
9 conversations, to the extent they're privileged or
10 protected by the work product doctrine, I would
11 instruct you not to answer.
12 A **Yeah, so I -- and I agree with counsel.**
13 **Likely those conversations would fall under that**
14 **category.**
15 **But the fact of the conversations I would**
16 **have spoken to, within the Office of the Legal**
17 **Advisor, Gene Smilansky, Andrew Keller, Rich**
18 **Visek, and likely at some point Mr. Burton. But,**
19 **again, as I said, he left for the private sector**
20 **shortly after I arrived.**
21 **And then I did have discussions on that**
22 **topic at -- at later times with -- with other**

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1 **people. But had you -- had your question been**
2 **scoped to the summer of '14?**
3 Q Yes.
4 A **Okay. Then that would be the totality of**
5 **the people I recall within the Office of the Legal**
6 **Advisor in the summer of 2014 that I had**
7 **conversations about that e-mail address with.**
8 Q Okay. And how about with Catherine Duval
9 and Mr. Evers?
10 A **So I would have had conversations with**
11 **them on that topic. At the time I don't know**
12 **whether they were actually formally assigned to**
13 **the Office of the Legal Advisor, and I don't**
14 **recall exactly when it was that each of them**
15 **started.**
16 **But subsequent to their arrival at the**
17 **department, I did have conversations with each of**
18 **them; may have been late summer, early fall of**
19 **2014.**
20 Q And how about with individuals from IPS,
21 including Mr. Hackett; did you have any
22 discussions with anybody from IPS about Secretary

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1 Clinton's e-mail address in the spring and summer
2 of 2014?
3 A **I expect that I did, but I don't recall**
4 **the timing or the substance of those**
5 **conversations.**
6 Q Other than Mr. Hackett, would you have
7 had any other conversations with anybody in his --
8 from the -- from IPS about the -- Secretary
9 Clinton's e-mail address in the spring and summer
10 of 2014?
11 MR. GARDNER: Objection. Form.
12 A **Again, I don't have a recollection on**
13 **what time period conversations with IPS on that**
14 **topic would have taken place. So I can't say with**
15 **certainty whether there would have been**
16 **conversations in the spring or summer of 2014.**
17 **To the extent that I later had**
18 **conversations with individuals in IPS on that**
19 **topic, it would have been common for others to be**
20 **present. There was a weekly meeting with**
21 **Mr. Hackett and his team. Typically Karen**
22 **Finnegan was present for those meetings. She**

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1 worked for John, but I don't recall her title.
2 And on occasion Susan Weetman, who I believe
3 technically worked for Karen and at some point may
4 have assumed Karen's position, may have been
5 present at those meetings.
6 But again, I -- I simply can't pinpoint
7 on a calendar of 2014 when those conversations
8 would have taken place.
9 Q And did you regularly attend those -- the
10 weekly meetings?
11 A I did.
12 Q Okay. And just to make sure I
13 understand, I have a clear understanding of your
14 testimony, are you testifying that at some point
15 during those weekly meetings Secretary Clinton's
16 e-mail address had come up?
17 A I do believe that at some point in those
18 weekly meetings I would have had discussions about
19 Secretary Clinton's e-mail address. But, again, I
20 don't recall exactly when, and I don't recall the
21 substance of particular conversations.
22 Q Did Gene Smilansky attend those meetings

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1 as well?
2 A Mr. Smilansky attended those meetings for
3 a period of time. There was a short period at
4 which -- during which he and I were both assigned
5 to L/M. But shortly after my arrival, a couple of
6 months -- I'm not sure exactly when -- he would
7 have rotated out to a different office with
8 different responsibilities and wouldn't have
9 attended those meetings thereafter.
10 Q And where Mr. Smilansky was rotated out,
11 was that still an office within the Office of the
12 Legal Advisor?
13 A Yes, it was.
14 Q Okay. And what was the office?
15 A I forget whether the acronym at the time
16 was NPT or NPV. But I believe that his next
17 rotation after L/M would have been the office that
18 deals with nuclear issues.
19 Q Did Mr. Finney ever attend those weekly
20 meetings?
21 A With Mr. Hackett?
22 Q Yes.

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1 A Not to my recollection.
2 Q Okay. And how about Mr. Evers; did he
3 attend those weekly meetings?
4 A Not to my recollection.
5 Q What about Andrew Keller?
6 A Not to my recollection.
7 Q Were you the only attorney from the
8 legal -- from the Office of the Legal Advisor who
9 attended the weekly meetings with Mr. Hackett?
10 A I was not.
11 So there was a -- s large FOIA litigation
12 caseload, and at any given time there would have
13 been between two and four or five attorneys who
14 were handling FOIA litigations. And so those
15 weekly meetings were an opportunity to meet with
16 IPS to discuss the status of those litigations.
17 So at various points attorneys who were
18 responsible for FOIA litigations would have also
19 attended.
20 Q Okay. Was this FOIA lawsuit also a
21 subject that would have been discussed during
22 those weekly meetings?

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1 MR. GARDNER: Objection. Form.
2 A I have no specific recollection of a
3 conversation about this lawsuit in those meetings.
4 Which doesn't mean it didn't happen; it just means
5 it was five years ago.
6 Q In regards to conversations about
7 Secretary Clinton's e-mails -- or Secretary
8 Clinton's e-mail address during the weekly
9 meetings with Mr. Hackett --
10 A Uh-huh.
11 Q -- were there any discussions about how
12 that might impact or affect FOIA litigations
13 relating to Secretary Clinton's e-mail?
14 MR. GARDNER: Objection. To the extent
15 you can answer that question without divulging
16 privileged information or work product, you may do
17 so. Otherwise I instruct you not to answer.
18 THE WITNESS: Okay. Could I clarify for
19 a moment?
20 A What time period are you referring to?
21 Q I'm referring to in 2014. So from April,
22 I believe, when you came to the State Department,

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1 up until the time that Secretary Clinton provided
2 copies of her e-mails to the State Department,
3 which was on December 5th, 2014.
4 **A And the specific question within that**
5 **time period was what? I apologize.**
6 Q No problem. The time frame from between
7 April 2014 and December of 2014, were there any
8 discussions about how Secretary Clinton's e-mail
9 address, or that fact, would impact FOIA lawsuits
10 relating to Secretary Clinton's e-mails?
11 MR. GARDNER: Same objection.
12 To the extent you can answer that
13 question without divulging information protected
14 by the attorney-client privilege or the work
15 product doctrine, you may do so. Otherwise I
16 would instruct you not to answer.
17 **A And you're referring to within those**
18 **weekly meetings in that time period?**
19 Q Yes. Thank you.
20 **A I don't have a specific recollection of**
21 **such conversations. Again, that doesn't mean they**
22 **didn't happen; it just means that sitting here**

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1 **today I don't recall it.**
2 Q Okay. Was the purpose -- one of the
3 purpose of the weekly meetings to discuss the
4 status of FOIA lawsuits with the State Department
5 and how the State Department was responding to
6 them?
7 **A Yes, it was. And often that would be a**
8 **deadline-driven exercise, whether it was for**
9 **production deadlines or -- or court filings. So**
10 **the things that had the most imminent deadlines**
11 **would typically take precedence in a given week's**
12 **meeting.**
13 Q Okay. Are you aware of weekly meetings
14 Mr. Hackett had in regards to Benghazi?
15 **A I don't have any knowledge of meetings**
16 **that Mr. Hackett may or may not have had without**
17 **me being present in them.**
18 **I don't recall being present in meetings**
19 **with Mr. Hackett specifically with respect to**
20 **Benghazi. But, again, it was five years ago.**
21 Q Did the -- as far as you recall, did the
22 FOIA lawsuits that were discussed during the

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1 weekly meetings that Mr. Hackett held -- and again
2 the time frame in 2014 -- did they focus on
3 Benghazi?
4 **A The meetings, as I said, focused on**
5 **whichever cases had, you know, upcoming deadlines.**
6 Q Upon learning of Secretary Clinton's
7 e-mail address in the spring or summer of 2014
8 from the Benghazi production that you testified
9 about, what did you do with that information?
10 **A I believe that I informed Mr. Burton of**
11 **it, simply to make sure that he was aware of it.**
12 **I don't have a specific recollection as to whether**
13 **he had already been aware.**
14 Q Did you do anything else as a result?
15 **A I recall being involved in subsequent**
16 **conversations as a result. But within that**
17 **particular time period, I don't have a specific**
18 **recollection of -- of doing anything other than**
19 **just telling my immediate supervisor. Again, I**
20 **had, you know, been on the job for about a month,**
21 **if that.**
22 Q Sure. The subsequent conversations that

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1 you were involved with after learning the
2 information about Secretary Clinton's e-mail
3 address, what -- can you provide a time frame?
4 **A I mean, there were a variety of**
5 **conversations obviously related to that e-mail**
6 **address, given that there were litigations**
7 **associated with it.**
8 **So can you be more specific?**
9 Q Did those conversations continue into
10 August and September of 2014?
11 MR. GARDNER: Objection. Form.
12 You can answer.
13 **A I don't recall necessarily when they**
14 **began, so I'm not sure I would say that they**
15 **continued. And I don't have a specific**
16 **recollection on the time frame.**
17 **But I do recall having conversations, as**
18 **I believe I testified, with Mr. Keller,**
19 **Mr. Smilansky, and at some point Mr. Visek,**
20 **regarding that e-mail address.**
21 **But I don't recall when the first of**
22 **those conversations would have been, nor do I**

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1 **really recall any of the content of them.**
2 Q Okay. Did you have any discussions about
3 that with Brett Gittleson?
4 MR. GARDNER: You can answer that with a
5 yes or no.
6 **A Can you -- what do you mean by "that"?**
7 Q Secretary Clinton's e-mail address. And
8 the time frame, again, being spring to summer of
9 2014.
10 **A I don't recall, as I said, the exact time**
11 **frame. But at some point I did have conversations**
12 **with Mr. Gittleson regarding that address.**
13 Q And just for the record, to make sure
14 it's clear, Mr. Gittleson, he was the director of
15 S/ES-IRM at the time? Is that correct?
16 **A I don't recall and I'm not sure I ever**
17 **knew his -- his full title. But he was involved**
18 **with e-mails within S/ES, yes.**
19 Q Did you discuss Secretary Clinton's
20 e-mail address with Tasha Thian at any point?
21 **A I don't believe I've ever met that**
22 **individual.**

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1 Q How about Yvette Jackson?
2 **A I don't believe I've met that individual**
3 **either.**
4 Q Again focusing on the summer of 2014.
5 Did you have any discussions in which -- or
6 communications with Mr. Hackett, you know, during
7 which Mr. Hackett had suggested that the State
8 Department should request copies of Secretary
9 Clinton's e-mails?
10 **A I don't recall any specific conversations**
11 **with Mr. Hackett on that topic. Which is not to**
12 **say that they didn't happen. But, again, it was**
13 **five years ago.**
14 Q How about in the spring, summer of 2014,
15 after learning of Secretary Clinton's e-mail
16 address from the Benghazi production, were there
17 any discussions about the State Department asking
18 for copies of Secretary Clinton's e-mails?
19 MR. GARDNER: Objection.
20 To the extent you can answer that
21 question without divulging attorney-client
22 privileged information or information protected by

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1 the work product doctrine, you may do so.
2 Otherwise I instruct you not to answer.
3 **A I don't believe that there's an answer**
4 **that I can give to that question that wouldn't be**
5 **subject to the privileges that counsel has**
6 **articulated.**
7 Q Are you familiar with Rob Prince, Robert
8 Prince, a DOJ attorney in this case?
9 **A Yes, I know Mr. Prince.**
10 Q Okay. Did you inform Mr. Prince of
11 Secretary Clinton's e-mail address in 2014?
12 **A At some point I would have had a**
13 **conversation with him about it, but I don't recall**
14 **when that would have been.**
15 Q In 2014?
16 **A Again, I simply don't recall when it**
17 **would have been. I just recall I would have had a**
18 **conversation with him about the e-mail address.**
19 **So I can't say with specificity whether it was**
20 **2014 or not.**
21 Q Well, can you try to narrow it down?
22 Because we are talking about a large span of time

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1 here. Do you recall whether it was before the
2 State Department received the 12 banker boxes with
3 copies of Secretary Clinton's e-mails?
4 **A I don't recall.**
5 Q Do you recall if it was short in time
6 upon learning of Secretary Clinton's e-mail
7 address in the spring or summer of 2014?
8 **A Upon learning of the address or --**
9 **Q Yes.**
10 **A -- upon receiving the production?**
11 Q Upon learning of the address.
12 **A I don't have a recollection of a**
13 **conversation that was specifically with respect to**
14 **having learned of the address with Mr. Prince.**
15 **Again, I had many conversations with him**
16 **afterwards that would have related to the various**
17 **litigations in which we were involved. And**
18 **e-mails to and from the Secretary, as you know,**
19 **were definitely involved in some of those cases.**
20 **But I don't have a specific recollection**
21 **on time frame or any specific conversations not**
22 **tethered to a particular case.**

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1 Q You've reviewed and you're aware of Judge
2 Lamberth's discovery order in this case. Correct?
3 **A I'm aware of it. I haven't reviewed it**
4 **in great detail.**
5 Q Okay. I'm sorry. I thought earlier on
6 in your testimony you said that you've recently
7 looked at --
8 **A I looked at it. I just haven't reviewed**
9 **it in great detail.**
10 Q Okay. Are you aware that one of the
11 subject matters that Judge Lamberth granted
12 discovery in this case is in connection with the
13 State Department's settlement conduct in this
14 case, and whether any bad faith -- or whether the
15 State Department acted in bad faith?
16 Are you aware of that?
17 **A That sounds like a -- a rough summary of**
18 **it, yes.**
19 Q Okay. You're aware that the State
20 Department engaged in settlement discussions with
21 Judicial Watch in this case. Correct?
22 MR. GARDNER: Objection. Form.

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1 **A Over the course of the two-plus years**
2 **that I was in L/M, I think the State Department,**
3 **through counsel at the Justice Department, engaged**
4 **in settlement discussions with Judicial Watch**
5 **on -- on a number of cases. This one in**
6 **particular is not one that I have a specific**
7 **recollection on.**
8 Q Do you recall if -- and again my question
9 is -- the reason I'm asking these followup
10 questions is trying to see if we can narrow down
11 the time frame of when you and Mr. Prince
12 discussed Secretary Clinton's e-mail address.
13 Because that is a very important issue that's part
14 of discovery in this case.
15 So do you -- are you able to say whether
16 you and Mr. Prince had discussions about Secretary
17 Clinton's e-mail address either during settlement
18 discussions or before settlement discussions in
19 this case?
20 MR. GARDNER: Objection. Form.
21 **A I don't actually have a recollection,**
22 **sitting here today, of when those discussions**

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1 **would have been. Can you place them on the**
2 **calendar for me?**
3 Q Can I place what on the calendar for you?
4 **A The settlement discussions that were the**
5 **premise of your question.**
6 Q Are you familiar with the draft Vaughn?
7 **A A draft Vaughn?**
8 Q Just the concept of draft Vaughn, have
9 you heard the term?
10 **A The concept of it, yes, I'm familiar with**
11 **that.**
12 Q Okay. And what's -- what's a draft
13 Vaughn as you understand it?
14 **A A draft Vaughn is, as I understand it,**
15 **roughly the equivalent of a privilege log in**
16 **private practice. So to the extent that**
17 **information had been redacted from documents that**
18 **were produced to a FOIA requestor, the draft**
19 **Vaughn would articulate the legal bases for those**
20 **redactions.**
21 **They're often accompanied by a search**
22 **declaration describing how the searches took**

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1 **place. And you will sometimes hear folks refer to**
2 **those collectively as a Vaughn, but it's not**
3 **strictly accurate.**
4 Q Okay. So settlement discussions in this
5 case took place in December of 2014. So, again,
6 going back to my question -- and the State
7 Department, Mr. Prince, provided a draft Vaughn on
8 December 5th of 2014, to Judicial Watch in this
9 case.
10 So going back to my previous question.
11 Are you able to tell me whether the conversations
12 you had with Mr. Prince about Secretary Clinton's
13 e-mail address occurred at any point during the
14 settlement discussions or prior to those
15 discussions?
16 MR. GARDNER: Objection. Form.
17 **A I don't recall.**
18 Q Are you able to recall whether the
19 conversations you had with Mr. Prince occurred
20 after Secretary Clinton provided 12 bankers boxes
21 with copies of her e-mails to the State
22 Department?

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1 MR. GARDNER: Objection. Asked and
2 answered.

3 **A Certainly after the production of those**
4 **documents, I would have had conversations with**
5 **Mr. Prince. But as I've said a few times, I don't**
6 **recall when those conversations took place. I**
7 **don't recall if there were conversations that were**
8 **prior to the production of those boxes. I**
9 **simply -- you know, for an event that took place**
10 **five years ago for one amongst, you know, a**
11 **hundred-plus FOIA cases, I don't have a specific**
12 **recollection of that.**

13 Q Okay. But by September of 2014 I
14 understand your testimony to be that at that point
15 you were aware of Secretary Clinton's e-mail
16 address. Correct?

17 **A By September of 2014 --**

18 Q Yes.

19 **A -- I would have been aware of a**
20 **particular address on a particular series of**
21 **documents that I, personally, saw.**
22 **I don't think I actually knew anything**

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1 **more than that in terms of whether that had been**
2 **regular practice or what its significance was.**

3 Q Did you have discussions after learning
4 of Secretary Clinton's e-mail address with Gene
5 Smilansky, Rich Visek, Andrew Keller, and others
6 from the Office of the Legal Advisor, as to the
7 significance that her e-mail address had in --
8 within the Benghazi-related documents?

9 MR. GARDNER: Objection.

10 To the extent you can answer that
11 question without divulging privileged information
12 or information subject to the attorney work
13 product doctrine, you may do so. Otherwise I
14 instruct you not to answer.

15 **A Again, I recall having conversations with**
16 **those individuals at some time regarding that**
17 **e-mail address. I don't have a specific**
18 **recollection of the content of those**
19 **conversations.**

20 Q Okay. When you did have the discussion,
21 the initial discussion with Mr. Prince about
22 Secretary Clinton's e-mail address, what did you

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1 tell him regarding her e-mail address?

2 MR. GARDNER: Objection.

3 To the extent that calls for the
4 disclosure of information subject to the
5 attorney-client privilege under the work product
6 doctrine, I instruct you not to answer. To the
7 extent you can answer without divulging that
8 privilege or protected information, you may do so.

9 **A I don't recall when I first discussed the**
10 **issue with Mr. Prince, and so I can't speak to**
11 **what the content of an initial conversation would**
12 **have been. Any subsequent conversations would**
13 **have been subject to the privileges that counsel**
14 **just articulated.**

15 Q Okay. And I don't want to go into any
16 legal advice that was discussed during the
17 conversations with Mr. Prince. But I do want to
18 understand whether at that point you informed
19 Mr. Prince of Secretary Clinton's e-mail address.

