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Transcript of Gene Smilansky

Date: June 11, 2019

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

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Transcript of Gene Smilansky
Conducted on June 11, 2019

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA
3 ----- x
4 JUDICIAL WATCH, INC., :
5 Plaintiff, :
6 v. : Civil Action No.
7 U.S. DEPARTMENT OF STATE, : 14-01242 (RCL)
8 Defendant. :
9 ----- X
10
11 Videotaped Deposition of GENE SMILANSKY
12 Washington, DC
13 Tuesday, June 11, 2019
14 10:43 a.m.
15
16
17
18
19
20 Job No.: 242901
21 Pages 1 - 148
22 Reported by: Debra A. Whitehead

1 Videotaped Deposition of GENE SMILANSKY, held
2 at the offices of:
3
4 PLANET DEPOS - DC
5 1100 Connecticut Avenue, NW
6 Suite 950
7 Washington, DC 20036
8 (888) 433-3767
9
10
11 Pursuant to notice, before Debra A. Whitehead,
12 an Approved Reporter of the United States District
13 Court and Notary Public of the District of Columbia.
14
15
16
17
18
19
20
21
22

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19 ALSO PRESENT:
20 JEREMY DINEEN, Video Specialist
21
22

5

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P R O C E E D I N G S

1 VIDEO SPECIALIST: Here begins Disk
2 Number 1 in the videotaped deposition of Gene
3 Smilansky in the matter of Judicial Watch, Inc.,
4 versus the U.S. Department of State, in the U.S.
5 District Court for the District of Columbia, Case
6 Number 14-01242.

7 Today's date is June 11, 2019. The time
8 on the video monitor is 10:43 a.m. The
9 videographer today is Jeremy Dineen, representing
10 Planet Depos. This video deposition is taking
11 place at the offices of Planet Depos, 1100
12 Connecticut Avenue, Northwest, Suite 950, in
13 Washington, DC.

14 Would counsel please voice-identify
15 themselves and state whom they represent.

16 MS. BURKE: Lauren Burke, representing
17 the plaintiff Judicial Watch.

18 MS. COTCA: Ramona Cotca, for the
19 plaintiff.

20 MR. GARDNER: Josh Gardner, with the
21 United States Department of Justice, on behalf of

8

1 defendant.

2 MS. SHAPIRO: Elizabeth Shapiro, from the
3 Department of Justice, on behalf of the defendant
4 State Department.

5 MR. PEZZI: Stephen Pezzi, from the
6 Justice Department, on behalf of defendant.

7 MS. GROSSO: Elizabeth Grosso, from the
8 State Department.

9 MR. JOHNSON: Cliff Johnson, from the
10 State Department.

11 MR. LIEBERMAN: Michael Lieberman, from
12 the State Department.

13 VIDEO SPECIALIST: Thank you.

14 The court reporter today is Debbie
15 Whitehead, representing Planet Depos.

16 Would the reporter please swear in the
17 witness.

18 GENE SMILANSKY,
19 having been duly sworn, testified as follows:
20 EXAMINATION BY COUNSEL FOR PLAINTIFF
21 BY MS. BURKE:
22 Q Good morning.

9

1 Could you please state your name and
2 spell it, for the record.
3 **A Yes. It's Gene Smilansky, G-E-N-E,**
4 **S-M-I-L-A-N-S-K-Y.**
5 Q Good morning, Mr. Smilansky.
6 **A Good morning.**
7 MR. GARDNER: And before we begin, the
8 witness reserves the right to read and sign.
9 MS. BURKE: Sure.
10 Q Mr. Smilansky, are you familiar with
11 deposition procedure and the rules, generally
12 speaking?
13 **A Not in particular.**
14 Q Okay. Have you ever been deposed before?
15 **A No.**
16 Q I'm going to go over just a couple of
17 ground rules, just to make sure things run
18 smoothly and we have a clean record.
19 You were just -- you did just -- you were
20 just given the oath by the court reporter, and so
21 we do trust that you will provide answers
22 truthfully and to the best of your knowledge.