20 **A At what point?**

21 MR. GARDNER: Objection. Form. Can you
22 reask that question? That was very confusing.

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1 Q When you discussed Secretary Clinton's
2 e-mail address with Mr. Prince, did you inform him
3 of the address?

4 MR. GARDNER: Objection. Form.

5 **A You mean like what the specific address**
6 **was?**

7 Q Yes. Or anything else with respect to
8 the e-mail address used by Secretary Clinton.

9 MR. GARDNER: Same objection. Form.

10 **A I don't recall the content of that**
11 **initial conversation, if that's what you're**
12 **asking. And I don't recall when it occurred. And**
13 **as I've said, any subsequent conversations, to the**
14 **extent that I can recall anything about them,**
15 **which is very little, would have been subject to**
16 **the privileges that counsel articulated.**

17 Q Are you familiar with a FOIA request that
18 was submitted to the State Department before you
19 came on board, and that was on December 6, 2012,
20 from CREW, which is Citizens For Responsibility
21 and Ethics in Washington, relating to Secretary
22 Clinton's e-mail accounts?

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1 A I do believe I became familiar with that
2 request at some point. That would be one in which
3 they were seeking something like records
4 sufficient to identify, as opposed to a particular
5 subject matter? Is that correct?
6 Q Yes.
7 A Yeah. Then, yes, I'm familiar with that.
8 Q Okay. Did you become familiar with that
9 in the summer of 2014?
10 A I believe so. That would be sort of the
11 earliest possible date, given my arrival.
12 Q And did you have discussions -- how did
13 become familiar with the CREW request?
14 A I don't recall when I first became
15 familiar with it or how.
16 Q You don't recall how?
17 A That's correct.
18 Q Do you recall the context when the CREW
19 request came up?
20 MR. GARDNER: Objection. Form.
21 A I don't have a specific recollection of
22 the context when it first came up because I don't

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1 recall when it first came up.
2 Q No, I'm not asking when it first came up.
3 But when it came up, I believe you said
4 summer of 2014, do you recall the context of why
5 it -- why it had come up?
6 A At some point I believe there was a
7 discussion of that case that occurred in relation
8 to the department's various legal obligations.
9 But, again, those conversations would be subject
10 to a number of privileges that I'm not the holder
11 of.
12 Q And was John Hackett involved in those
13 discussions?
14 A As I said, there would have been a
15 variety of discussions. It's possible that that
16 issue was also discussed with Mr. Hackett, but I
17 don't have a recollection of a specific
18 conversation.
19 Q How about Mr. Smilansky?
20 A I do recall at some point having
21 conversations with Mr. Smilansky on that, but it
22 was for the purpose of evaluating the department's

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1 legal obligations, and so I wouldn't be able to
2 say anything further.
3 Q Do you recall having any discussions with
4 the State Department's OIG when you were
5 interviewed about the CREW request?
6 A I do believe that was the subject of
7 discussion, yes.
8 Q Okay. Was -- was there any discussion
9 with the State OIG at that point as to whether the
10 State Department needed to correct its response to
11 the CREW request?
12 MR. GARDNER: Objection. Form.
13 A I'm sorry, can you rephrase?
14 Q Yes. Were there any discussions with the
15 State OIG, when you were interviewed by them in
16 the context of speaking about the CREW request, as
17 to whether any State Department officials felt
18 that the State Department should correct its
19 response that was sent out to CREW?
20 MR. GARDNER: Objection. Form.
21 A So to be clear, any discussions with the
22 OIG would not have been a conversation regarding

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1 whether or not there were obligations and -- and
2 what steps the department needed to take, because
3 that's simply not the OIG's role, in -- is taking
4 those steps or not.
5 I believe at some point there was a
6 discussion with OIG regarding what analysis had
7 taken place with respect to CREW upon -- I don't
8 recall whether it was upon delivery of the
9 documents from the former Secretary or if it was
10 earlier than that.
11 But in any event, the discussion would
12 have been a recitation, as I recall it, of what
13 the department's legal analysis of that question
14 was. And while the department takes the position
15 that such information cannot be withheld from an
16 inspector general, it also takes the position, I
17 believe, that that is not a waiver of privilege
18 for other purposes.
19 I'm afraid I can't say anything further.
20 Q You can't say anything further because?
21 A Because it remains subject to a privilege
22 of which I'm not the holder.

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1 Q And what privilege is that?

2 A **It would be the attorney-client**

3 **privilege, to the extent that the IG asked me to**

4 **discuss legal analysis that had been done for the**

5 **State Department.**

6 **In the same way that I can't answer your**

7 **questions as to what those conversations were with**

8 **Mr. Smilansky, for example. That would have**

9 **simply been the IG saying, What were your**

10 **conversations regarding legal advice that you had,**

11 **for example, with Mr. Smilansky. The mere fact**

12 **that that conversation then took place with the IG**

13 **is not something the department considers a waiver**

14 **of that privilege, to the best of my knowledge.**

15 MS. COTCA: Okay. Let's go off the

16 record.

17 VIDEO SPECIALIST: We are going off the

18 record at 11:09.

19 (A recess was taken.)

20 VIDEO SPECIALIST: We are back on the

21 record at 11:26.

22 BY MS. COTCA:

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1 Q Mr. Bair, I want to go back to the

2 discussions you had about Secretary Clinton's

3 e-mail address after you learned of it in the

4 review of the Benghazi documents.

5 I asked you earlier, did you have

6 discussions after learning of Secretary Clinton's

7 e-mail address with Gene Smilansky, Rich Visek,

8 Andrew Keller, and others from the Office of the

9 Legal Advisor as to the significance that her

10 e-mail address had within the Benghazi-related

11 documents.

12 MR. GARDNER: Objection.

13 To the extent that the witness can answer

14 that question without divulging information

15 subject to the attorney-client privilege or the

16 work product doctrine, you may do so. Otherwise I

17 instruct the witness not to answer.

18 A **And I apologize. I think that was just a**

19 **statement of what you previously asked. Are you**

20 **asking it again?**

21 Q Yes, I am.

22 A **Can you rephrase, please, or restate?**

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1 Q Did you have discussions after learning

2 of Secretary Clinton's e-mail address with Gene

3 Smilansky, Rich Visek, Andrew Keller, and others

4 from the Office of the Legal Advisor about the

5 significance of Secretary Clinton's e-mail

6 address?

7 MR. GARDNER: Same objection.

8 Same instruction.

9 A **I would have had conversations, as I**

10 **believe I've testified, with those individuals**

11 **regarding the former Secretary's e-mails.**

12 **I don't recall exactly when those**

13 **conversations first took place. I don't recall**

14 **specific conversations or their content. And I**

15 **have no recollection of, I think as your question**

16 **phrased it, a conversation regarding their**

17 **significance within I believe what you had posited**

18 **was the production of documents to Congress.**

19 **Is that correct?**

20 Q The significance that Secretary -- that

21 you found out that -- about Secretary Clinton's

22 e-mail address.

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1 A **Right. But I think your question had**

2 **initially referenced Benghazi. I'm trying to**

3 **figure out, is this a FOIA-specific question, is**

4 **this a Congress question?**

5 Q No. Just with respect to finding out

6 about Secretary Clinton's e-mail address, did you

7 have any discussions with these individuals about

8 the significance of learning that fact?

9 MR. GARDNER: Same objection.

10 Same instruction.

11 A **I don't recall specific conversations. I**

12 **would have had conversations with them on this**

13 **topic, but I don't recall their contents.**

14 Q Okay. And just to make sure we have a

15 clear record, are you answering my question fully,

16 or did you withhold anything from your answer

17 based on your attorney's objection as to any of

18 the attorney-client or attorney work product

19 privileges?

20 A **To be clear, any of those conversations**

21 **would have been in the course of helping the**

22 **department evaluate its legal obligations, so they**

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1 would have been privileged.
2 **But sitting here today, I do not**
3 **personally recall the content of any such**
4 **conversations. I do recall that there were**
5 **conversations on the general topic of the former**
6 **Secretary's e-mail address. But those, again,**
7 **would be privileged.**
8 Q Well, the fact that you discovered
9 Secretary Clinton's e-mail address was not
10 confidential. Correct?
11 **A I'm not sure that "discovered" is the**
12 **appropriate word. I as a junior attorney first**
13 **became aware of something when I first saw a**
14 **particular document. But discovery implies**
15 **searching for and revelation in a way that I don't**
16 **think is accurate.**
17 Q Well, was Secretary Clinton's e-mail
18 address during that time, is that -- was a
19 confidential fact?
20 MR. GARDNER: Objection. Lack of
21 foundation.
22 **A I'm not sure I --**

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1 MR. GARDNER: Objection, form.
2 **A Yeah, I don't understand the question.**
3 Q Let me rephrase.
4 You -- the State Department disclosed to
5 the Benghazi Select Committee in August of 2014
6 Secretary Clinton's e-mail address. Correct?
7 **A The State Department -- and again I don't**
8 **recall the particular date of the production --**
9 **produced a variety of documents to the Benghazi**
10 **Select Committee that were responsive to its**
11 **various requests, one of which may have been a**
12 **subpoena, I simply don't remember.**
13 **I believe that some of those documents**
14 **included that address on it. I don't think that**
15 **that's quite fair to characterize that as**
16 **disclosed the address.**
17 **They provided documents that were**
18 **responsive to what Congress had asked for. They**
19 **made no particular statement that was specific to**
20 **the address, to my recollection, at that time.**
21 Q Okay. And at the time that the State
22 Department produced the document production to the

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1 Benghazi Select Committee that included Secretary
2 Clinton's e-mails in August of 2014, was the State
3 Department keeping Secretary Clinton's e-mail
4 address confidential?
5 MR. GARDNER: Objection. Lack of
6 foundation.
7 **A What does "confidential" mean?**
8 Q How do you understand "confidential"?
9 **A Confidential --**
10 MR. GARDNER: Objection to form.
11 THE WITNESS: I beg your pardon, sir.
12 MR. GARDNER: I said, objection to form.
13 **A "Confidential" is a term of art under**
14 **Executive Order 13526 which deals with classified**
15 **information. It was certainly not considered to**
16 **fall within that definition of the term.**
17 Q All right. So I'm speaking in regards to
18 the layman's terms of the word "confidential,"
19 meaning not disclosed to third parties.
20 **A And your question?**
21 Q Was the State Department maintaining in
22 August of 2014 that Secretary Clinton's e-mail

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1 address was confidential?
2 MR. GARDNER: Objection, lack of
3 foundation. Objection, form.
4 **A I don't have any recollection of whether**
5 **that were the case. And as I said, I'm not -- I'm**
6 **still not sure I understand the question.**
7 **But I -- I don't have any recollection**
8 **that would close to it.**
9 Q Going back to your testimony about
10 locating Secretary Clinton's e-mail address in the
11 spring or summer of 2014.
12 **A Sorry, what do you mean by "locating"?**
13 Q When you first learned of Secretary
14 Clinton's e-mail address. Is that not what you
15 testified to earlier?
16 **A Well, again, "locating" implies a search.**
17 **I think the only thing I've testified to, which is**
18 **what's accurate, is that at some point in the**
19 **course of reviewing those documents I saw a piece**
20 **of paper that had that address on it. I don't**
21 **think that can appropriately be characterized as**
22 **locating. It was I read that address on a piece**

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1 of paper.
2 Q Okay. Was -- I want to get a little bit
3 more information with respect to the review
4 process that you were doing and how you learned of
5 Secretary Clinton's e-mail address.
6 Were you reviewing hard paper documents?
7 A I would defer to counsel. At the outset,
8 given that any actions that were taken were in
9 response to congressional requests.
10 MR. GARDNER: I think you can answer that
11 with a yes or no.
12 A Could you restate the question, please?
13 MS. COTCA: Do you mind reading it back?
14 (Pending question read.)
15 A At that time in the summer of 2014, yes,
16 the review was of paper.
17 Q Paper. And how did you know it was
18 Secretary Clinton's e-mail address when you first
19 came upon it?
20 A I don't recall what the specific address
21 was. I don't recall if I checked with anyone.
22 But I believe that there were some indicia in the

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1 address itself that seemed to indicate that it was
2 associated with the former Secretary.
3 Q Okay. And what -- did you flag that
4 document?
5 A As I believe I've testified, I showed
6 that document to my immediate supervisor,
7 Mr. Burton.
8 Q Immediately upon seeing it?
9 A I don't recall what the time frame was,
10 but shortly thereafter.
11 Q Was there anybody else in the -- doing
12 the document review with you when you --
13 A I--
14 Q -- when you first saw Secretary Clinton's
15 e-mail address?
16 A I don't recall the exact day or the exact
17 constellation of people. But I can say that, as a
18 general matter, during the course of that
19 hard-copy review, there typically would have been
20 other people in the room, as their schedules and
21 duties allowed; as I had said, subject-matter
22 experts, other attorneys. But I don't have a

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1 recollection as to -- to who those individuals
2 were.
3 Q So is there a room dedicated to the
4 review process for the Benghazi-related documents
5 in August of 2014?
6 A At that point I don't know that there was
7 a specific room. Much of the building was
8 undergoing sort of rolling renovations. And so,
9 oftentimes, you know, for whatever purpose,
10 including my own office, one had to relocate
11 pretty frequently. I think I moved two or three
12 times over the course of those two years.
13 Q Did you ever see Jonathon Wasser doing --
14 reviewing any of those documents back in time
15 frame spring to August of 2014?
16 A So I have -- I have no knowledge of what
17 documents Mr. Wasser may have reviewed in a
18 separate context or for a different purpose. I
19 can say that in terms of the review for production
20 of documents to Congress, I do not recall
21 Mr. Wasser participating in meetings in which I
22 also participated.

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1 Q Okay. And I'm just -- I want to focus on
2 the review process that you told us about. Seems
3 to have been in a particular room of hard-copy
4 documents. When you --
5 A Again, it was in a room. I'm not sure it
6 remained the same room, as I testified. But, yes,
7 it was hard-copy documents.
8 Q Right. But I just want to focus on the
9 time frame of spring to August of 2014.
10 A Uh-huh.
11 Q Was that review process done in the same
12 room?
13 A I don't recall the answer to that. It's
14 entirely possible it wasn't, as I said, because of
15 the renovations.
16 Q Okay. But there was one -- whether it
17 was one room or another, it was one room that was
18 dedicated for the review process of the hard paper
19 documents?
20 A I don't know that I can say that with
21 certainty.
22 Q Okay.

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1 **A Again, I was -- had just gotten there and**
2 **wasn't in charge of the process.**
3 Q Okay. Well, the room that you're aware
4 of, where the -- where you did the review of the
5 hard paper documents, did you ever see Monica
6 Tillery doing -- reviewing any of the documents?
7 MR. GARDNER: Objection. Lack of
8 foundation.
9 **A So Ms. Tillery was, I don't know if she**
10 **still is, an employee with IPS. My interactions**
11 **with her would have been primarily, if not**
12 **exclusively, in the context of the Freedom of**
13 **Information Act.**
14 **I don't have a specific recollection of**
15 **being in any meetings with her that were**
16 **specifically dedicated to reviewing documents for**
17 **production to Congress.**
18 **That said, I can't in any way say that**
19 **Ms. Tillery never reviewed the same document for**
20 **production for a different purpose, such as in a**
21 **FOIA case.**
22 Q Okay. And I want to focus, again, we're

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1 strictly speaking about the review process in
2 responding to the Benghazi Select Committee.
3 Okay?
4 I'm asking if you ever saw Ms. Tillery or
5 if you have any knowledge whether Ms. Tillery
6 reviewed any of the hard paper documents in the
7 time frame of spring to summer of 2014.
8 **A Again, and I'm not trying to be**
9 **difficult, but, like, the same documents were**
10 **responsive to a number of different things. I**
11 **have no idea if she reviewed it for a different**
12 **purpose.**
13 **I have no memory of her participating in**
14 **the review process for production of documents to**
15 **Congress. Doesn't mean it didn't happen, but it**
16 **does mean it was five years ago and I had just**
17 **gotten there and was trying to get my feet under**
18 **me.**
19 Q How were the documents organized, the
20 paper documents that you reviewed?
21 **A I don't recall.**
22 Q Were there big stacks of them?

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1 **A Yes.**
2 Q Okay. How many stacks?
3 **A I don't recall.**
4 Q When you first saw Secretary Clinton's
5 e-mail address in the paper documents that were
6 produced to the Benghazi Select Committee in
7 August of 2014, why did you make your supervisor
8 aware of Secretary Clinton's e-mail address?
9 MR. GARDNER: Objection to the extent
10 that that calls for disclosure of information
11 subject to the work product doctrine or the
12 attorney-client privilege. To the extent that you
13 can answer that question without disclosing
14 privileged information or information subject to
15 work product, you may do so. Otherwise I would
16 instruct you not to answer.
17 **A As I've said, I don't have a specific**
18 **recollection of that conversation.**
19 **To the extent that there's any general**
20 **recollection of why the issue was to -- was**
21 **discussed, it would be subject to the privileges**
22 **that counsel has articulated.**

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1 Q Well, there are several privileges, and I
2 want to make sure that we are very specific about
3 which privilege is invoked.
4 Are you invoking the attorney-client
5 privilege? Because then I don't see where the
6 communication, the confidential fact is being
7 discussed. If you're speaking about work product,
8 then you need to state that it's the work product,
9 because that can obviously be pierced when there's
10 a need for it.
11 MR. GARDNER: I think my objections were
12 quite clear.
13 I said, to the extent that his
14 information disclosed would implicate either the
15 attorney-client privilege or the work product
16 doctrine, then I'm instructing him not to answer.
17 MS. COTCA: Well, I'm asking --
18 MR. GARDNER: If he can answer the
19 question without implicating either the privilege
20 or the doctrine, he may do so. I couldn't be
21 clearer about that.
22 MS. COTCA: Okay. I'm asking the basis

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1 for the attorney-client privilege being invoked.
2 MR. GARDNER: I just said to the extent
3 that it does implicate the privilege, then he
4 cannot answer the question.
5 MS. COTCA: What is the confidential
6 fact?
7 MR. GARDNER: The confidential fact is
8 the discussions that he had with another
9 attorney --
10 MS. COTCA: That's not the question.
11 MR. GARDNER: -- about providing or
12 receiving information sufficient to provide legal
13 advice.
14 MS. COTCA: That's not the question.
15 MR. GARDNER: To the -- to the extent --
16 Ramona, to the extent that he can answer the
17 question without divulging that kind of
18 information, I've been very clear he may do so.
19 BY MS. COTCA:
20 Q Okay. So the question is, to be very
21 clear, why did you inform your supervisor about
22 Secretary Clinton's e-mail address that was

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1 produced to Congress in -- sometime in the spring
2 or summer of 2014?
3 MR. GARDNER: Same objections and same
4 instructions.
5 A As I've said, to the -- first of all, I
6 don't recall the particular conversation. I can
7 say that in the course of my work as an attorney
8 for the department, most conversations that I had
9 between and among attorneys would have been
10 helping -- for the purpose of helping the
11 department to evaluate various legal obligations,
12 and thus I do believe that that would have come
13 within the attorney-client privilege.
14 But with respect to your specific
15 question, as I believe I've said a few times now,
16 I don't recall the specific conversation with
17 Mr. Burton, and thus it would be just speculation,
18 even if it weren't privileged, for me to discuss
19 what had animated that conversation.
20 Q Okay. So your -- and I don't mean to be
21 difficult, but you're conflating the answer with
22 privilege and then also providing substantive part

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1 of your answer to the question.
2 So I want to be very clear. Are you
3 withholding any information in part of your answer
4 under the attorney work product privilege?
5 A You have asked about a specific
6 conversation which would be the first time that I
7 brought that document to Mr. Burton's attention.
8 I want to be very clear. I have no particular
9 specific recollection of that conversation at all.
10 Q Okay. And I'm not asking as to what was
11 discussed in the conversation. The question,
12 again, is, why did you go to your supervisor to
13 inform him of Secretary Clinton's e-mail address?
14 MR. GARDNER: Objection. Asked and
15 answered.
16 MS. COTCA: He still hasn't answered my
17 question.
18 MR. GARDNER: I think we can agree to
19 disagree on that.
20 You can answer it again.
21 A Happy to answer it again. I would agree
22 with counsel this has been asked several times

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1 now.
2 I don't recall the conversation, and as a
3 result I can't recall what motivated the
4 conversation.
5 Q Why do you believe, sitting here today,
6 that you informed your supervisor of Secretary
7 Clinton's e-mail address when you first located it
8 or found it in the documents sometime in the
9 spring of 2014?
10 A I had just joined the State Department,
11 and the ordinary course would have been if there
12 were something that needed higher attention, that
13 it would have been -- or if I simply had a
14 question about it, that it would have been
15 something that I would naturally have brought to
16 the attention of my immediate supervisor.
17 Q Okay. And going back to my previous
18 question, did you withhold any information from
19 your answer subject to the attorney work product
20 privilege?
21 A With respect to the answer I just gave?
22 Q With respect to my initial question as to

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1 why you informed your supervisor about Secretary
2 Clinton's e-mail address after you first located
3 it or found it in the documents we're talking
4 about.

**5 A I believe I've said a few times now I
6 don't recall the content of that conversation. I
7 therefore don't recall what is motivating the
8 conversation to take place. As a result, I have
9 no recollection that could be withheld pursuant to
10 either of those privileges, sitting here today.**

11 Q So is your answer that you didn't
12 withhold any information subject to the attorney
13 work product privilege?

**14 A With respect to the specific question
15 that you've asked a few times now regarding one
16 particular conversation with Mr. Burton?**

17 Q I didn't ask about the conversation. I
18 asked why you felt the need to go and inform your
19 supervisor about Secretary Clinton's e-mail
20 address. That's the question.

**21 A I think I've said a number of times now I
22 simply don't recall.**

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1 Q But my question with respect to that
2 question is whether you're withholding any
3 information from your answer --

4 A I am --

5 Q -- subject to the attorney work product
6 privilege.

**7 A I am giving you an answer to your
8 question. It is a full answer to your question,
9 and therefore nothing could have been withheld.
10 The answer to your question is I do not recall.**

11 Q Okay. And how did your supervisor
12 respond when you informed him of the -- Secretary
13 Clinton's e-mail address?

**14 A I don't recall his response to that. I
15 don't recall the conversation.**

16 Q Do you know what he did as a result?

17 A I do not.

18 Q Then I believe after learning of
19 Secretary Clinton's e-mail address, you had
20 discussions, subsequent discussions with Gene
21 Smilansky, Rich Visek about Secretary Clinton's
22 e-mail address. Is that correct?

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1 A That's correct.

2 Q Okay. And what were those discussions?

3 MR. GARDNER: Objection.

4 To the extent it calls for the disclosure
5 of information subject to the attorney-client
6 privilege or the work product doctrine, I instruct
7 you not to answer.

8 To the extent that you can answer that
9 question without implicating privilege or work
10 product, you may do so.

11 A What time period are you asking about?

12 Q The summer of 2014.

**13 A I do not recall any specific
14 conversations with those individuals during that
15 time period. I believe that the topic would have
16 been discussed with them, but I do not recall
17 specific conversations. Again, it was more than
18 five years ago.**

19 Q Do you recall having any discussions with
20 Gene Smilansky, and as to whether he had
21 previously known about Secretary Clinton's e-mail
22 address?

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1 A Sitting --

2 Q In the summer of 2014.

**3 A Sitting here today, I have no specific
4 recollection of such a conversation in the summer
5 of 2014. It doesn't mean it didn't happen; it
6 just means I didn't recall it.**

7 Q Do you recall asking Mr. Smilansky if he
8 was aware of Secretary Clinton's e-mail address?
9 Again, summer of 2014, after you first saw
10 Secretary Clinton's e-mail address?

11 MR. GARDNER: Objection.

12 To the extent that calls for disclosure
13 of information subject to the attorney-client
14 privilege or the work product doctrine, I instruct
15 you not to answer.

16 To the extent you can answer that
17 question without disclosing privileged information
18 or information subject to the work product
19 doctrine, you may do so.

**20 A As I believe I've testified, I have no
21 specific recollection regarding any particular
22 conversation with Mr. Smilansky on that topic**

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1 **during that time period. As a result, it**
2 **naturally follows that I also don't recall a**
3 **specific question within a conversation that I**
4 **don't recall.**
5 Q Still in the summer of 2014.
6 A **Uh-huh.**
7 Q Were there discussions with respect to a
8 briefing to be provided to the public affairs
9 office about Secretary Clinton's e-mail address --
10 or e-mail use, excuse me.
11 A **I don't have any recollection of that.**
12 Q Do you recall asking Mr. Hackett to
13 attend a briefing to the public affairs office
14 about Secretary Clinton's e-mail use in or around
15 August of 2014?
16 A **I do not. It doesn't mean that it didn't**
17 **occur, but I don't have a recollection of it.**
18 Q Okay. Do you recall attending a briefing
19 with the public affairs office with respect to
20 Secretary Clinton's e-mail use in or around August
21 of 2014?
22 A **I'm not sure what you mean by "briefing."**

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1 **And it's a little delicate because the -- the**
2 **duties of the public affairs office are to brief**
3 **the public.**
4 **So if you're talking about an internal**
5 **discussion within the State Department, we**
6 **probably would have referred to that as a meeting.**
7 **But, again, I don't have a recollection of a**
8 **meeting on that topic in that particular time**
9 **period from five years ago.**
10 Q Do you recall a conversation with
11 Mr. Hackett in which you told him that the State
12 Department may be receiving public attention as to
13 Secretary Clinton's e-mail use in August of 2014?
14 A **I do not recall such a conversation.**
15 Q And --
16 A **And, again, I just -- I just want to be**
17 **clear. I understand that that's, you know, my**
18 **answer to a lot of your questions.**
19 **It doesn't mean that these things didn't**
20 **occur. I'm not confirming or denying them. Just**
21 **sitting here today, five years after the events**
22 **of, you know, a relatively isolated incident,**

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1 **with, you know, a hundred-plus cases and the**
2 **passage of time, I just don't have a recollection**
3 **of it.**
4 Q So what are you referring to as "a
5 relatively isolated incident"?
6 A **To the extent that your questions within**
7 **the scope of discovery relate to this FOIA case,**
8 **it was one of more than a hundred. I don't have**
9 **recollections of it.**
10 Q So are you answering my questions in the
11 context of it being specific to Judicial Watch's
12 FOIA request?
13 A **I'm not.**
14 Q Okay.
15 A **I have answered your question as they've**
16 **been asked.**
17 Q Okay.
18 A **But you're, again, referring to a time**
19 **period that was five years ago, where the same**
20 **records as they were ultimately produced in**
21 **December would have been implicated in a number of**
22 **different contexts.**

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1 Q So I just want to get a sense of your
2 work in 2014. Percentage-wise, how much would you
3 say you dedicated to Secretary Clinton's e-mails
4 in 2014?
5 A **In 2014?**
6 Q Uh-huh.
7 A **I don't know that I could estimate a**
8 **percentage, but it -- it wouldn't have been -- it**
9 **wouldn't have been the bulk of the work, given**
10 **that those e-mails had not yet been provided to**
11 **the department. And that ultimately when they**
12 **were provided to the department, there was a**
13 **records appraisal that took place. So that would,**
14 **you know, put you in 2015, before the records**
15 **began to be reviewed for a variety of purposes;**
16 **whether it's FOIA cases or production to Congress.**
17 **So in 2014, you know, it was -- it was an**
18 **issue that I was aware of, but I was predominantly**
19 **focused on my docket of FOIA litigations and**
20 **occasionally, as needed, assisting with**
21 **productions to Congress.**
22 Q Did you also as part of your work also

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1 focus on Secretary Clinton's e-mails in 2014, the
2 summer of 2014?
3 MR. GARDNER: Objection. Form.
4 **A If there was a question that was posed to**
5 **me that related to those questions, I would focus**
6 **on it and answer it. But that's the extent to**
7 **which I can answer that question.**
8 **It was not the bulk of my work in the**
9 **summer of '14, given that the documents themselves**
10 **were not in the possession of the department in**
11 **the summer of 2014.**
12 Q So I understand that it's been five
13 years. But I'll represent to you that Mr. Hackett
14 has identified you in his testimony in this case
15 as the individual who informed him in the summer
16 of 2014, somewhere around summer of 2014, about
17 potential public attention that the department may
18 be receiving in relation to Secretary Clinton's
19 e-mail use, and as well as who asked him to attend
20 a briefing, is the term he used, with public
21 affairs about Secretary Clinton's e-mail use.
22 Do you have any reason or basis to

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1 dispute Mr. Hackett's testimony?
2 MR. GARDNER: Objection. Form.
3 **A I have no basis to dispute it. Again, I**
4 **simply don't recall it.**
5 Q How many times did you become aware of
6 Secretary Clinton's e-mail?
7 **A I'm sorry, could you ask that again?**
8 Q Yes. How many times did you become aware
9 of Secretary Clinton's e-mail?
10 MR. GARDNER: Objection. Form.
11 **A I think you can only become aware of**
12 **something once. At that point you know it.**
13 Q Okay. How many times did you locate
14 Secretary Clinton's e-mail in the documents that
15 you reviewed in the summer of 2014?
16 **A So let's start with the word "locate."**
17 **Again, I don't think that it's something that**
18 **people were looking for. I would have reviewed**
19 **documents for particular purposes, whether it be**
20 **in response to a congressional request or in**
21 **response to a particular FOIA request --**
22 Q Right.

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1 **A -- litigation.**
2 **At that point it is entirely possible**
3 **that a certain document would come across my desk**
4 **in a particular context that may have had that**
5 **address on it. I don't have a particular**
6 **recollection of that happening, let alone the**
7 **frequency of it.**
8 Q Do you --
9 **A And again, I'm not saying it didn't**
10 **happen.**
11 Q Do you recall seeing Secretary Clinton's
12 e-mail address in the documents that were
13 initially reviewed in response to judicial -- the
14 search done for Judicial Watch's FOIA request in
15 this case?
16 MR. GARDNER: Objection. Lack of
17 foundation.
18 **A Could you ask the question again?**
19 **I'm sorry.**
20 Q Do you recall coming across Secretary
21 Clinton's e-mail address in or around September of
22 2014 in -- as part of the document production that

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1 was reviewed in the FOIA litigation in this case?
2 And by "document production" I'm not
3 saying documents that were actually produced to
4 Judicial Watch, but documents that resulted as a
5 part of the initial search.
6 MR. GARDNER: Objection. Lack of
7 foundation.
8 **A Sitting here today, five years later, I**
9 **don't have any particular recollection at all**
10 **regarding the specific processing of documents**
11 **related to this particular FOIA case.**
12 Q Okay. Well, let me ask you, if you did
13 come across Secretary Clinton's e-mail address as
14 part of the documents that were reviewed from the
15 initial search in this case, would that have stood
16 out to you, considering the fact that you went to
17 your supervisor in the spring of 2014 to make him
18 aware of Secretary Clinton's e-mail address in the
19 Benghazi-related documents produced to Congress?
20 MR. GARDNER: Objection. Form.
21 **A Okay. So just to be clear, I've just**
22 **testified that I have no recollection regarding**

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1 **the processing of any documents in this particular**
2 **FOIA case.**
3 **Is your question notwithstanding this --**
4 **that fact, hypothetically, if an event that I**
5 **don't recall had occurred, what would my reaction**
6 **have been?**
7 Q No.
8 A **Then what was your question, please?**
9 Q Are you aware that an e-mail with
10 Secretary Clinton's e-mail address was located as
11 part of the State Department's search in this case
12 in or around September of 2014?
13 A **As I believe I've testified, this was one**
14 **of a hundred-plus FOIA cases. I have no**
15 **particular recollection, sitting here today, about**
16 **the processing of any documents in this particular**
17 **case.**
18 Q Mr. Bair, weren't you in fact also
19 involved in providing press guidance regarding
20 FOIA and Secretary Clinton's e-mails after The New
21 York Times published the article about Secretary
22 Clinton's e-mail use in March of 2015?

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1 A **So to be clear, your question is for --**
2 **at any point after the publication of that article**
3 **in March, was I involved in the preparation of**
4 **press guidance at any point thereafter?**
5 Q No. My question is, in response to The
6 New York Times publication of Secretary Clinton's
7 e-mail use in March of 2015, were you also
8 involved in providing press guidance regarding
9 FOIA and Secretary Clinton's e-mails?
10 A **I likely would have been one of the**
11 **attorneys who had cleared on that press guidance.**
12 **I don't have a specific recollection of it. And**
13 **I -- and I do know that for a period of time I**
14 **would have been aware of press guidance on that**
15 **topic going forward, given that public statements**
16 **by the department could potentially have**
17 **implications in litigation, and we want to make**
18 **sure that everyone, both the litigators and the --**
19 **the press folks, had the appropriate information**
20 **available to them.**
21 Q And is it your testimony that you don't
22 recall any press guidance that you provided with

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1 respect to Secretary Clinton's e-mail use prior to
2 the March 2015 New York Times article?
3 A **I have no specific recollection of my**
4 **involvement in any particular item of press**
5 **guidance on this topic.**
6 **I do know that at some point I would,**
7 **along with a number of others, have been involved**
8 **in clearing press guidance on the topic, but I**
9 **don't recall exactly when that would have begun.**
10 Q Well, I guess I -- I don't want to be
11 that specific. My question is, in again the
12 summer, fall --
13 A **Well, I believe your question was before**
14 **the article, so it was a rather specific question.**
15 Q All right. Let me just finish, and then
16 you'll get a clear understanding of my question.
17 The time frame is summer and fall of
18 2014. Do you recall any discussions with respect
19 to meetings with individuals from the press office
20 about Secretary Clinton's e-mail use?
21 MR. GARDNER: Objection. Form.
22 A **Do I recall discussions regarding**

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1 **meetings?**
2 Q Yes.
3 A **With the press office? I do not recall**
4 **particular discussions of that nature.**
5 Q Do you recall any meetings that you
6 attended in late summer, early fall, with
7 individuals from the press office, including
8 Mr. Finney, to discuss Secretary Clinton's e-mail
9 use?
10 A **So Mr. Finney wouldn't have been in the**
11 **press office. You're asking about meetings with a**
12 **broader collection of people that included folks**
13 **from the press office?**
14 Q Correct.
15 A **Okay. Within that time period, I have no**
16 **specific recollection of a particular meeting.**
17 **Again, that doesn't mean it didn't happen; it just**
18 **means it was five years ago.**
19 Q Okay. I believe you said that you became
20 aware of Judicial Watch's lawsuit shortly after it
21 was filed. Crediting?
22 A **I became aware of it when it was assigned**

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1 to me. And in the normal course, that would have
2 taken place shortly after service of process.
3 Q Okay. Was your understanding at that
4 time that Judicial Watch requested communications
5 from Secretary Clinton's office relevant to the
6 subject matter in the FOIA request?
7 MR. GARDNER: Objection. Form.
8 A I don't -- I don't have a recollection of
9 what my understanding at the time was. My
10 ordinary practice would have been to read the
11 precise language of the request.
12 Q Is your understanding that communications
13 include e-mails currently as we sit here today?
14 MR. GARDNER: Same objection. Form.
15 A Just so that I can understand, you're
16 talking about when a FOIA requestor submits a
17 request that includes the word "communications,"
18 does that encompass e-mails?
19 Q Uh-huh.
20 A Yes, that would be the normal -- my
21 normal understanding of that.
22 Q Okay. And that was your normal

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1 understanding back in August, September of 2014?
2 A That was and remains my understanding of
3 that term, yes.
4 Q And it -- was it your understanding back
5 in September, August through November time frame
6 of 2014, that Secretary Clinton's e-mails were
7 relevant to Judicial Watch's FOIA request in this
8 case?
9 MR. GARDNER: Objection to the extent
10 you're asking for the disclosure of information
11 subject to the attorney work product doctrine.
12 To the extent you can answer that
13 question without divulging information subject to
14 that doctrine, you may do so. Otherwise I would
15 instruct you not to answer.
16 A Okay. So let me -- let me try to answer
17 it this way. I'm not sure what you mean by
18 "relevant." But please let me continue.
19 Standard practice at the department --
20 and, again, I have no specific recollection
21 regarding processing this request -- would be that
22 records that were in the possession, custody, and

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1 control of the agency at the time that the search
2 began would be those which were searched in
3 response to that request.
4 So any such records that were responsive
5 to whatever the specific language of Judicial
6 Watch's request would have been, including where
7 it was scoped in terms of offices, would have been
8 tasked. To the extent that records were found
9 there that were responsive, those would have been
10 reviewed.
11 Q Okay. So I don't think that really
12 answers my question.
13 A Could you ask it again, please?
14 Q Sure. My question was, was it your
15 understanding that Secretary Clinton's e-mail
16 communications, if she had any, from 2012,
17 regarding the Benghazi talking points that were
18 provided to Ambassador Susan Rice, that those were
19 relevant to Judicial Watch's FOIA request in this
20 case?
21 MR. GARDNER: Same objection. And the
22 same instruction.