10

1 Even if you only have partial knowledge, please
2 respond with that partial knowledge. Don't rely
3 on just lack of full knowledge or lack of
4 recollection. Please provide us with as much
5 information as -- as you can.
6 And you see next to you the court
7 reporter is transcribing. We do want a clean
8 record. This is sort of an informal hearing or an
9 informal procedure before the court. And so we do
10 like to make sure that everything is, for her
11 sanity, caught on record.
12 So when I'm asking questions if you could
13 just wait until I'm finished with my question
14 until you give a response, and I'll do the same
15 for you. I won't speak over you. And there will
16 be no difficulty for the court reporter there.
17 As well, your attorneys are next to you,
18 and they want to make their voice heard on the
19 record as well. So there will be times where they
20 raise objections. They will make a note on the
21 record.
22 You can wait until that objection has

11

1 been stated, and then you do -- you may proceed to
2 answer the question that has been asked unless you
3 have been advised by your attorney not to answer.
4 And if -- I try to do my best to be as
5 clear as possible. But it does not always work
6 out that way. So please don't hesitate to ask me
7 to clarify anything if you don't understand what
8 it is that I'm asking.
9 And if at any moment -- we will take
10 periodic breaks, as the flow of things go and --
11 and time seems to necessitate a break. But if at
12 any time you need a break, you want to speak with
13 your attorneys, or you if you would like to use
14 the restroom or just get a glass of water, please
15 don't hesitate and we will step away and take a
16 break.
17 Sorry. Do you know why you're here
18 today?
19 MR. GARDNER: Objection. Form.
20 Q You can answer.
21 **A Yes.**
22 Q Why are you here today?

12

1 **A For a deposition.**
2 Q And -- and this case is -- the deposition
3 that you are here for is related to a FOIA request
4 case. It's been in litigation. It's Judicial
5 Watch versus the Department of State. It was a
6 litigation filed back in July 2014. And it
7 relates to copies of talking points and
8 communications related to the Benghazi attack back
9 in 2012.
10 This is actually quite a unique case.
11 Often discovery is not permitted. But there were
12 several issues that were raised, and it went
13 before the judge. And Judge Lamberth in this case
14 did permit Judicial Watch, the plaintiff here, to
15 take some limited deposition, limited discovery.
16 Part of his discovery order, he did note
17 that although it is rare for a party usually to
18 depose an opponent's attorney, this is a rare
19 case. And I'm just going to read for you from the
20 judge's discovery order so that you have -- sort
21 of to lay a foundation of what we're looking for,
22 what we're seeking to clarify, and what the judge

13

1 had some questions on and why he permitted us to
2 go ahead and bring you in this morning.
3 The judge said, "Judicial Watch
4 adequately justifies this exceptional step by
5 establishing Smilansky's involvement in processing
6 FOIA requests for Secretary Clinton's e-mails from
7 2012 to 2014, including CREW's 2012 request. And
8 in this case about what government officials knew
9 and when they knew it, Smilansky's experience,
10 documented through e-mails he sent and received in
11 2013 and 2014 (see ECF Number 50-1), is highly
12 relevant and critical to Judicial Watch's case."
13 And so that's why we brought you in here
14 today is to ask you about some of the -- those
15 e-mails back in 2012, 2013, and 2014, that is the
16 time period that we will be focusing on generally
17 in the questions that I'm asking you.
18 So what -- and if I may, where do you
19 work?
20 A I work at the U.S. Department of State.
21 Q And how long have you been with the
22 Department of State?

14

1 A I've been with the department for almost
2 seven years.
3 Q So when did you begin working at the
4 Department of State?
5 A In October 2012.
6 Q And looking back in August of 2014, what
7 did you know about Hill Clinton's e-mails?
8 MR. GARDNER: Objection. Form.
9 Also, objection to the extent that that
10 information calls for the disclosure of privileged
11 information.
12 To the extent that you can answer that
13 question without divulging privileged information,
14 you may do so. Otherwise I would instruct you not
15 to answer.
16 A Could you please clarify what e-mails are
17 you referring to.
18 Q I am asking generally, but maybe we could
19 break it down a little bit if -- if that might
20 help.
21 Did Hillary Clinton have a state.gov
22 e-mail account during her tenure at the State