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1 A I -- first of all, again, I don't have
2 particular requests -- recollection of this
3 request.
4 Can you define the word "relevant" for
5 me? Because in the context of a FOIA litigation,
6 you'd be talking about the word "responsive," and
7 that is going to be scoped to specifically what
8 the language of the request was.
9 Q So --
10 A Do you see those terms as being distinct
11 from one another?
12 Q No. I'm using them interchangeably.
13 A Okay. So you mean responsive?
14 Q Correct.
15 A Okay.
16 MR. GARDNER: So same objection and same
17 instruction.
18 A Again, I have no specific recollection on
19 the processing of this case. To the extent that
20 there were records in the possession, custody and
21 control of the State Department at the time that
22 the search was initiated, that came from former

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1 **Secretary Clinton's account, and were responsive**
2 **to the terms as articulated in Judicial Watch's**
3 **request, those would have been collected and**
4 **reviewed.**
5 Q Okay.
6 A **But again, that's -- it's specific to the**
7 **language --**
8 Q That's not answering --
9 A **It's specific to the language of the**
10 **request. It's specific to the time period in**
11 **which the search was initiated. And, therefore,**
12 **highly relevant to when the particular boxes that**
13 **the former Secretary produced to the department**
14 **came into the possession, custody, and control of**
15 **the department, which was in December.**
16 Q No. I'm actually asking about an e-mail
17 communication with Secretary Clinton that the
18 State Department had in its possession in
19 September of 2014.
20 Does that change your answer?
21 A **I have no recollection with respect to a**
22 **particular document of that type.**

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1 Q Okay.
2 (Bair Deposition Exhibit 1 marked for
3 identification and is attached to the transcript.)
4 Q Mr. Bair, you've been shown what's been
5 marked as Exhibit 1. And it's an e-mail address
6 from Susan Weetman to -- addressed to IPS FOIA
7 litigation D.O. and John Hackett, with a copy to
8 you and then some others, including Gene Smilansky
9 and Jonathan Davis.
10 Is that an accurate representation of
11 what you see before you?
12 A **Yes. It's an e-mail from Ms. Weetman to**
13 **the individuals that you described, dated**
14 **Wednesday, August 6, 2014.**
15 Q Okay. And does this e-mail reference the
16 FOIA lawsuit and the fact that you would be
17 handling this FOIA lawsuit on behalf of the State
18 Department?
19 A **I believe, looking at the civil action**
20 **number, that this is the same case. And, yes, the**
21 **last sentence says, Monica will be handling this**
22 **case for IPS and Jamie for L/M.**

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1 Q Okay. And the Jamie --
2 A **That would be me.**
3 Q -- referenced there, that's you.
4 Correct?
5 A **Yes, ma'am.**
6 Q Okay. And what is the date of this
7 e-mail?
8 A **It's August 6, 2014.**
9 Q Okay. Thank you.
10 And upon being assigned to handle this
11 lawsuit, did you start paying attention and start
12 working on this lawsuit shortly thereafter?
13 MR. GARDNER: Objection. Form.
14 A **Again, I have no recollection that is**
15 **specific to this case. My ordinary practice would**
16 **have been to work with Ms. Tillery, who would have**
17 **been the IPS analyst, I believe is the title, to**
18 **ask what prior actions had been taken when the**
19 **request had come in simply as a nonlitigation**
20 **request, to ensure that if searches had already**
21 **been tasked out, that we reviewed the results of**
22 **those. Or if they hadn't been, to ensure that**

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1 **they were tasked, and that those taskings were**
2 **appropriately scoped to the language of the**
3 **request.**
4 Q Okay.
5 (Bair Deposition Exhibit 2 marked for
6 identification and is attached to the transcript.)
7 Q Mr. Bair, if you can take a look at
8 what's been marked as Exhibit 2.
9 A **Uh-huh.**
10 Q And this document is an e-mail chain
11 dated -- well, the date range is from September 4,
12 2014, to September 12, 2014, about searches that
13 were done in response to this FOIA request.
14 Is that accurate?
15 A **And just because they use different**
16 **terminology, can we all stipulate that 08848,**
17 **which is the FOIA request number, corresponds to**
18 **the civil action number of 1242?**
19 Q Yes.
20 A **Okay. I just want to make sure it's the**
21 **same one. As I said, there were a bunch of them.**
22 **Can I just have a moment to review the**

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1 document?
2 Q Yes. Please.
3 A Thank you.
4 Q Okay. And just for the record, so you
5 know, the State Department actually produced this
6 document in the discovery in this case on April
7 25th, 2019, which you can see at the bottom there.
8 A And that's the Bates sequencing of DOS
9 underscore?
10 Q Correct.
11 A Okay.
12 Q Yes.
13 According to this exhibit, did you at
14 some point start working on this -- on this
15 lawsuit?
16 A So what the exhibit indicates is, as
17 would be the normal course, and initial tasking by
18 Ms. Tillery to Mr. Wasser, presumably because
19 based on a review of the request itself it was
20 determined that relevant records, responsive
21 records may possibly be contained in S/ES, my
22 first interaction on this e-mail chain, I was

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1 copied on the September 4 transmission to
2 Mr. Wasser, and then I did follow up with him it
3 looks like Monday, September 8, seeking a status
4 update.
5 Q Okay. And does this document at all help
6 refresh as to whether Mr. Wasser located any
7 records in his initial search that he conducted on
8 September 8th of 2014?
9 A So he has a reply on September 8 at 12:47
10 p.m., saying, "I have completed this search with
11 no records found. I will have a finalized report
12 with search terms and databases searched for use
13 soon."
14 That does not refresh my particular
15 recollection with respect to this case. But that
16 is the language that he used in this record.
17 Q Okay. Now, you're aware that four
18 documents were in fact produced to Judicial Watch
19 in November of 2014 in response to this FOIA?
20 MR. GARDNER: Objection. Lack of
21 foundation.
22 A I have no specific recollection of that.

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1 Q Okay.
2 (Bair Deposition Exhibit 3 marked for
3 identification and is attached to the transcript.)
4 Q Mr. Bair, you've been handed what's been
5 marked as Exhibit 3. And, again, this was
6 produced to Judicial Watch by the State Department
7 on April 25th, 2019, with the Bates number that
8 appears at the bottom.
9 It appears to be all one document,
10 C06296542. Is that accurate?
11 MR. GARDNER: Objection. Lack of
12 foundation.
13 A It's unclear to me how the numbers or
14 identifiers in the header relate to the
15 identifiers in the footer. I -- I don't have a --
16 I don't have knowledge of whether this would be
17 considered one document. I think the document
18 sort of speaks for itself.
19 Can I review it?
20 Q Absolutely. I just want to make sure we
21 were talking about the same thing. That it has
22 the same document number that's provided by the

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1 State Department at the top left corner on each
2 page of --
3 A So you just simply want to know does that
4 top left corner number appear on every page?
5 Q Yeah.
6 A Okay.
7 Yes, it does.
8 Q Thank you. Okay. Please take a minute
9 to review.
10 A I will. Thank you.
11 Thank you.
12 Q Okay. Sure.
13 And part of this document, or this
14 exhibit, is a copy of Judicial Watch's FOIA
15 request at issue in this case, which I believe you
16 just --
17 A That's correct.
18 Q -- looked at.
19 Correct?
20 A Yeah.
21 Q Okay. Having seen Judicial Watch's FOIA
22 request in this case, do you agree with me that

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1 there was no date range that was specified in
2 Judicial Watch's FOIA request?
3 **A I don't see a date range on the face of**
4 **the request. Frequently date ranges would have**
5 **been negotiated with DOJ counsel. I don't know**
6 **whether that occurred in this particular case.**
7 Q Well, I'll represent to you that I've
8 been the assigned attorney in this case, and that
9 has never been negotiated with DOJ counsel as to a
10 date range.
11 **A I have no reason to dispute that.**
12 Q Okay. So based on the face of Judicial
13 Watch's request, you agree that there is no date
14 range that's specified. Correct?
15 **A There is no specified date range on the**
16 **face of this request, which I think -- it's a**
17 **little blurry -- is May 16, 2014?**
18 Q The date is -- I believe that's right.
19 **A Okay.**
20 Q Having seen now the FOIA request
21 submitted by Judicial Watch in this case, do you
22 agree with me that any e-mails to or from

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1 Secretary Clinton about the Benghazi talking
2 points that were provided to Ambassador Susan
3 Rice, that that -- that those e-mails would have
4 been relevant, or were relevant to this FOIA
5 request?
6 MR. GARDNER: Objection. Form.
7 **A I'm sorry, could you restate the**
8 **question?**
9 Q Yes. Do you agree with me, having seen
10 the FOIA request submitted by Judicial Watch in
11 this case, that Secretary Clinton's e-mails about
12 the talking points provided to Ambassador Susan
13 Rice in regards to Benghazi are relevant to
14 Judicial Watch's FOIA request?
15 MR. GARDNER: Same objection.
16 **A Again, so I think the issue would be**
17 **responsive at least in the parlance that we would**
18 **have used in FOIA.**
19 **The second item of the request does refer**
20 **to "any and all records or communications**
21 **concerning, regarding, or relating to talking**
22 **points or updates on the Benghazi attack, given to**

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1 **Ambassador Rice by the White House or any federal**
2 **agency."**
3 **I agree with you that communications**
4 **would encompass e-mails, and that, as I have**
5 **previously stated, the department's obligations**
6 **would have been to search the records in its**
7 **possession, custody, and control at the time that**
8 **the search was initiated.**
9 **I can't speculate as to which e-mails**
10 **that the former Secretary may have sent or**
11 **received would have been responsive to this or in**
12 **the possession, custody, and control of the**
13 **department at the time the search began.**
14 Q Okay. And I just want to step back a
15 little bit, only because you are using the term
16 "responsive."
17 I think there's a step prior to
18 responsive. Correct? There is -- during the FOIA
19 process at the State Department.
20 **A And that would be potentially responsive,**
21 **yes.**
22 Q Correct. Okay.

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1 So communications with Secretary Clinton
2 relating to Benghazi from -- after, subsequent to
3 the Benghazi attacks on September 11, 2012, do you
4 agree with me that those communications are
5 potentially responsive to Judicial Watch's FOIA
6 request?
7 MR. GARDNER: Objection. Form.
8 **A Not necessarily, no.**
9 Q Do you agree with me that Secretary
10 Clinton's e-mails from the State Department about
11 Benghazi, the Benghazi attacks, would be
12 potentially responsive to Judicial Watch's FOIA
13 request?
14 MR. GARDNER: Objection. Form.
15 **A Not necessarily, no.**
16 Q Why not?
17 **A Because, as I've said, the obligation is**
18 **to search for records responsive to what Judicial**
19 **Watch actually asked for, which was any and all**
20 **records or communications concerning, regarding,**
21 **or relating to talking points or updates on the**
22 **Benghazi attack that were given to Ambassador Rice**

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1 by the White House or any federal agency.
2 So it would have to be concerning,
3 regarding, or relating to talking points. And it
4 would also have to have been something, even
5 within that narrow category of documents
6 potentially responsive, that had also been given
7 to Ambassador Rice by the White House or any
8 federal agency.
9 Q Okay. So I want to go back again to the
10 potentially responsive. I'm not speaking about
11 records that are actually, or that the State
12 Department found to be responsive to Judicial
13 Watch's FOIA request, but the potentially
14 responsive documents.
15 How -- I mean, can you just -- what did
16 you refer to or what did you mean by "potentially
17 responsive" just a minute ago?
18 A In terms of the way that the process
19 generally works -- and again I have no specific
20 recollection on this case -- the specific language
21 of the request is provided to IPS. IPS then
22 provides it to the component of the State

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1 Department that may have potentially responsive
2 records.
3 Judicial Watch by its letter scoped this
4 to the Office of the Secretary of State, which is
5 why that would have gone to Mr. Wasser.
6 Mr. Wasser would have then been
7 responsible for looking at the plain language of
8 what Judicial Watch had asked for and finding
9 records that were potentially responsive to that
10 plain language. He would have been bounded by
11 what Judicial Watch sought. And what Judicial
12 Watch sought was on its face records or
13 communications concerning, regarding, or relating
14 to talking points or updates on the Benghazi
15 attack that were then given to Ambassador Rice by
16 the White House or any federal agency.
17 He would provide the e-mails or other
18 records that he felt were potentially responsive
19 to that request. And then there would be a
20 further review to ensure that they were indeed
21 responsive and to ensure that any appropriate
22 exemptions were taken.

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1 Q Okay. And so, I wanted to focus on the
2 time from a when Mr. Wasser would have located the
3 potentially responsive records.
4 Does he do the responsiveness check, or
5 is that something that he sent over to the Office
6 of the Legal Advisor to do?
7 MR. GARDNER: Objection, form. Also
8 objection, lack of foundation.
9 A As a general matter -- and, again, I
10 don't have a recollection with this specific
11 case -- it is an iterative process, whereby the
12 initial search for potentially responsive records
13 bounded, as it should be, by the language of what
14 the requestor asked for, is conducted by someone
15 in the component that may have those records.
16 That would be Mr. Wasser.
17 Those records are then provided to IPS,
18 where the analysts will undertake to review them,
19 again informed both by the language of what the
20 requestor sought and by any applicable exemptions.
21 That process, once it's complete within
22 IPS, would be -- the results of that would be in a

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1 litigation case provided to the particular
2 attorney responsible for that case as documents
3 that they believed were potentially responsive,
4 and, therefore, should be produced.
5 There would be a conversation between IPS
6 and L/M as to whether the records were indeed
7 responsive. And ultimately it would be IPS, via a
8 letter that would be signed by someone from IPS,
9 that would be responsible for the final
10 determination and production.
11 Q Okay. The analyst reviews -- reviewing
12 the potentially responsive records, is that done
13 in -- was that typically done in conjunction
14 with -- with you on cases on which you were the
15 assigned attorney?
16 A If there were specific questions, I would
17 answer them. But typically I would come in after
18 that process was complete and review the results
19 of that process, mainly because of volume. It
20 just wouldn't be possible to sit side by side with
21 an analyst to review everything that they were
22 going through.

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1 Q Okay. And then you agree with me that
2 the page just appearing before the Judicial
3 Watch's FOIA request according to the exhibit
4 Mr. Wasser had conducted or completed his search
5 on September 8, 2014?
6 **A I don't know that this indicates that he**
7 **had completed the search on this date. It**
8 **indicates that he signed the form on this date.**
9 Q Okay. Do you agree with me that he
10 completed this initial part of the search by
11 September 8, 2014?
12 **A That is what the record appears to**
13 **indicate.**
14 Q Okay. Thank you.
15 And then the page before that, which is
16 the search tasker form, are you familiar with
17 these forms?
18 **A I recall having seen these in the past.**
19 **It's been a while.**
20 Q Okay. My understanding is that this
21 pretty much documents what happens with a FOIA
22 request, as to once it's received by IPS, and then

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1 the tasking that you testified to --
2 **A I'm not sure that it documents what**
3 **happens. I think it's a cover sheet that assigns**
4 **the task. I don't believe that this form does**
5 **reflect all of the actions that are taken in**
6 **response to the tasking.**
7 Q Okay. And by "the tasking" you mean the
8 asking -- the request by IPS to the particular
9 component to do a search. Correct?
10 **A To say, Herewith is attached a FOIA**
11 **request. Please review the exact language of it**
12 **and provide potentially responsive records to IPS,**
13 **yes.**
14 **This search tasker is something that**
15 **initiates that process. It does not, and I don't**
16 **believe is designed to, formally create a record**
17 **of every action that is taken in response to that**
18 **tasking.**
19 Q Okay. Do you see the second part, the
20 bottom half of this page, where it has a date
21 range of September 1, 2012, to December 31, 2012?
22 **A I do see that.**

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1 Q Okay. Do you know why the State
2 Department limited the date range for this initial
3 search?
4 MR. GARDNER: Objection. Lack of
5 foundation. Also objection to form.
6 **A So a couple of things.**
7 **One is, I don't have a particular**
8 **recollection with respect to this case, so I don't**
9 **know why these particular dates were placed on**
10 **this form. But as I just testified to, this form**
11 **is in no way the end all and be all of what**
12 **actions may have been taken in connection with a**
13 **particular case. Particularly for something**
14 **that's in litigation.**
15 **The document that one would look to to**
16 **determine what actions the State Department**
17 **ultimately took would be to search the declaration**
18 **that was filed with the court.**
19 Q Okay. And we'll get to the declaration
20 that was filed.
21 But before we get to that, I want to ask,
22 do you recall any discussions with respect to

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1 limiting the date range for the search of this
2 FOIA request?
3 **A As I've said, I don't have a recollection**
4 **of any specifics that relate particularly to this**
5 **FOIA request at all.**
6 Q Okay. And do you know whether the State
7 Department supplemented its search to include
8 records from January 1, 2013, through February 1,
9 2013, when Secretary Clinton left the State
10 Department?
11 **A I don't know the answer to that question,**
12 **because I don't have a recollection of the events**
13 **surrounding the processing of this particular**
14 **case.**
15 **That said, as I've testified, the best**
16 **evidence of what actions the State Department took**
17 **in this litigation would be the formal search**
18 **declarations that were filed with the court.**
19 Q Okay.
20 (Bair Deposition Exhibit 4 marked for
21 identification and is attached to the transcript.)
22 Q Mr. Bair, you've been handed what's been

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1 marked as Exhibit 4.
2 MR. GARDNER: And, just for the record,
3 this does not appear to be a single document, but
4 a collection of documents? Is that correct?
5 MS. COTCA: That's correct.
6 MR. GARDNER: Okay.
7 Q But -- that's correct.
8 MR. GARDNER: So please take the time you
9 need to review this collection.
10 THE WITNESS: Actually, this might be a
11 good time if I could ask if we could take a short
12 break, and then I'm happy to come back on the
13 record and review the document, if that's okay?
14 MS. COTCA: Sure. No problem.
15 VIDEO SPECIALIST: We are going off the
16 record at 12:28.
17 (A recess was taken.)
18 VIDEO SPECIALIST: We are back on the
19 record at 12:34.
20 BY MS. COTCA:
21 Q Mr. Bair, you've been handed what's been
22 marked as Exhibit 4.

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1 Did you have a chance to look through it?
2 A **Not yet.**
3 Q Okay.
4 A **Yes, ma'am.**
5 Q Okay. For the record, do you agree with
6 me that it is a -- the November 12, 2014, document
7 production that the State Department had made to
8 Judicial Watch in response to the FOIA request at
9 issue in this case?
10 A **So it appears to be a couple of different**
11 **things. One is that it's a cover e-mail dated**
12 **November 12, 2014. With an attachment that says,**
13 **My Document.PDF.**
14 **It's not entirely clear, but I assume**
15 **that the documents that follow are in fact the PDF**
16 **that was attached to that e-mail, which consists**
17 **of a couple of different things. One is a cover**
18 **letter dated November 12th, and then there are a**
19 **series of documents that follow, which would have**
20 **been the enclosures to that document. That would**
21 **have been, if I understand correctly from**
22 **context -- and, again, don't have a specific**

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1 **memory of this case, but it looks like that would**
2 **have been what was produced on November 12th. And**
3 **that all four of those documents had previously**
4 **been produced to Judicial Watch, as stated in the**
5 **letter, in a related FOIA case with a different**
6 **case number, and had been provided to Judicial**
7 **Watch on April 17, 2014.**
8 Q Correct. Thank you.
9 And this e-mail with the attachment was
10 sent to you on November 12, 2014, by Monica
11 Tillery. Correct?
12 A **That appears to be the case, yes.**
13 Q Okay. Do you know what precipitated to a
14 supplemental search for the production of the four
15 documents identified in the November 12, 2014,
16 letter?
17 A **I'm sorry, what do you mean by**
18 **"supplemental"?**
19 Q Well, in the previous exhibits,
20 specifically Exhibit 3, the documentation from
21 S/ES-CR, or S/ES-S from Mr. Wasser's office, you
22 agree with me, reflects that it located -- there

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1 were no documents that were found responsive to
2 Judicial Watch's request. Correct?
3 MR. GARDNER: Objection. Lack of
4 foundation. Plus objection, form.
5 A **So what the previous document, which is**
6 **marked as Exhibit 3, seems to indicate, if you**
7 **look at the second page of it -- and again this is**
8 **just reading this document fresh as we sit here**
9 **today -- there would have been a series of**
10 **databases that would have typically been searched**
11 **in S/ES. I apologize, I don't have a recollection**
12 **as to what those were or what they contained.**
13 **But I believe that those are the names of**
14 **those databases in the top line of that chart,**
15 **which is the second page of Exhibit 2, STARS**
16 **Current, STARS History, STePs, TS, and CARS.**
17 **What this indicates is that the following**
18 **terms were searched in those databases. And for**
19 **the sake of the record it was Ambassador Rice;**
20 **USUN/W; September 11, 2012; Attack; Benghazi,**
21 **Libya; talking points; updates.**
22 **So the only thing that this indicates to**

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1 me is that, as of the date of this document in
2 Exhibit 1, which appears that the search itself
3 took place on or before September 8, 2014, which
4 is the date later in the tasker, all it seems to
5 say is that those terms did not produce results
6 within that database.
7 Now, that's early September. I don't
8 have a recollection, sitting here today, as to
9 whether or not e-mails would have been contained
10 in those databases, whether or not prior FOIA
11 productions would have been contained in those
12 databases. The only thing that this record says,
13 Exhibit 1, is that as of the date that the tasker
14 was signed, there had not been responsive records
15 found in those databases.
16 MR. GARDNER: I think you said Exhibit 1.
17 Do you mean Exhibit 3?
18 THE WITNESS: Yes, apologies. Exhibit 3.
19 A So this would be -- so it's Exhibit 3.
20 It's the second page. And it's the chart.
21 Q Okay. Thank you.
22 A And there had been -- you know, so two

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1 months between that chart in Exhibit 3 and then
2 the production letter that you've referred to here
3 on November 12, 2014, in Exhibit 4.
4 So I simply don't agree with the
5 characterization that this would have been a
6 supplemental search. It would have been the
7 results of a search. And I don't have a record of
8 what else was searched besides those databases for
9 which Mr. Wasser indicated on September 8 he had
10 not found responses within those databases.
11 Q Okay. And I guess that's my followup
12 question: Do you recall what the search was that
13 led to the location of the four documents
14 identified in November 12, 2014, letter?
15 A I don't. To the extent I have a
16 recollection, it's just on generality --
17 generalities. Which is why those databases sort
18 of stood out to me as things that, to the best of
19 my recollection, didn't necessarily contain
20 e-mails.
21 Q Okay.
22 A At the time.

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1 Q So how were searches conducted at that
2 time for e-mails from the Secretary's office?
3 A At the time -- we're going back, again,
4 five years -- I don't know that I ever sat and
5 watched someone do it. But my understanding is
6 that there were PST files -- and I apologize, I
7 knew what that acronym meant at some point, I no
8 longer do -- that had been, in accordance with the
9 Federal Records Act, left behind by predecessors
10 in that office. For some period of time they
11 would remain within S/ES, you know, a short period
12 of time after the person departed the department.
13 At a certain point those records would be retired
14 and they would reside elsewhere.
15 But to the best of my recollection, as a
16 general matter, there would be a process by which
17 those PSTs were searched. As a technological
18 matter, I don't recall if there was a separate
19 program that they were using at the time or if
20 they were simply mounting those PSTs into
21 Microsoft Outlook.
22 Q And I want to stay away from the

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1 technology side of it.
2 A But all to say that, you know, my
3 recollection is that there was a -- a separate
4 process that was involved in searching those
5 e-mails. Because I don't believe that those
6 e-mail records were in any of the databases that
7 are indicated on the chart in Exhibit 3.
8 Q Okay. And how -- what was the process,
9 as you understood it, as to how to identify which
10 PST files or which custodians would be -- would
11 have their e-mails searched?
12 A So that wouldn't have been unique to
13 S/ES. That would have been any FOIA case in
14 which, based on -- it's one of the reasons that
15 custodial searches were done, is that the people
16 who work in that office are most likely to know
17 who worked on a particular issue that is
18 potentially responsive to a FOIA request. And so
19 based on their understanding of how a particular
20 subject matter was dealt with, who was involved in
21 a particular event, they would use that knowledge
22 to inform which custodians needed to be searched.

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1 Q And were you involved in that process
2 back during that time frame?
3 **A What do you mean by "that process"?**
4 Q The process of determining which
5 custodians to search.
6 **A If there were specific questions that
7 were put to me, I would address those questions.
8 But as a general matter, given the volume of -- of
9 FOIA requests, even just in litigation, the
10 department would appropriately have relied on the
11 expertise of -- of individuals in the relevant
12 offices, rather than ask lawyers who wouldn't have
13 the same proximity to the events to second guess
14 their choices.**
15 Q So that would mean the relative office
16 you were speaking about, the specific component
17 who was tasked -- which was tasked with the
18 search. Correct?
19 **A Right. Which -- which in this case, by
20 virtue of Judicial Watch's scoping, would have
21 been the Office of the Secretary.**
22 Q Okay. Thank you.

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1 And as of November 12, 2014, you were
2 aware of Secretary Clinton's e-mail address.
3 Is that correct?
4 **A I believe that I would have been aware of
5 an address. Again, I'm not sure exactly which one
6 it was.**
7 Q Okay.
8 **A But I was not aware of, at the time I
9 believe, given my understanding of when the boxes
10 were delivered, was which, if any, records
11 associated with that e-mail address would have
12 been in the possession, custody, and control of
13 the State Department as of November 12, 2014.**
14 Q Okay. So let me just ask, when did you
15 first become aware that the State Department was
16 planning on asking Secretary Clinton for her
17 e-mails?
18 **A I don't recall the exact date when that
19 happened. I know that there was a letter --**
20 Q I'm not looking for a specific date.
21 **A I know that there was a letter that was
22 sent towards the end of 2014. I don't recall the**

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1 **date of that letter. But I expect that I would
2 have become aware of it sometime shortly before it
3 was sent.**
4 **The --**
5 Q And that specific -- when you say "become
6 aware of it," you're referring to the actual
7 letter. Right?
8 **A Yes, that's correct.**
9 Q Okay. So my question is a little bit
10 broader than that. And I want to get a sense from
11 you of when did you first become aware of any
12 discussions within the State Department about
13 making a request for Secretary Clinton's e-mail?
14 **A And I'm sorry, I just don't recall the
15 specific date. I -- I expect that logically it
16 would have been close in time to the date of that
17 letter, which was handled well above my pay grade.**
18 Q Do you recall communications or
19 discussions in August of 2014 about asking
20 Secretary Clinton for her e-mails?
21 **A I don't have a specific recollection of
22 such discussions. It doesn't mean they didn't**

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1 **happen.**
2 **And I would say that that's, you know,
3 true of -- of every statement that I've given:
4 Just because I don't happen to recall something
5 sitting here today doesn't mean it didn't happen.**
6 Q And by November 12, 2014, did you have an
7 understanding that Secretary Clinton would return
8 some e-mails to the State Department?
9 **A I don't know when I became aware. I
10 believe that there was a letter that was sent by
11 the department to all former Secretaries of State
12 who would potentially have had access to e-mail,
13 just based on when the technology was available.**
14 **So I believe there were identical
15 record -- letters, rather, that went to
16 Secretaries Albright, Powell, Rice, and Clinton.
17 I believe they probably went, you know, on or
18 about the same day.**
19 **Subsequent to the sending of those
20 letters, I believe that representatives for each
21 of those former Secretaries offered a reply of
22 some sort to the State Department. That reply**

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1 wouldn't have come to me. But I think at some
2 point I would have become aware of it. Whether
3 through a forward on the same day or later, I just
4 don't know. Because there were a number of people
5 above me at that point, having been there for four
6 months.
7 So what I can say is, I recall that at
8 some point that letter was sent. I recall that at
9 some point a representative for former Secretary
10 Clinton sent a reply. I don't recall specifically
11 the contents of that reply or when it happened.
12 But I do know that, obviously, there was
13 a production that followed thereafter.
14 Q Okay. So I want to not necessarily focus
15 on the formal requests and the formal replies that
16 came to the State Department. But, rather, prior
17 to that, were you aware of any discussions or
18 communications by State Department officials,
19 including Mr. Visek and Cheryl Mills, that
20 Secretary Clinton agreed to return her State
21 Department e-mails as far back as August of 2014?
22 A So I don't -- just to walk through that

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1 step by step.
2 I was never on one of those calls. And I
3 don't recall the specific time frame.
4 I do recall that -- being told that there
5 had been a conversation with Ms. Mills. I don't
6 know if it was a conversation that she had with
7 Mr. Visek or it may have been with Mr. Keller,
8 both of whom are in the front office.
9 And sitting here today, I don't recall
10 whether in that conversation she made any
11 representations regarding what, if anything, would
12 be returned. Obviously there was material that
13 was returned. But, you know, for a conversation
14 that I didn't participate in, that sort of got
15 passed down the line to me, I -- I can't recall
16 anything about what I may have heard about the
17 content of that call.
18 Q Who --
19 A Or whether there was one or many.
20 Q Who informed you of the communication
21 with Ms. Mills?
22 A I believe I likely had heard that from

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1 Mr. Keller or Mr. Visek, would have been the two
2 individuals most likely. But, again, I don't
3 recall a specific conversation.
4 And that's just by virtue of their
5 position in the front office.
6 Q What do you mean by that?
7 A I mean that they would have been the two
8 senior-most attorneys who would have been dealing
9 with the issue. And it makes sense then that
10 they, rather than I or someone of my junior rank,
11 would have been dealing with a representative of
12 the former Secretary of State.
13 Q Okay. In 2014, how closely did you work
14 with Mr. Visek?
15 A I saw Mr. Visek relatively frequently.
16 Not necessarily in a systematic fashion.
17 There was a gap between Mr. Burton's
18 departure to go to the private sector and the
19 arrival of his successor, who was Sarah Prosser.
20 That would be normally the middle
21 management level of how L would be staffed. So I
22 would report to whoever was occupying that

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1 Burton/Prosser position. Above that would have
2 been Mr. Visek.
3 During the period of time where no one
4 was occupying that job between Mr. Burton and
5 Mr. -- and Ms. Prosser, I had more frequent
6 contact with Mr. Visek.
7 Q Okay. Do you -- do you recall when
8 Ms. Prosser came on board?
9 A It was some point in the fall of 2014, I
10 think.
11 I know that there was a gap. I don't
12 recall exactly how long it lasted.
13 Q Okay. And how about with Mr. Keller; how
14 closely did you work with him?
15 A I worked with Mr. Keller relatively
16 frequently. It would have been sort of the same
17 structure in terms of my normal direct report
18 would have been who was ever occupying that -- the
19 title is assistant legal advisor, or ALA, was the
20 role that first Mr. Burton, then Ms. Prosser
21 occupied.
22 In the absence of an ALA, I had occasion

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1 to report to Mr. Keller on occasion because there
2 was nobody in that job. Most of those
3 interactions at the time dealt with the production
4 of documents to Congress, rather than FOIA cases.
5 Q And when you're saying dealt with
6 document productions in response to Congress, are
7 you speaking of the Benghazi Select Committee?
8 A Not exclusively. And I'm not sure,
9 again, exactly at what date the Select Committee
10 was established that took over from the House
11 Oversight Committee. But generally that would
12 have included investigations in the House of
13 Representatives by a variety of committees
14 regarding the Benghazi attacks, yes.
15 Q Okay. But they were all relating to the
16 Benghazi attacks?
17 A That was the bulk of the work.
18 Q Okay.
19 A There was -- there were other
20 investigations on different topics. I don't
21 recall whether those were active during the time
22 that Mr. Keller was in the front office. He

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1 eventually left to take a policy job elsewhere in
2 the State Department.
3 Q Okay.
4 (Bair Deposition Exhibit 5 marked for
5 identification and is attached to the transcript.)
6 Q Mr. Bair, if you can take a look at
7 what's been marked as Exhibit 5.
8 MS. COTCA: And, for the record, it's a
9 production letter from the State Department to
10 Judicial Watch in this case, dated April 18, 2016.
11 And it includes only a subset of the documents
12 that were attached with this production letter.
13 A So you're saying the exhibit you've
14 handed me is not the entirety of what had been
15 produced on April 18, 2016?
16 Q Correct. There were additional
17 documents.
18 A Okay.
19 Q But I just want to focus on the ones that
20 are attached to the letter.
21 A Quite all right. I just wanted to get
22 clarity on that.

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1 Q Sure.
2 A Yes, ma'am.
3 Q Okay. Do you recall seeing this document
4 before, whether it's the April 18, 2016, letter,
5 or whether it's the attached document to the
6 letter?
7 A I have no recollection of seeing either
8 the cover letter or the attached documents.
9 I will say that based on the date of the
10 letter, it is possible, in fact it is likely, that
11 I was out of the office on parental leave at the
12 time that this letter was sent. And I don't know
13 who may have been handling the case in my absence.
14 Q Just so I have clarity as to the
15 timeline, when were you on leave?
16 A So I don't know the exact dates, but I
17 can tell you it was roughly -- my -- my daughter
18 was born at the end of March. I initially took a
19 month off, came back to the office for some period
20 of time. I don't believe that all the cases I had
21 previously been handling were returned to me at
22 that time. And then I went out again for another

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1 couple of months in the summer of 2016.
2 But based on an April 18th date, I think
3 it's likely that I was not involved in this.
4 Q Do you know what -- which attorney was
5 tasked with handling this case during your
6 absence?
7 A I don't know. Again, there were about 60
8 or so active cases at any given time, which had to
9 have been divided up amongst my colleagues when I
10 was out, for which I am quite grateful. But I
11 don't recall who picked up what.
12 Q Are you familiar with, I believe a
13 Dominic Hicks?
14 A Dominic?
15 Q Yes.
16 A I do know Ms. Hicks. She's an analyst in
17 IPS. Or was at the time. I don't know what she's
18 doing now.
19 Q How about a Ms. Lovejoy?
20 A Ms. Martha Lovejoy?
21 Q Yes.
22 A Yes. She is an attorney in the Office of

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1 **the Legal Advisor.**
2 Q Okay. Do you recall if Ms. Lovejoy took
3 over this case during your absence?
4 **A I don't have a specific recollection**
5 **regarding this case. It's likely that she would**
6 **have picked up some of my FOIA cases in my**
7 **absence.**
8 Q Okay. Do you know if she's still with
9 the State Department?
10 **A I believe she is, but it's been a while**
11 **since I have spoken to her. I'm not sure.**
12 Q Okay. And when you left the State
13 Department, was she still at the office, within
14 the Office of the Legal Advisor?
15 **A I don't know the answer to that question,**
16 **I'm sorry.**
17 Q All right. Well, I'll just ask you. I
18 want to point you to the third paragraph, third
19 full paragraph of this letter. "Also, upon
20 further review, the department has determined that
21 one document previously withheld in full in our
22 letter dated November 12, 2014, may now be

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1 released in part."
2 Do you see that?
3 **A I do see that.**
4 Q Okay. Do you recall any discussions with
5 respect to the document that was previously
6 withheld in full and as of April 2016 was produced
7 in part?
8 MR. GARDNER: Objection. Lack of
9 foundation.
10 **A I have no present-day knowledge or**
11 **recollection of what is being referred to in this**
12 **third paragraph.**
13 Q Do you recall any discussions about the
14 substance and the contents of the third paragraph
15 in this letter?
16 MR. GARDNER: Objection. Lack of
17 foundation.
18 **A I -- I believe I just answered that**
19 **question. I have no knowledge of -- of what this**
20 **may be about. Because, again, as I've said, I**
21 **don't have a recollection regarding the processing**
22 **of this particular case. But it is my**

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1 **recollection, based on the date, that I likely**
2 **would have been out of the office at the time.**
3 Q Okay. So I'm just asking if you recall
4 any discussions about it, not necessarily do you
5 recall the substance of what's included in the
6 paragraph.
7 **A I'm sorry if there was any of clarity,**
8 **ma'am. But, no, I do not recall.**
9 Q Thank you.
10 And pointing you to the document that's
11 attached to the letter.
12 **A Which document, please?**
13 Q Well, the State Department had designated
14 Document Number C05831334 --
15 **A Yes, ma'am.**
16 Q -- at the top.
17 Do you see that?
18 **A Yes, ma'am.**
19 Q It's a three-page document?
20 **A Uh-huh.**
21 Q And I want to point you to the first
22 e-mail in that e-mail chain, which appears from

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1 the bottom. So it's the e-mail from Jacob
2 Sullivan to Secretary Clinton and Cheryl Mills,
3 dated September 29, 2012.
4 Do you see that?
5 **A I do.**
6 Q Okay. Do you recall seeing this document
7 ever before?
8 **A I have no recollection of seeing this**
9 **particular document. I've seen many e-mails**
10 **related both to Benghazi and to the former**
11 **Secretary's e-mails, given my work on FOIA. But I**
12 **don't have a present-day recollection of this**
13 **particular one.**
14 Q Okay. Do you recall seeing this document
15 back in September of 2014, when reviewing any of
16 the search results in response to Judicial Watch's
17 FOIA request?
18 MR. GARDNER: Objection. Form.
19 **A As I believe I said, ma'am, I don't**
20 **recall having seen it at all, which doesn't mean**
21 **that I didn't, but, therefore, I can't recall**
22 **having seen it at a particular time.**

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1 Q Okay.
2 (Bair Deposition Exhibit 6 marked for
3 identification and is attached to the transcript.)
4 Q Mr. Bair, you've been handed what's been
5 marked as Exhibit 6. And I'll proffer to you that
6 this document has been produced to Judicial Watch
7 in discovery of this case, subject to Judge
8 Lamberth's discovery order --
9 A **Uh-huh.**
10 Q -- in unredacted form.
11 A **Well, in the form you presented it to me.**
12 **Right? Because there are redactions on it.**
13 Q There are still some redactions, but the
14 substance of the e-mails are unredacted. Correct?
15 A **Okay. Yes, ma'am.**
16 Q Okay. And just to make sure that we're
17 clear, they actually have the same document
18 numbers at the top. Right?
19 A **5831334, you're asking me to compare that**
20 **with Exhibit 5?**
21 Q Yes, please.
22 A **That is the same number, yes.**

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1 Q Okay. And, again, I want to point you to
2 the initial e-mail from Jacob Sullivan to
3 Secretary Clinton and Cheryl Mills.
4 A **I beg your pardon.**
5 **So this would have been the outgoing**
6 **e-mail from Mr. Sullivan, September 29, 2012, at**
7 **11:09 a.m.?**
8 Q Yes. That's correct.
9 A **Okay.**
10 Q Okay. I'll point you halfway down the
11 e-mail.
12 A **Uh-huh.**
13 Q Where the paragraph that it begins, Let
14 me read you an e-mail from the day before Susan
15 went on the shows. It provides the talking points
16 for HPSCI and for her public appearance. It's
17 from a very senior official at CIA, copying his
18 countertops and DNI, NCTC, and FBI.
19 Did I read that correctly?
20 A **I think it says "counterparts" rather**
21 **than "countertops." But otherwise, yes.**
22 Q Oh, thank you very much. "Counterparts."