15

1 Department?
2 MR. GARDNER: Objection. Foundation.
3 THE WITNESS: Sorry, could I ask what
4 foundation?
5 MR. GARDNER: Foundation is simply an
6 objection that says she hasn't established that
7 you would have any knowledge that she had or
8 didn't have a .gov account.
9 But you can answer that to the extent you
10 can answer the question.
11 THE WITNESS: Sure.
12 A Are you asking my knowledge as of August
13 2014?
14 Q Specifically, no. Breaking down the
15 question a little bit.
16 I'm asking you do you -- if you know, did
17 Hillary Clinton have a state.gov e-mail account
18 during any point in her tenure as Secretary of
19 State?
20 A You're asking whether I know that now?
21 Q Yes.
22 A As far as I know, she did not have a

16

1 state.gov gov account.
2 Q And in August 2014 what was your
3 knowledge of any state.gov e-mail account?
4 MR. GARDNER: Objection. Form. Also
5 objection to the extent that that question calls
6 for the disclosure of privileged information, I
7 instruct you not to answer.
8 To the extent that you can answer that
9 without disclosing privileged information, you may
10 do so.
11 A As of August 2014, as far as I was aware,
12 she did not have a state.gov account.
13 Q And how did you know that?
14 MR. GARDNER: Objection. Calls for the
15 disclosure of privileged information.
16 To the extent you can answer that without
17 divulging privileged information, you may do so.
18 Otherwise I instruct you not to answer.
19 And if you need to take a break to
20 consult, we can obviously do that.
21 THE WITNESS: I think that might be
22 helpful.

17
1 MR. GARDNER: Okay. I'll tell you what,
2 to avoid being disruptive, do you want to sort of
3 skip over that question, we can table it and at a
4 break we can discuss, or would you prefer to take
5 that break now?
6 MS. BURKE: I just want to clarify. So
7 that you're objecting that how he knew whether
8 Hillary Clinton had a state.gov e-mail account is
9 privileged?
10 MR. GARDNER: I said it could be
11 privileged.
12 To the extent that he can answer that
13 without divulging privileged information, he may
14 do so. But the way you phrased that question, it
15 absolutely could implicate privileged information.
16 So if you want to sort of reask that
17 question in a different way, we can try it that
18 way. We're not trying to be difficult, but
19 obviously with an attorney there are particular
20 sensitivities that do not attend to nonattorneys.
21 MS. BURKE: We'll set that aside for the
22 moment.

18
1 MR. GARDNER: Okay.
2 BY MS. BURKE:
3 Q Were there ever discussions within the
4 State Department related to Hillary Clinton's
5 state.gov e-mail account?
6 MR. GARDNER: Objection. Form.
7 You can answer that obviously with a yes
8 or no.
9 A Yes.
10 Q Who was involved with those -- in those
11 discussions?
12 A I have the same questions about privilege
13 as ...
14 MR. GARDNER: You should be able to
15 identify individuals who were involved in those
16 conversations without the content of those
17 conversations, to the extent they would be
18 privileged.
19 THE WITNESS: Okay.
20 MR. GARDNER: But obviously we can take a
21 break if we need to.
22 THE WITNESS: Thank you.

19
1 A I recall being a part of a conversation
2 with the director of the IT office that served the
3 Secretary's office, among other offices, at the
4 State Department, about whether the Secretary of
5 State at the time had an official State Department
6 e-mail address.
7 Q And who was the IT director that you're
8 referring to?
9 A His name was Brett Gittleson.
10 Q And when was that conversation?
11 A I can't recall precisely. I believe it
12 would have been at some point in 2013.
13 Q Can you spell Brett Gittleson's last
14 name?
15 A I can spell it to the best of my
16 recollection. B-R-E-T-T. G-I-T-T-L-E-S-O-N.
17 Q And where did this conversation take
18 place?
19 MR. GARDNER: Are you asking about the
20 physical location? I'm just asking what you're
21 asking.
22 MS. BURKE: Yes.