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1 Thank you.
2 And then it continues to say, "Here are
3 the talking points."
4 Is that accurate?
5 A **That is what the document says.**
6 Q Okay. Do you agree with me that this
7 document is responsive to Judicial Watch's FOIA
8 request in this case?
9 MR. GARDNER: Objection. Form.
10 A **Sitting here today, I don't think I'm in**
11 **a position to make a legal determination regarding**
12 **whether it was responsive to that particular**
13 **request.**
14 Q Okay.
15 A **If it was produced in that case, then I**
16 **assume that there was a determination made that it**
17 **was responsive at the time that it was produced.**
18 Q Okay. Do you agree with me, sitting here
19 today and seeing the substance of the e-mail, that
20 on the face of the e-mail from Jacob Sullivan to
21 Secretary Clinton, that it relates to talking
22 points that were provided to Susan Rice in regards

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1 to the Benghazi attacks?
2 A **So what I can see on the face of the**
3 **document is that it was something that was sent**
4 **from Mr. Sullivan to Secretary Clinton and**
5 **Ms. Mills. It appears to be a script for a call**
6 **with an unnamed Senator. And then it -- where you**
7 **picked up reading says, Let me read you an e-mail**
8 **from the day before Susan went on the shows.**
9 **It's not clear to me from the context of**
10 **this document whether or not this is Mr. Sullivan**
11 **saying to Secretary Clinton, Here are the talking**
12 **points for your call with this Senator, or if this**
13 **is meant to be a script for Secretary Clinton in**
14 **speaking with the Senator to say, Here are the**
15 **talking points that had been provided to Ms. Rice.**
16 Q Do you --
17 A **If it is the latter, then I would agree**
18 **with you that it would be something that would**
19 **relate to -- if I could go back. Do you recall**
20 **the exhibit number of the request?**
21 Q No.
22 A **Okay.**

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1 **If in fact she was reading talking points**
2 **that had been provided to Ambassador Rice, and**
3 **that those had themselves related to things that**
4 **were provided to former Secretary Clinton, then**
5 **they would arguably be responsive. Sitting here**
6 **today, I'm not in a position to second-guess that**
7 **judgment. But I would say that as a normal**
8 **matter, you know, just based on the first sentence**
9 **of the e-mail below is my stab at talking points,**
10 **TPs, that that would ordinarily be something that**
11 **the State Department would have considered to be**
12 **subject to the deliberative process.**
13 **So just because something is responsive**
14 **to a request -- and, again, that judgment was made**
15 **at the time it was produced -- doesn't mean**
16 **necessarily that the content itself gets produced**
17 **to a FOIA requestor.**
18 Q Meaning that the content is disclosed.
19 A **Subject to -- the content, if it is**
20 **subject to a particular exemption, would not**
21 **necessarily be disclosed. That's correct.**
22 Q All right. So I'm going back to my

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1 question here.
2 A **Uh-huh.**
3 Q Because you weren't quite -- I think I
4 understood your answer to say that you're not
5 quite clear as to the talking points that's
6 referenced in the second -- the bottom half of
7 this e-mail.
8 Do you see the sentence where it says,
9 "It provides the talking points for HPSCI and for
10 her public appearance," and the sentence preceding
11 that references to Susan.
12 Do you see that?
13 A **I do see that.**
14 Q Okay. Do you -- were you aware that
15 Ambassador Rice appeared on -- made public
16 appearances on the Sunday talk shows to discuss
17 the Benghazi attacks the Sunday following the
18 attacks?
19 A **I don't believe I had a contemporaneous**
20 **awareness of that back in 2012. I since became**
21 **aware of the fact that that event had occurred.**
22 Q Okay. In 2014 were you aware of that?

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1 A **At what point in 2014?**
2 Q Well, after Judicial Watch had submitted
3 its FOIA request for talking points that were
4 provided to Ambassador Susan Rice, the subject
5 matter of this litigation.
6 A **So I don't think my awareness of the**
7 **Benghazi attacks is necessarily related to a**
8 **particular Judicial Watch lawsuit. But I can say**
9 **that I became more familiar with the attacks**
10 **themselves and the response to them after having**
11 **joined the State Department in April 2014.**
12 Q Okay. Do you recall, in reviewing the
13 Benghazi-related documents, one of the issues
14 being Ambassador Susan Rice's public appearances
15 after the attacks occurred, and discussing a
16 YouTube video?
17 MR. GARDNER: Objection. Form.
18 A **The last part throws me a little. I**
19 **don't recall any -- participating in any**
20 **discussions about a YouTube video.**
21 Q Okay. That's not the question. The
22 question is, during your review of the

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1 Benghazi-related documents in 2014, do you recall
2 that one of the issues was Ambassador Susan Rice's
3 public appearances that she made the Sunday
4 following the Benghazi attacks?
5 A **Okay. There's a lot in there.**
6 **In terms of -- of issues, I'm not quite**
7 **sure how to define that term. So let me -- let me**
8 **try to answer the question that I think you're**
9 **getting at.**
10 **My recollection -- and I don't have the**
11 **specific letter requests or subpoenas in front of**
12 **me -- is that, yes, there had been congressional**
13 **requests for documents that were related to**
14 **Ambassador Rice's appearance on a variety of shows**
15 **shortly after the Benghazi attacks. And that we**
16 **would have reviewed records that would have been**
17 **responsive to those requests.**
18 Q Okay. But you were aware of Judicial
19 Watch's FOIA request that specifically asked for
20 records relating to talking points provided to
21 Ambassador Susan Rice following the Benghazi
22 attacks. Correct?

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1 **A I believe your question -- and I may have**
2 **misunderstood -- was with respect to review for**
3 **Congress.**
4 **Yes, I had an awareness that Judicial**
5 **Watch also had a variety of lawsuits related in**
6 **various overlapping ways to that same subject**
7 **matter at various times. But I don't have**
8 **specific recollections on a particular lawsuit.**
9 Q Okay. So from reading these -- this
10 paragraph, beginning with, Let me read you -- you
11 an e-mail from the day before Susan went on the
12 shows, is it your testimony that you're not
13 certain whether those talking points that are
14 referenced below that refer to the talking points
15 that were provided to Ambassador Susan Rice?
16 MR. GARDNER: Objection, form. Also
17 objection, lack of foundation.
18 **A My testimony is that, sitting here in**
19 **November of 2019, it is not possible for me to say**
20 **with certainty what Mr. Sullivan meant in**
21 **September of 2012 when he sent an e-mail to the**
22 **then Secretary of State that I was not on.**

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1 Q Okay.
2 **A I'm not saying that's not what it means;**
3 **I'm saying I can't tell you with certainty that**
4 **that's what it means.**
5 Q Okay. Do you agree with me that this
6 e-mail from Mr. Sullivan to Secretary Clinton was
7 sent to Secretary Clinton's personal e-mail
8 address at the Clintonemail.com account?
9 **A The e-mail was sent to**
10 **hdr22@clintonemail.com.**
11 Q Okay. Is that the same e-mail address
12 that you testified about seeing during your review
13 of the Benghazi-related documents in the spring of
14 2014?
15 **A I don't recall if that was the same one**
16 **that I saw. It may have been. I do recall that**
17 **that is the same address that ultimately was --**
18 **provided the bulk of the documents that were**
19 **subsequently produced to the State Department and**
20 **made available to the public in the Leopold**
21 **litigation.**
22 Q Okay. Do you recall that -- whether it

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1 was the same domain name, the Clintonemail.com
2 domain, that you saw back in the spring of 2014 as
3 is noted on this document?
4 **A As I've said, I don't recall specifically**
5 **what I saw back in that -- in those initial days**
6 **of my arrival at the State Department. I**
7 **subsequently became familiar, as I think we all**
8 **did, with that domain name.**
9 Q Okay.
10 MR. GARDNER: Would now be a good time to
11 break for lunch?
12 MS. COTCA: Oh, yeah. Lunch? Let's go
13 off the record.
14 VIDEO SPECIALIST: We are going off the
15 record at 13:10.
16 (A recess was taken.)
17 VIDEO SPECIALIST: We are back on the
18 record at 13:22.
19 BY MS. COTCA:
20 Q Mr. Bair, going back again to 2014. But
21 I want to focus in around December of 2014.
22 **A Uh-huh.**

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1 Q And specific to this FOIA request, as I
2 mentioned, there was a draft Vaughn that was
3 produced to Judicial Watch on December 5th, 2014.
4 Were you involved, as far as you can
5 recall, in reviewing and revising the draft
6 Vaughn?
7 **A So I have no recollection, as I've said,**
8 **of anything to do particularly with this case. It**
9 **would have been my practice, prior to the**
10 **production of a draft Vaughn to any plaintiff, to**
11 **have reviewed that document.**
12 Q Okay. And do you recall -- did you have
13 any discussions with respect to potentially
14 settling the case with Judicial Watch during that
15 time frame, in December of 2015?
16 MR. GARDNER: Objection. Form. Just to
17 be clear, discussions with whom?
18 MS. COTCA: With anybody.
19 Q And just yes-or-no question.
20 MR. GARDNER: Answer it yes or no.
21 **A I don't have any recollections that are**
22 **specific to this case.**

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1 Q During that same time frame, Secretary
2 Clinton had returned copies of -- hard copies of
3 her e-mails to the State Department that were
4 included in 12 bankers boxes. Is that correct?
5 A I don't recall the exact number of boxes,
6 but there was a large volume of material produced
7 in paper sometime in December.
8 Q Okay. Do you recall when she produced
9 them?
10 A I don't. I believe there was a -- a
11 cover letter that's public, but that would
12 probably be the best evidence of that.
13 Q Okay. Were you involved in the retrieval
14 process for those records by the State Department?
15 A I'm not even sure really what "retrieval
16 process" means. But, no, I was not.
17 Q Okay.
18 (Bair Deposition Exhibit 7 marked for
19 identification and is attached to the transcript.)
20 Q Mr. Bair, this is an e-mail chain marked
21 as Exhibit 7, I believe?
22 A That's correct.

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1 Q It's a two-page e-mail chain starting
2 from December 2nd, 2014 -- well, it ends on
3 December 2014, about records, and I believe
4 Secretary Clinton's e-mail records.
5 Do you see that?
6 A I see an e-mail chain that begins on
7 December 2nd with Mr. Finney e-mailing
8 Mr. Fischer. Mr. Fischer then forwards that,
9 without Mr. Finney copied, to John Hackett, Peggy
10 Grafeld, Celeste Houser-Jackson, Eric Stein. It's
11 not clear to me how that then gets transformed --
12 and the date of that is December 2nd, 2014, 11:11
13 a.m.
14 It's not clear to me how that then
15 becomes the e-mail directly above it, which is
16 December 2nd, 2014, at 3:49 p.m. It appears that
17 someone has changed the subject line of it. So
18 it's not totally obvious how this is the same
19 e-mail chain. And it is a different set of
20 recipients.
21 So this one is Eric Stein, who had been a
22 recipient of the 11:11 e-mail from Bill Fischer,

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1 sending an e-mail to Rich Visek, Kathleen
2 Austin-Ferguson, and Margaret Grafeld. And then
3 directly above that is an e-mail dated December
4 2nd, 2014, at 3:49 p.m. This one appears to be a
5 forward of that 3:49 p.m. e-mail below from
6 Mr. Stein, to Mr. Hackett, Mr. Fischer, and
7 Ms. Houser-Jackson.
8 Q Okay. Do you see the document number of
9 the two pages of the document C06124616 that was
10 assigned by the State Department?
11 A I do see that, yes.
12 Q Okay. And you agree with me that both
13 pages bear the same document number. Correct?
14 A Yes, they do.
15 Q Okay. I want to point you to the second
16 e-mail appearing from the top.
17 A Uh-huh.
18 Q Where some -- some content of the e-mail
19 is redacted and some is not.
20 A Uh-huh.
21 Q From Mr. Stein, to Mr. Richard Visek.
22 And there is a reference there about you being the

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1 POC for former Secretary's records.
2 Do you see that?
3 A That is what it says.
4 Q Okay. Can you tell me more about what?
5 Like, what -- were you the point of contact for
6 Secretary Clinton's e-mail records being --
7 A No, I was not.
8 Q Do you know what that refers to?
9 MR. GARDNER: Objection. Lack of
10 foundation.
11 A I was not on this e-mail. I don't know
12 that I've ever seen it before. I can tell you
13 that those are the words on the page, but that's
14 all I know about it.
15 Q Do you recall any discussions about you
16 being the point of contact for Secretary Clinton's
17 e-mails?
18 A I don't recall that. And I
19 specifically -- that e-mail says, Peggy's
20 recollection, I believe, referring to Ms. Margaret
21 Grafeld. I don't recall ever having a
22 conversation with Ms. Grafeld about who would

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1 serve as the point of contact for the former
2 Secretary's e-mails. So I don't know what the
3 basis of the statement that she had recalled that
4 would be.

5 Q Okay. Do you know who was the point of
6 contact, if any, from the Office of the Legal
7 Advisor, in regards to Secretary Clinton's
8 e-mails?

9 A I don't. But I just know it wasn't me.

10 Q Okay. Okay. Thank you.

11 Do you recall any discussions with anyone
12 in 2014 with respect to the search and review
13 parameters that Secretary Clinton's attorneys used
14 during their review process of Secretary Clinton's
15 e-mails prior to determining which ones would be
16 returned to the Secretary -- to the State
17 Department?

18 MR. GARDNER: Objection. That is beyond
19 the scope of the three topics that the court has
20 permitted discovery on.

21 I'll permit him to answer because I
22 suspect I know what his answer is going to be.

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1 But I do believe that's beyond the scope.

2 A I don't recall any such discussions.

3 Q Do you recall any discussions with
4 Mr. Hackett or involving Mr. Hackett, with respect
5 to his concerns that the State Department did not
6 know what the search and review parameters were
7 used to ensure that all of Secretary Clinton's
8 State Department e-mails were returned to the
9 State Department?

10 A Sitting here today in November of 2019, I
11 do not have a specific recollection of such a
12 conversation.

13 Q Do you have any general recollection?

14 A I do not.

15 Q Okay. Do you recall any weekly meetings
16 by upper management in 2014 or 2015 to go over the
17 Clinton-related e-mails, FOIA requests pertaining
18 to Secretary Clinton, or congressional requests?

19 MR. GARDNER: Objection. Form.

20 A I don't recall the time period. I
21 believe at some point there was a meeting of some
22 frequency, I don't know if it was weekly, that

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1 would have involved senior department officials in
2 order to make sure that everyone was aware of the
3 production of documents on a variety of topics
4 that could become noteworthy in the public,
5 whether that be because they were produced in FOIA
6 or because they were produced to Congress.

7 I may have attended one or two of those
8 meetings either as a stand in for or in the
9 absence of Sarah Prosser. And my recollection is
10 that they were meetings that were entirely built
11 around making sure that everyone was aware that
12 whether it be in Congress or in FOIA, the
13 department has an obligation to produce a set of
14 records, here's what's about to be produced. And
15 it was simply an information-providing exercise.

16 Q During the one or two meetings that you
17 attended, do you recall any discussions about
18 Judicial Watch's FOIA request subject to this
19 lawsuit?

20 A I don't recall the specific contents of
21 any of those meetings or that lawsuit or Judicial
22 Watch at all necessarily coming up.

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1 Q Okay. And for either the one or the two
2 meetings that you attended as a stand in for
3 Ms. Prosser, did you communicate with Ms. Prosser
4 or brief her as to what was discussed at those
5 meetings?

6 A I don't have a specific recollection, but
7 that would have been my normal process, if I had
8 been asked to attend something in the -- in the
9 shoes of my supervisor.

10 Q Okay. Do you recall if the one or two
11 meetings that you did attend, whether those
12 meetings were before Secretary Clinton provided
13 the copies of her e-mails in December of 2014?

14 A I believe they would have been after.

15 Q Do you know when these meetings
16 commenced, or when did they start?

17 A I do not. Again, my involvement in them
18 was limited to the one or two occasions when
19 Ms. Prosser was unable to attend.

20 (Bair Deposition Exhibit 8 marked for
21 identification and is attached to the transcript.)

22 Q Mr. Bair, this has been marked as Exhibit

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1 8. And it's a document that was produced to
2 Judicial Watch during Ms. Pitterle's deposition,
3 the 30(b)(6) deposition in this case.
4 **A Uh-huh.**
5 Q Have you seen this document before?
6 **A I believe that I saw this document in**
7 **preparation for this deposition. I don't know**
8 **that I had seen it before this.**
9 Q Okay.
10 **A I did receive it, and so it's likely that**
11 **I saw it at the time. I don't have a recollection**
12 **of having seen it other than very recently in**
13 **preparation for this deposition.**
14 Q Okay. And that's my followup question.
15 Did you receive the e-mails contained in
16 this e-mail chain with the subject matter,
17 "Meeting with spokesperson's office"?
18 **A I have no reason to think that I didn't.**
19 **The State Department's e-mail system is not always**
20 **the most reliable. I will note that my address**
21 **does appear on this document.**
22 Q Okay. And then on the second page of

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1 this document, the e-mail actually begins at the
2 bottom of the first page, from Clarence Finney to
3 Lauren Hickey, dated August 27, 2014. And you're
4 copied on that e-mail, discussing a meeting with
5 the spokesperson's office.
6 Do you see that?
7 **A I do see that.**
8 Q And do you agree with me that you're
9 listed as one of the attendees on behalf of the
10 L/M office as an attorney advisor?
11 **A Other than the fact that both my last**
12 **name and the word "advisor" are misspelled, I**
13 **believe that's who they're referring to.**
14 Q Okay. Do you recall this meeting, after
15 having seen this document?
16 **A I do not.**
17 Q Do you recall what precipitated this
18 meeting?
19 **A I do not.**
20 Q And it looks like in the same e-mail that
21 spokesperson for the State Department, Jen Psaki,
22 and Deputy Spokesperson Marie Harf were no longer

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1 going to be attending.
2 MR. GARDNER: Objection. Form.
3 **A I'm sorry, could you point me to that**
4 **portion of the e-mail?**
5 Q So it's at the same e-mail where you're
6 listed as being in attendance.
7 **A Uh-huh.**
8 Q And right before the Thanks, Clarence.
9 **A Yes, I see that.**
10 Q With the asterisk in front of it.
11 **A Yes, I see that.**
12 Q Okay. Do you know why Ms. Jen Psaki and
13 Deputy Spokesperson Marie Harf were no longer
14 going to be attending the meeting?
15 MR. GARDNER: Objection. Form.
16 **A I do not. Again, I don't have any**
17 **recollection of this meeting.**
18 Q Okay.
19 Okay. You can put that aside. Thank
20 you.
21 (Bair Deposition Exhibit 9 marked for
22 identification and is attached to the transcript.)

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1 (A discussion was held off the record.)
2 Q Mr. Bair, you've been handed what's been
3 marked as Exhibit 9, I believe?
4 **A Yes, ma'am.**
5 Q And it -- do you agree with me it appears
6 to be an e-mail chain regarding WikiLeaks update?
7 MR. GARDNER: Objection. Lack of
8 foundation.
9 **A It appears to be an e-mail chain, the**
10 **bulk of which has been redacted, from Philip J.**
11 **Crowley, to a variety of individuals. The Subject**
12 **line is, WikiLeaks Update.**
13 **Given the extensive redactions, I**
14 **actually can't speak to what the e-mail may or may**
15 **not be about.**
16 Q Okay. Do you see where the sentence
17 right before the redactions appears it says, "I
18 just wanted to do a quick update on WikiLeaks."
19 Do you see that?
20 **A Yes.**
21 Q And --
22 **A And I would just say that there's**

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1 multiple paragraphs after there and I don't know
2 what's under the redactions.

3 Q Okay. And I actually don't want to focus
4 on that part of the document but, rather, on the
5 e-mails in the e-mail chain talking about
6 Secretary Clinton's personal e-mail address, and
7 the fact that she guards it pretty closely.

8 A I do see that statement, yes.

9 Q Okay. And this is an e-mail that is
10 dated December 24, 2010.

11 Do you recall seeing any e-mails or any
12 communications while you were at the State
13 Department in 2014 with similar reference in
14 regards to Secretary Clinton's e-mail use and the
15 fact that she guards it closely?

16 A So is your question do I recall seeing
17 other documents in which people who had been
18 corresponding with the Secretary stated that she
19 guards her address closely?

20 Q No. Let me just make it simple.
21 Have you seen this document before?

22 A I don't recall.

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1 Q Do you recall any discussions about an
2 e-mail -- an e-mail chain about the fact that
3 Secretary -- that there is a -- let me start over.
4 Do you recall any discussions in 2014
5 about an e-mail chain in which State Department
6 officials are discussing Secretary Clinton's
7 e-mail and the fact that she guards it closely, or
8 that people shouldn't use that e-mail, or words to
9 that effect?

10 MR. GARDNER: Just objection to form, but
11 I may withdraw it.

12 Can you just ask it one more time? I
13 find it very confusing what you're asking.

14 Are you asking about the e-mail itself or
15 just the subject matter of the e-mail? I'm sorry.

16 MS. COTCA: I'm asking about discussions
17 about the subject matter of the e-mail.

18 A So you're not actually asking about a
19 document; you're asking about whether there were
20 discussions on a particular topic?

21 Q Yes. I thought my question was, do you
22 recall any discussions from 2014 about the subject

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1 matter in this e-mail, in specific the subject
2 matter dealing with Secretary Clinton's e-mail,
3 not the WikiLeaks.

4 A So I think what you're asking is, do I
5 recall in 2014 anyone discussing -- and then I'll
6 just use Mr. Bair's characterization -- that the
7 Secretary guards pretty closely her e-mail
8 address. Is that your question?

9 Q Or words to that effect, yes.

10 A I do not recall any conversations to that
11 effect. That doesn't mean they didn't happen. It
12 was five years ago.

13 Q You don't recall any such discussions
14 with Mr. Hackett?

15 A I don't.

16 Q You can put that aside. Just bear with
17 me one moment.

18 A Uh-huh.

19 Q Mr. Bair, when did you first become aware
20 that Cheryl Mills, Huma Abedin, and Jacob
21 Sullivan's e-mails would also be requested by the
22 State Department?

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1 MR. GARDNER: Objection. Form.

2 A I don't recall when I -- I have a vague
3 recollection that there was eventually a request
4 for those records. I don't recall when that
5 request was sent. I don't recall when responses
6 were given to that request. And I don't recall
7 any conversations necessarily in the lead-up to
8 making that request.

9 Q Okay. Are you aware that Cheryl Mills,
10 in addition to copies of her e-mails, that she
11 also returned some binders and at least one
12 notebook to the State Department?

13 A I don't know that I was ever aware of
14 that.

15 Q Okay. Well, I still have to ask this:
16 Do you know whether the State Department, in
17 responding to the FOIA request in this case,
18 whether it searched the notebook or those binders
19 that Cheryl Mills returned to the State
20 Department?

21 MR. GARDNER: Objection. Lack of
22 foundation.

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1 **A Again, I – I don't have any knowledge on**
2 **that point. I – I don't recall the specifics of**
3 **any of the processing relating to this case.**
4 Q In 2015, specifically the time frame of
5 June 2015, were you still the attorney working on
6 this lawsuit?
7 **A June of 2015. I believe that that case**
8 **would have remained assigned to me at that time,**
9 **yes.**
10 Q Okay. And then also continuing into the
11 summer of 2015?
12 **A That's correct. As I said, in the spring**
13 **of 2016 I took leave for the birth of a child. I**
14 **don't recall whether or not I got particular cases**
15 **back when I returned from leave. Part of that is**
16 **due to the fact that I was due to rotate fully out**
17 **of that office shortly after returning.**
18 So up until sort of the March time frame
19 in 2016, I can say that I would have been the
20 attorney assigned to this case.
21 Q Okay.
22 **A Thereafter, I'm not quite sure what had**

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1 **happened with it.**
2 Q As I stated, Mr. Hackett had provided --
3 or the State Department had provided a signed
4 declaration by Mr. Hackett with the State
5 Department's summary judgment motion in this case.
6 And that was done in I think early July of 2015.
7 As the assigned attorney, did you assist
8 Mr. Hackett in -- with the declaration?
9 **A I don't have any particular recollection**
10 **of that declaration or that specific filing. I'm**
11 **not sure what you mean by "assist."**
12 Q Well, did you work at all on the
13 declaration?
14 **A I don't have a particular recollection**
15 **for that case. It would have been my practice to**
16 **review documents prior to their filing. But**
17 **different cases involved, you know, different**
18 **levels of interaction, depending on what was**
19 **required. And I just don't happen to recall this**
20 **one.**
21 Q But it was your normal practice to review
22 court filings?

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1 **A It would be my normal practice in**
2 **consultation with the Justice Department to review**
3 **those filings before the Justice Department filed**
4 **them, yes.**
5 Q I understand that you went on leave
6 shortly before the April 2016 supplemental
7 production that we discussed earlier?
8 **A That it would have been somewhere in that**
9 **time frame. I'm not sure of the exact date. But**
10 **that would make sense, based on my daughter's**
11 **birthday.**
12 Q Sure. Understood.
13 Are you aware or do you know what
14 precipitated or what led to making that
15 supplemental production in 2016, a year after the
16 State Department had filed a motion for summary
17 judgment in this case?
18 **A Again, I think we had talked about this**
19 **earlier. I don't have any knowledge that I can**
20 **sit here and recall today regarding that. And I'm**
21 **not sure that I would have been personally**
22 **involved with that particular phase of the case,**

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1 **given the date.**
2 Q So you don't know if Judge Lamberth's
3 order from March of 2016 permitting discovery in
4 this case had anything to do with the State
5 Department's April 2016 production?
6 MR. GARDNER: Objection. Asked and
7 answered.
8 **A I don't recall.**
9 Q Of the bulk of the FOIA cases that you
10 worked on in litigation in 2014, can you tell me,
11 like, either a percentage or an estimate as to how
12 many of them dealt with -- specifically with
13 Secretary Clinton's e-mails?
14 **A I can't. I don't expect it would have**
15 **been a -- let me -- let me just clarify.**
16 **Your question was dealt with her e-mails?**
17 Q Worked on cases relating to her e-mails.
18 **A So are you asking about cases that**
19 **specifically requested searches of her e-mails or**
20 **that asked about other things where it was**
21 **reasonably likely that former Secretary Clinton**
22 **would have had responsive records?**

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1 Q The latter.
2 A I don't have a particular recollection of
3 what was on my plate in September of 2014, August
4 2014, that time frame. You know, we would have
5 looked at each individual case, as I've said,
6 based on the language of the request, scoped it to
7 where records were reasonably likely to be found.
8 And then the issue was simply whether or not
9 responsive records were at that time in the
10 possession, custody and control of the State
11 Department. As I think we've established, many,
12 many of former Secretary Clinton's records didn't
13 come into the department's possession in the first
14 place until they were delivered in December.
15 Thereafter there was an appraisal process that was
16 undertaken by the agency records officer that was
17 hampered in part by the fact that they had been
18 produced in paper. And it wasn't until after that
19 process was complete that I believe there was a
20 final -- that one was able to say with -- with any
21 sort of certainty that this was the collection
22 that was in the possession, custody, and control

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1 of the department for FOIA purposes.
2 So it would depend on where a particular
3 case fell on that timeline of December through the
4 completion of that appraisal.
5 Q Okay. So the same question: In 2014,
6 are you able to give me an estimate as to how many
7 of the FOIA lawsuits you worked on that dealt
8 specifically or made a specific request for
9 Secretary Clinton's e-mails?
10 A I don't recall. I'm not sure that there
11 were any in that time frame. But there may have
12 been.
13 Q Other than Judicial Watch's lawsuit in
14 this case, do you know how many other FOIA
15 lawsuits the State Department attempted to settle
16 in 2014 that were relevant or pertained to
17 Secretary Clinton's e-mails?
18 MR. GARDNER: Objection. Form. Also
19 objection, beyond the scope of discovery permitted
20 by the court.
21 But I suspect I know what your answer is,
22 so feel free to go ahead and answer.

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1 A I don't know.
2 Q Again in 2014, other than the current
3 FOIA lawsuit that we are here about today, did
4 you -- do you know how many other lawsuits in
5 which you worked on directly relating to Secretary
6 Clinton's e-mails the State Department attempted
7 to settle?
8 MR. GARDNER: Same objection to form.
9 Same objection to scope.
10 A I think that's a subset of the same
11 question. And my answer remains the same, which
12 is I do not recall.
13 Q Do you know, of the total number of FOIA
14 lawsuits that you attempted to settle in 2014 on
15 behalf of the State Department, do you know how
16 many were relevant to Secretary Clinton's e-mails?
17 MR. GARDNER: Objection, lack of
18 foundation. Objection, form. Also objection,
19 beyond the scope of the court's order in this
20 case.
21 A And I would note for the record that I'm
22 not sure what you mean by "relevant." But I do

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1 not recall.
2 Q That relate to Secretary Clinton's or
3 related to Secretary Clinton's e-mail.
4 MR. GARDNER: Same objections.
5 A I do not recall.
6 Q Okay. Do you recall any discussions with
7 Mr. Prince in this case about Secretary Clinton's
8 e-mails in the context of the draft Vaughn that
9 was produced to Judicial Watch on December 5th,
10 2014?
11 MR. GARDNER: You can answer that with a
12 yes or no, or I don't know.
13 A Again, I believe I've previously
14 testified that I don't have any particular
15 recollection regarding that Vaughn. As a result,
16 I don't have any recollection regarding
17 conversations with Mr. Prince about that Vaughn.
18 I'm not saying it didn't happen; it was
19 just five years ago.
20 Q When did you first learn that Secretary
21 Clinton had provided copies of her e-mails to the
22 State Department?

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1 **A I believe I became aware of it for the**
2 **first time either that day or a couple of days**
3 **thereafter.**
4 (Bair Deposition Exhibit 10 marked for
5 identification and is attached to the transcript.)
6 Q Mr. Bair, this is Exhibit 10. It's a
7 copy of the OIG's -- State Department OIG January
8 2016 report evaluating the FOIA processes for
9 requests involving the Office of the Secretary.
10 Do you see that?
11 **A I do see that that is roughly the title**
12 **of the document, yes.**
13 Q Okay. Thank you.
14 I want to point you to Page 15 of the
15 report. And specifically in Footnote 64.
16 I believe -- in Footnote 64 the CREW
17 request that we talked about earlier is being
18 discussed. And there is a notation that during
19 the course of the OIG's review, the State
20 Department staff advised OIG of their belief that
21 the department's response to CREW was incorrect
22 and that it should have been revised to include

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1 the former Secretary's personal e-mail account
2 used to conduct official government business.
3 Do you see that?
4 **A I do see that.**
5 Q Okay. Do you know the State Department
6 staff who had those concerns?
7 MR. GARDNER: Objection. Lack of
8 foundation. Also objection, form.
9 **A So I likely reviewed this report when it**
10 **was issued. I haven't seen it since then. So my**
11 **response to your question is based simply on**
12 **reading the entire footnote, which is to say that**
13 **OIG discovered four instances between July and**
14 **September 2014 in which staff from L, A, or the**
15 **Bureau of Legislative Affairs engaged in that**
16 **review. It is not clear to me from the subsequent**
17 **sentence that you pointed out what the IG meant by**
18 **department staff advising the IG that those**
19 **particular staff members had believed that the**
20 **CREW response was incorrect and should have been**
21 **revised.**
22 Q Okay. So my understanding is that you do

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1 not know who the OIG was referring to in this
2 footnote.
3 **A I do not know.**
4 Q Okay. In the bullet point, the last
5 bullet point on the same page.
6 **A Yes, ma'am.**
7 Q There's a discussion about this FOIA
8 lawsuit. And the bottom, towards the bottom --
9 well, halfway down, it says, "S/ES initially
10 identified five documents, but only returned four
11 documents to IPS because it did not view the fifth
12 document, an e-mail, as responsive."
13 Do you see that?
14 **A I do see that.**
15 Q All right. And then at the last line
16 appearing on this page, "One of these records
17 included the fifth document identified in the
18 September 2014 search by S/ES as part of a longer
19 e-mail chain."
20 And that's discussing the e-mail that was
21 produced in 2016 to Judicial Watch. And it was
22 referenced in the summary judgment motion by the

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1 State Department in July of 2015.
2 MR. GARDNER: Objection. Lack of
3 foundation. Form.
4 **A Actually, I'm not sure I heard a**
5 **question.**
6 Q There hasn't been a question yet.
7 MR. GARDNER: You just made a bunch of
8 representations that don't refer to the document,
9 so I'm just lodging objections. If you have a
10 question, go for it.
11 MS. COTCA: I was going to get to the
12 question.
13 Q Did you discuss with anybody after the
14 OIG report came out the substance of this bullet
15 point?
16 MR. GARDNER: Objection. Form.
17 **A So -- so I would -- I would agree with**
18 **counsel, I didn't follow or understand the variety**
19 **of representations that you just made prior to**
20 **asking the question. They seem to have related**
21 **possibly to some of the dates in this paragraph,**
22 **but I'm not actually sure what the question is.**

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1 Q The question -- have you had a chance to
2 review this bullet point, the contents of what's
3 included in this bullet point?
4 A I haven't. It's a rather lengthy
5 paragraph. Would you like me to read it?
6 Q That would be great. You don't have to
7 read it out loud. You can just read it to
8 yourself.
9 A Okay.
10 Q So my question is, do you recall any --
11 or did you have any discussions that you recall,
12 in regards to the fifth document that's referenced
13 in this bullet point, with anybody at the State
14 Department?
15 A So just for the sake of the record, the
16 sentence that I think you're referring to says,
17 let's see, we'll go back. "In June 2015, pursuant
18 to an earlier request, several former officials
19 provided the department with copies of records
20 that were in their possession."
21 Doesn't specify which officials.
22 "One of these records included the fifth

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1 document identified in the September 2014 search
2 by S/ES as part of a longer e-mail chain."
3 That is a reference to a statement
4 earlier in the paragraph of an S/ES search in
5 September 2014 in response to this FOIA request.
6 Then says that "S/ES reviewed the
7 document and determined that it was in fact
8 responsive to the FOIA request in this case, which
9 the department disclosed to the court in July
10 2015."
11 I do not have any recollection of any of
12 those statements or events.
13 Q Do you recall reviewing or discussing the
14 e-mail chain, or Jacob Sullivan e-mail, in the
15 e-mail chain contained in Exhibit 6?
16 A I believe we discussed Exhibit 6
17 previously. I don't have a specific recollection
18 regarding this e-mail or any of the other
19 documents that were produced or processed in this
20 case.
21 Q Okay. During the time at your State
22 Department, in the normal course of working with

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1 DOJ attorneys on a piece of litigation, did you
2 discuss settlement offers with DOJ?
3 A As a general matter, and without
4 divulging anything that may be subject to
5 privilege, it would have been my practice to have
6 frequent conversations with Justice Department
7 attorneys regarding all aspects of case
8 management.
9 Q And did that include -- and would that
10 have included settlement offers?
11 A As a general practice, yes.
12 Q Okay. Are you familiar with the term
13 "litigation hold letter"?
14 A I don't know that it was always "letter,"
15 but I know what a litigation hold is, yes.
16 Q Can you explain what a litigation hold
17 is?
18 A A litigation hold is a document that is
19 issued -- and this applies, you know, with equal
20 vigor other in the private sector as it does in
21 government -- to individuals who may potentially
22 have records responsive to a lawsuit, directing

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1 them to preserve those records until further
2 notice.
3 Q Okay. And do you recall whether -- well,
4 at the time that you were at the State Department,
5 was it normal or customary for litigation holds to
6 be placed when a FOIA lawsuit would be filed?
7 MR. GARDNER: Objection. Beyond the
8 scope of discovery in this case. I instruct the
9 witness not to answer.
10 A I'm going to follow the advice of
11 counsel.
12 (Bair Deposition Exhibit 11 marked for
13 identification and is attached to the transcript.)
14 MS. COTCA: So, Josh, this exhibit
15 discusses litigation holds specific to this FOIA
16 request. And it's a document that was produced to
17 Judicial Watch in the discovery of this case after
18 Judge Lamberth issued his discovery order.
19 Is it still your position that this is
20 outside the scope?
21 MR. GARDNER: Why don't we take a brief
22 break and I can confirm with my colleagues.

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1 MS. COTCA: Okay.
2 VIDEO SPECIALIST: We are going off the
3 record at 14:00.
4 (A recess was taken.)
5 VIDEO SPECIALIST: We are back on the
6 record at 14:03.
7 MR. GARDNER: Yeah, I maintain the
8 objection. The questions about the general
9 practice of the State Department with respect to
10 litigation holds is beyond the scope of the three
11 topics authorized by the court in this litigation.
12 MS. COTCA: Okay. I believe the pending
13 question was actually with respect to a litigation
14 hold being issued in this FOIA lawsuit.
15 MR. GARDNER: No. Your actual question
16 was going to the general practice of the agency.
17 You can -- if you want to ask him a
18 question about the litigation hold in this case,
19 it is beyond the scope of discovery still. But if
20 he knows the answer, he's welcome to try to answer
21 it.
22 **A And I'm sorry, just for my benefit, could**

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1 **we have the stenographer read back what the**
2 **pending question had been?**
3 Q No. Because I'm actually going to reask
4 it.
5 **A Okay.**
6 Q Mr. Bair, was there a litigation hold
7 placed in this -- in this case?
8 **A I don't have a specific recollection**
9 **regarding, as I said, anything to do with the**
10 **processing of this case.**
11 **The exhibit that you've handed me now**
12 **marked as Exhibit 11 has a Subject line,**
13 **"Litigation hold Re Judicial Watch FOIA cases."**
14 **As I'm sure you're aware, there are many, many**
15 **Judicial Watch FOIA cases. But if it was in fact**
16 **produced by the department as being relevant to**
17 **this litigation, then I have no reason to dispute**
18 **that this document relates to that case, and that**
19 **by its Subject line it is likely a litigation**
20 **hold.**
21 **I do not know what material may be behind**
22 **the rather large redaction box, which is likely**

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1 **there because it would have been attorney-client**
2 **privileged and attorney work product.**
3 Q Okay. So actually just one correction.
4 I believe you stated that the Subject line of the
5 e-mail chain here is about -- regards to Judicial
6 Watch's -- Judicial Watch cases. But, rather, do
7 you agree with me that this is specific to
8 litigation hold regarding Judicial Watch FOIA
9 request?
10 **A I believe that's what I read. I believe**
11 **my subsequent statement was that because there are**
12 **many Judicial Watch FOIA cases, it is difficult to**
13 **say with certainty that this relates to the one at**
14 **issue here today.**
15 Q Okay. Well --
16 MR. LIEBERMAN: Just for the record, this
17 is Exhibit 10. I think the witness said Exhibit
18 11.
19 THE WITNESS: This is marked as Exhibit
20 11 in front of me.
21 MS. COTCA: I believe OIG.
22 THE WITNESS: The OIG was Exhibit 10.