19
1 MR. GARDNER: All right.
2 A I recall a conversation at the Department
3 of State over the phone.
4 Q It was a telephone conversation?
5 A I recall a telephone conversation, yes.
6 And I recall a followup e-mail.
7 Q With Mr. Gittleson?
8 A Correct.
9 Q Were there ever discussions at the State
10 Department about Hillary Clinton's use of a
11 nonstate.gov e-mail account?
12 MR. GARDNER: Again, you can answer that
13 with a yes or a no.
14 A Yes.
15 Q And who were those -- who did those
16 discussions involve?
17 A I recall a discussion, being present for
18 a discussion with a number of people. I'm not
19 going to be able to -- I'm not confident that I
20 can remember everyone.
21 But I remember certain individuals;
22 including Kate Duval, who was an attorney working

21

1 for the department; Andrew Keller, another
2 attorney; James Bair also an attorney.
3 And there may have been other people, but
4 those are the ones that I can remember for sure.
5 Q And when did that conversation take
6 place?
7 A I believe it was in the summer of 2014.
8 I'm not a hundred percent confident of that.
9 Q And similarly, where -- where did that
10 conversation take place?
11 A At the Department of State.
12 Q Was this a telephone conversation or --
13 A No. It was an in-person meeting.
14 Q The attorneys that you just listed, you
15 identified them all as attorneys, did they -- that
16 work for the Department of State.
17 Is that correct?
18 A At the time of the meeting, yes. To the
19 best of my knowledge.
20 Q What department do you work in in the
21 Department of State?
22 MR. GARDNER: Objection. Form.

22

1 You mean currently?
2 Q Currently, yes.
3 A Currently I work for the Office of the
4 Legal Advisor.
5 Q And how about in the summer of 2014?
6 A Also for the Office of the Legal Advisor.
7 Q The attorneys that you just listed, do
8 they all work in the same Office of the Legal
9 Advisor with you? Or did they at the time?
10 A Andrew Keller and James Bair did work for
11 the Office of the Legal Advisor.
12 To clarify, the Office of the Legal
13 Advisor, despite its name, is a bureau that
14 consists of multiple offices.
15 Kate Duval, I'm not sure actually to what
16 bureau she was assigned during her time at the
17 department.
18 Q Is Kate Duval still at the State
19 Department in the same bureau as you're
20 referencing from August 2014?
21 A As far as I know, she's not.
22 Q How about Andrew Keller?

23

1 A No, he's not.
2 Q And James Bair?
3 A No, he's not.
4 Q Do each of them still work at the
5 Department of State?
6 A As far as I know, they don't. I'm not
7 totally clear on James' situation, whether he's on
8 a detail or actually separated from the
9 department. But I don't believe that he is
10 working at the department currently.
11 Q Did you ever inform attorney Rob Prince
12 or any of the other -- any DOJ attorneys about
13 this conversation regarding a nonstate.gov e-mail
14 account for Hillary Clinton?
15 MR. GARDNER: Objection.
16 To the extent it calls for the disclosure
17 of privileged information, I instruct the witness
18 not to answer.
19 MS. BURKE: With a yes or no?
20 MR. GARDNER: What?
21 MS. BURKE: With a yes or no?
22 MR. GARDNER: We would need to take a

24

1 break to confer about that.
2 Q In or around this time, let's say roughly
3 between 2012 and 2014, which is the time frame,
4 did FOIA requests for Hillary e-mails ever become
5 an issue?
6 MR. GARDNER: Objection, form. Also
7 foundation.
8 A Could you please clarify what you mean by
9 "an issue."
10 Q Was there ever a concern regarding
11 Hillary Clinton e-mails as they related to FOIA
12 requests?
13 MR. GARDNER: Objection, form. And
14 objection, foundation.
15 A A concern on whose part?
16 Q At the State Department.
17 MR. GARDNER: Same objections.
18 A It's hard for me to answer on behalf of
19 the whole department. If you could clarify
20 specifically what you're referring to, that would
21 be helpful.
22 Q Sure.