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1 Q Well, in the content of the actual letter
2 that -- or the actual communication that's
3 redacted on Page 1 and Page 2, would that have
4 included the fact that Judicial Watch had filed a
5 lawsuit in this case?
6 MR. GARDNER: Objection. Calls for
7 speculation. Lack of foundation.
8 Also objection to the extent that you're
9 asking for the content of the litigation hold,
10 which is an attorney-client communication and
11 subject to the attorney work product doctrine.
12 MS. COTCA: Josh, just before you go
13 ahead and answer, as you know, attorney-client
14 protects only confidential information that is --
15 and facts, confidential facts, that are
16 communicated from the client to the attorney.
17 The fact that Judicial Watch had filed a
18 FOIA lawsuit in this case, I don't believe that is
19 confidential fact, or I don't know if the State
20 Department can take the position that that's a
21 confidential fact.
22 MR. GARDNER: Well, I appreciate you

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1 don't know that.
2 I am telling you the government's
3 position is that the litigation hold is subject to
4 the attorney-client privilege, as well as the
5 attorney work product doctrine.
6 It is communicating a confidential
7 communication about the scope of preservation
8 efforts. So I will instruct the witness not to
9 answer any -- any questions about the content of
10 that litigation hold.
11 **A I would note for the record that one of**
12 **the only pieces of this e-mail that is unredacted**
13 **reads, "Privileged and confidential,**
14 **attorney-client communication, attorney work**
15 **product," in all capital letters.**
16 Q Yes, I understand that that's what it's
17 labeled. However, as to the veracity and the
18 appropriateness of that label is in question.
19 So I guess, Mr. Bair, my question is,
20 with respect to this e-mail, the litigation hold,
21 what are the confidential facts that are being
22 communicated or contained in this e-mail?

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1 MR. GARDNER: I instruct the witness not
2 to answer. The divulge of that information calls
3 for the disclosure of information subject to the
4 attorney-client privilege. It is also subject to
5 the work product doctrine.
6 By the way, it's also --
7 MS. COTCA: Just to be clear --
8 MR. GARDNER: It's also beyond the scope
9 of the discovery permitted by the court in this
10 case.
11 MS. COTCA: Again, just for the record,
12 this is a document that the State Department had
13 produced --
14 MR. GARDNER: I understand.
15 MS. COTCA: -- in -- I would like to just
16 finish.
17 This is a document that the State
18 Department had produced in the discovery of this
19 case following Judge Lamberth's ruling in this
20 case permitting discovery.
21 MR. GARDNER: Understood.
22 MS. COTCA: And just for the record to

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1 make sure I understand it, Josh, are you asserting
2 the attorney-client privilege for the entirety of
3 the -- of the e-mail contained in this --
4 MR. GARDNER: I'm asserting the
5 attorney-client privilege over the entirety of the
6 litigation hold that is redacted.
7 MS. COTCA: Thank you.
8 MR. GARDNER: That is clearly indicated
9 as such. As well as the attorney work product
10 doctrine.
11 BY MS. COTCA:
12 Q Was the fact that a litigation hold had
13 been issued in this case communicated with
14 Secretary Clinton or her representatives?
15 MR. GARDNER: Objection. Lack of
16 foundation.
17 Q In 2014.
18 MR. GARDNER: Objection. Lack of
19 foundation.
20 **A I have no recollection on that point one**
21 **way or another.**
22 Q Do you know if that was communicated --

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1 and by "that" I mean the fact that there is a
2 litigation -- was a litigation hold issued in this
3 case, to Secretary Clinton or her attorneys up
4 through March of 2015?
5 **A So just for the sake of clarity, your**
6 **first question dealt with 2014, and your second**
7 **question deals with January 1st, 2015, through**
8 **March 31st, 2015?**
9 Q Uh-huh.
10 **A I have no recollection or knowledge of**
11 **that fact.**
12 Q You are aware that Secretary Clinton's
13 representatives deleted approximately 30,000
14 e-mails from Secretary Clinton's e-mail account?
15 MR. GARDNER: Objection. Lack of
16 foundation.
17 **A I have seen press reporting of varying**
18 **specificity regarding actions that may have been**
19 **taken during the course of the review prior to**
20 **documents being provided to the State Department.**
21 **I have no personal knowledge regarding**
22 **any of those actions.**

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1 Q Are you aware of public reports about
2 Secretary Clinton's representative deleting 30,000
3 e-mails after Secretary Clinton provided copies to
4 the State Department, and which was done in or
5 around March of 2015?

6 MR. GARDNER: Objection. Form.

7 A **To the extent that your question relies
8 on sequencing and timing, I don't have present
9 knowledge regarding any such reports. I'm
10 generally aware of reports regarding e-mails that
11 her representatives determined not to be federal
12 records, not having been provided to the State
13 Department. I was not involved in that process
14 and don't have any independent knowledge of that
15 process.**

16 Q Okay. Are you also aware that the FBI
17 located e-mails of Secretary Clinton that she had
18 not returned to the State Department in December
19 of 2014?

20 A **What to you mean by, "of Secretary
21 Clinton"?**

22 Q Either e-mails to or from Secretary

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1 Clinton.

2 A **And what is the time frame?**

3 Q The time frame is still two thousand --
4 March -- around March of 2015, when the deletion
5 occurred.

6 A **Again --**

7 MR. GARDNER: Hold on.
8 Objection. Foundation.

9 A **If I could, "deletion" is your
10 representation, it's not mine. Time frame, as
11 you've established it here, is March of '15.
12 What is the question, please?**

13 Q All right. Let me reask it.
14 Are you aware that in 2016 the FBI had
15 located e-mails and returned e-mails to the State
16 Department from Secretary Clinton's e-mail account
17 that she had not returned to the State Department
18 in December of 2014?

19 A **So we're departing from March of '15,
20 which I believe had been your prior question.
21 Your current question is in '16. And it was
22 e-mails of former Secretary Clinton?**

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1 Q No. It was e-mails from her e-mail
2 account.

3 A **I don't know that I'm aware of anything
4 that the FBI purported to have directly retrieved
5 from her e-mail account, which would be the
6 characterization in your question.**

7 Q Okay. I think you're -- you're being too
8 specific. So let me reask it.
9 Are you aware of the FBI in 2016 locating
10 e-mails either to or from Secretary Clinton during
11 its investigation of Secretary Clinton's e-mail
12 use?

13 A **I don't know what investigation it was
14 pursuant to. I believe that at some point I
15 became aware through public reporting, if I'm not
16 mistaken, either because I was on leave or had
17 rotated by that point, that there were certain
18 e-mails that the FBI provided to the State
19 Department.**

20 It was not clear to me whether or not,
21 upon further review, it was ultimately determined
22 that all or the bulk of those e-mails were

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1 **duplicative of e-mails that had already been
2 provided. I simply don't have knowledge of that
3 fact.**

4 Q And are you aware that the FBI provided
5 six CDs or disks containing the e-mails and
6 records it located?

7 A **I don't have a specific recollection of
8 that. Again, it may have occurred during a time
9 when I was either on leave or in the process of
10 rotating to a new job.**

11 Q What steps, if any, did the Office of the
12 Legal Advisor, as far as you're aware, take to
13 determine if e-mails relevant to this FOIA request
14 were deleted by Secretary Clinton's
15 representatives?

16 MR. GARDNER: Objection. Lack of
17 foundation.

18 A **I don't -- my -- my understanding of that
19 process is that the former Secretary was bound by
20 the same obligations that bind all federal
21 employees, which is that each employee has an
22 obligation to determine whether or not a**

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1 particular record is in fact a federal record.
2 My understanding is that that process was
3 undertaken. I was not involved in it. I don't
4 know specific details related to it.
5 The former Secretary's representatives
6 provided to the department documents that it
7 believed were potentially federal records. And as
8 we've discussed at length here today, that
9 production occurred somewhere in the time frame of
10 December of 2014.
11 Upon receipt of those documents, the
12 department conducted a records appraisal.
13 Thereafter the entire collection of documents
14 became subject to a FOIA lawsuit brought by Jason
15 Leopold. And I believe they were all produced.
16 With respect to your specific question
17 regarding whether documents that were not provided
18 to the State Department as federal records and
19 that even if they had been provided to the
20 department as federal records at the same time as
21 the December production would not have been in the
22 possession, custody, and control of the State

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1 Department at the time that the search in this
2 case began, I don't know how to begin answering
3 that question. It's entirely speculative.
4 Q So I'm not sure that you even touched on
5 my question.
6 My question is, what steps, if any, did
7 the Office of the Legal Advisor take to determine
8 whether any e-mails relevant to this FOIA request
9 were deleted by Secretary Clinton's
10 representatives in March of 2015?
11 MR. GARDNER: Objection. Lack of
12 foundation.
13 A Again, "deleted" is your word. The time
14 frame is something that hasn't been established in
15 the record.
16 I do not know of any steps taken by the
17 Office of the Legal Advisor to ask a former
18 government official whether or not that government
19 official, having determined that certain records
20 were not federal records, nonetheless searched
21 those documents which were not federal records to
22 see if they were potentially responsive to a

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1 particular FOIA case. Nor do I know why anyone
2 would do that.
3 Q The process that you referred to with
4 respect to a State Department official determining
5 which records are federal records, you agree with
6 me that that process is in place while the
7 official is still at the State Department, and not
8 after they departed.
9 MR. GARDNER: Objection. Form.
10 A I don't know that I do agree with you on
11 that. It calls for a legal conclusion, and it's
12 been a long time since I looked at the Federal
13 Records Act.
14 Q Okay. While you were still at the State
15 Department working on this lawsuit, did you become
16 aware of a separate e-mail account that was
17 created by Secretary Clinton's representative Paul
18 Combetta, which was a Gmail account that contained
19 all of Secretary Clinton's e-mails?
20 A I am not familiar with that name, and I
21 don't know that I've ever been familiar with the
22 facts that you just represented, if indeed they

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1 are facts.
2 Q Are you familiar with Platte River
3 Networks?
4 A I'm not.
5 Q Have you ever heard of Platte River
6 Networks?
7 MR. GARDNER: Objection. Asked and
8 answered.
9 A I don't recall if I've ever heard of it.
10 Sitting here today, it's not a name I'm familiar
11 with.
12 Q Up until your time at the State
13 Department, do you know whether there was any
14 request made to Platte River Networks for a copy
15 of the e-mails that were a part of the Gmail
16 account that Mr. Combetta had created with --
17 containing Secretary Clinton's e-mails?
18 MR. GARDNER: Objection. Foundation.
19 Objection, form.
20 A I believe I've previously stated that I
21 don't have present knowledge or recollection of
22 either Platte River Networks, nor the Gmail

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1 **account that you had represented, nor am I aware**
2 **of any request that was in any way related to**
3 **either of those two things that I do not recall.**
4 Q Are you aware that Judge Lamberth had
5 raised the issue about the Gmail account at the
6 status conference in this case in August of this
7 year?
8 **A I have no knowledge of that one way or**
9 **the other.**
10 Q Okay. And you're not aware that he had
11 suggested that that should be looked at, and I
12 believe in fact his words were, "shake that tree"?
13 **A Consistent with my previous answer, I**
14 **have no knowledge of that.**
15 Q I want to go over some general
16 background, and I think we're almost done.
17 **A Okay.**
18 Q When did you begin working for the State
19 Department? Was it in April of 2014?
20 **A It was about April of 2014. I don't**
21 **recall the exact date.**
22 Q Okay. And you started in April 2014

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1 within the Office of the Legal Advisor. Correct?
2 **A I was in the Office of Legal Advisor, and**
3 **then within that the Office of Legal Advisor's**
4 **Office of Management, L/M.**
5 Q Thank you. And are you currently still
6 an employee of the State Department?
7 **A I am not.**
8 Q Okay. When did you leave the department?
9 **A I don't recall the exact date. It was**
10 **sometime in the fall of this year.**
11 Q Can you give me a month?
12 **A I don't recall. September, August, I'm**
13 **not sure.**
14 Q September or August of 2019?
15 **A Yes.**
16 Q Okay. And while you were at the State
17 Department between April 2014 and August of 2019,
18 were you always within the Office of the Legal
19 Advisor?
20 **A No, I was not.**
21 Q Okay. When -- from -- and I want to just
22 go chronologically. From April 2014 how long were

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1 you within the Office of the Legal Advisor?
2 **A So I was within the Office of the Legal**
3 **Advisor up until, you know, as I said, sometime in**
4 **the fall of 2019. I think the question that's**
5 **most relevant here is for the period from about**
6 **April of 2014 to about October of 2016, I was**
7 **assigned to the Office of Legal Advisor's Office**
8 **of Management. Somewhere on or about October of**
9 **2016 I moved from the Office of Management to the**
10 **Office of Treaty Affairs. I was in the office of**
11 **treaty affairs beginning, as I said, October-ish**
12 **of 2016 up until January or February or so of**
13 **2019. At that point I was assigned by the Office**
14 **of Legal Advisor on a detail to the House Foreign**
15 **Affairs Committee. And somewhere in the fall of**
16 **this year became a full-time employee of the House**
17 **Foreign Affairs Committee.**
18 Q And I believe for the House Foreign
19 Affairs Committee you said that you were assigned
20 by somebody in the Office of the Legal Advisor for
21 that detail. Who assigned you for the detail?
22 **A It was a detail that was approved by the**

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1 **Office of Legal Advisor. It was also approved by**
2 **a variety of individuals across the department. I**
3 **don't know all the names. The letter transmitting**
4 **the actual approval of the detail to the House of**
5 **Representatives would have come from the Office of**
6 **Legislative Affairs, which is traditional for**
7 **correspondence between the State Department and**
8 **the Hill.**
9 Q Okay. And who within the Office of the
10 Legal Advisor approved your detail?
11 **A The final approval, I don't know. I know**
12 **it was something that I had discussions with a**
13 **number of people about, including Rich Visek, Josh**
14 **Dorosin, and the then legal advisor Jennifer**
15 **Newstead. Or at least she was involved in**
16 **discussions. I don't know that she and I ever**
17 **personally spoke about it.**
18 Q I'm sorry, what was the last name?
19 **A Jennifer Newstead.**
20 Q And what was her position?
21 **A She was the legal advisor.**
22 Q Okay. Do you know what led to you being

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1 assigned on this detail?
2 **A It was something that folks that the**
3 **House of Foreign Affairs committee had asked if I**
4 **was interested in. I had asked them to see if**
5 **they could make it a detail, which they happily**
6 **did. And after some discussion, some of which was**
7 **delayed I believe by the government shutdown, it**
8 **was ultimately approved.**
9 Q And who on the House Foreign Affairs
10 committee asked whether you could --
11 **A Chairman Eliot Engel.**
12 Q I'm sorry, what's the name?
13 **A Chairman Eliot Engel.**
14 Q Leading to your detail, did you have any
15 discussions about it with anybody else within
16 Chairman Eliot Engel's committee?
17 MR. GARDNER: Objection. Form.
18 **A I had discussions with the staff director**
19 **and the chief counsel.**
20 Q And who is the staff director?
21 **A The staff director for the Foreign**
22 **Affairs committee is a gentleman by the name of**

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1 **Jason Steinbaum.**
2 Q And how about the chief counsel?
3 **A Chief counsel is Janice Kaguyutan. And**
4 **forgive me, I don't recall the exact spelling of**
5 **that.**
6 Q Can you give it a stab? I mean, you can
7 probably do better than I can.
8 **A K-A-G-U-Y-A-T-A-N I think is pretty**
9 **close.**
10 Q Thank you very much.
11 And then I went to just go back to the
12 Office of Treaty Affairs.
13 **A Yes, ma'am.**
14 Q Okay. Is that an office still within the
15 Office of the Legal Advisor or totally separate?
16 **A It's within the Office of Legal Advisor.**
17 **There's 20-odd offices within the Office of Legal**
18 **Advisor.**
19 Q Okay. And what was the Office of Treaty
20 Affairs responsible for?
21 **A Treaties and international agreements.**
22 Q What was the last part?

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1 **A International agreements.**
2 Q I believe we're almost done. Let's just
3 go off the record for a minute.
4 VIDEO SPECIALIST: We are going off the
5 record at 14:25.
6 (A recess was taken.)
7 VIDEO SPECIALIST: We are back on the
8 record at 14:26.
9 BY MS. COTCA:
10 Q Mr. Bair, did you have any discussions
11 with anybody outside your counsel with respect to
12 the contents of your testimony today?
13 **A Not -- not with respect to the contents.**
14 **Merely the fact of it, in order to accommodate**
15 **scheduling.**
16 Q Okay.
17 MS. COTCA: I think we are all set.
18 We have no further questions.
19 MR. GARDNER: The witness will read and
20 sign.
21 VIDEO SPECIALIST: If there are no
22 further questions, then this ends the deposition,

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1 and we are going off the record at 14:27.
2 (Off the record at 2:27 p.m.)
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1 ACKNOWLEDGMENT OF DEPONENT

2 I, JAMES PATRICK BAIR, ESQUIRE, do hereby
3 acknowledge that I have read and examined the
4 foregoing testimony, and the same is a true,
5 correct and complete transcription of the
6 testimony given by me, and any corrections appear
7 on the attached Errata sheet signed by me.


8
9 _____
10 (DATE) (SIGNATURE)

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, Debra Ann Whitehead, the officer before whom
3 the foregoing deposition was taken, do hereby
4 certify that the foregoing transcript is a true and
5 correct record of the testimony given; that said
6 testimony was taken by me stenographically and
7 thereafter reduced to typewriting under my
8 direction; that reading and signing was requested;
9 and that I am neither counsel for, related to, nor
10 employed by any of the parties to this case and have
11 no interest, financial or otherwise, in its outcome.
12 IN WITNESS WHEREOF, I have hereunto set my hand and
13 affixed my notarial seal this 26th day of November,
14 2019.

15
16 My commission expires:
17 September 14, 2023

18 
19 *Debra Ann Whitehead*

20 -----

21 NOTARY PUBLIC IN AND FOR THE
22 DISTRICT OF COLUMBIA

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