25

1 A Thank you.
2 Q Strike that for now.
3 Did you ever play a role in -- in FOIA
4 requests that the State Department received?
5 A Yes.
6 Q What role was that?
7 A **The role varied, depending on the**
8 **situation. But at base, one of my**
9 **responsibilities was to advise on issues relating**
10 **to FOIA processing.**
11 Q Can you expand on what you mean by
12 "issues related to FOIA processing"?
13 A **Yes. Legal issues relating to the**
14 **department's obligations under the FOIA.**
15 Q Did you deal with specific FOIA requests
16 that came in to the State Department?
17 MR. GARDNER: Objection. Form.
18 A **Sometimes, yes.**
19 Q And how did you deal with them?
20 MR. GARDNER: Objection. Form.
21 A **It depended on the situation. It**
22 **depended on the request. It wasn't a uniform**

26

1 **approach for all requests.**
2 Q Do you recall any FOIA requests during
3 this time period related to Hillary Clinton
4 e-mails?
5 MR. GARDNER: Which time frame? I'm
6 sorry.
7 Q Between 2012 and 2014.
8 A **Yes.**
9 Q What FOIA requests were related to
10 Hillary e-mails during that time frame?
11 A **I recall a request from an organization**
12 **called CREW.**
13 Q And when was that?
14 A **I don't recall exactly when it came in.**
15 **But I think it would have been late 2012 or early**
16 **2013, around that time. That's to the best of my**
17 **recollection.**
18 Q Do you recall any other FOIA requests
19 related to Hillary Clinton e-mails?
20 A **During what time period?**
21 Q During that -- the 2012 to 2014.
22 A **Through the end of 2014?**

27

1 Q Yes.
2 A **I recall the request that's at issue in**
3 **the current litigation, for example.**
4 Q And that, for the record, is Judicial
5 Watch versus Department of State?
6 A **Yes, I believe so.**
7 Q And, again, for the record, the number,
8 Case Number 14-1242.
9 Do you recall when that FOIA request came
10 into the State Department?
11 A **I don't, no.**
12 Q Did you handle the -- strike that.
13 Were you involved in the Judicial Watch
14 FOIA request at issue here?
15 A **Not to my recollection. It -- sorry,**
16 **could you clarify, what do you mean "involved"?**
17 Q Did you play any role in -- strike that.
18 What do you recall about the FOIA request
19 at issue right now that we're here for?
20 MR. GARDNER: Objection. Form.
21 A **I recall that it is a request that came**
22 **into the department at some point and entered**

28

1 **litigation at some point.**
2 Q When a FOIA request enters litigation,
3 are you brought into -- strike that.
4 At the point that a FOIA request enters
5 litigation, are you informed that a request has
6 entered litigation at that point?
7 MR. GARDNER: Objection. Form.
8 A **By "you" do you mean me specifically?**
9 Q Yes.
10 A **At the time that I was serving in that**
11 **role, it would depend on the request.**
12 **I wasn't handling all of the department's**
13 **FOIA caseload. So I certainly would be informed**
14 **about the cases that I was assigned to handle,**
15 **yes.**
16 Q Were you assigned to handle this Judicial
17 Watch request?
18 A **No.**
19 Q Do you recall any other FOIA requests
20 regarding Hillary Clinton e-mails during that same
21 time period of 2012 to 2014?
22 A **Could you clarify what you mean by**

29

1 **"regarding Hillary Clinton's e-mails."**
2 Q Were there any other FOIA requests that
3 involved -- the request involved Hillary Clinton
4 e-mails?
5 **A Do you mean that the request on its face**
6 **asked for Hillary Clinton's e-mails?**
7 Q Not necessarily on its face. But were
8 there FOIA requests at that time, that you recall,
9 that involved Hillary Clinton e-mail -- e-mails as
10 potentially responsive records?
11 MR. GARDNER: Objection. Form.
12 **A If you don't mean the request on its face**
13 **asked for e-mails from the then Secretary of**
14 **State, I'm not sure I know how to answer that**
15 **question, since -- I mean, there were thousands of**
16 **requests coming into the department on various**
17 **subject matter without specifying from who the**
18 **e-mail -- the e-mails being sought were.**
19 **So -- so I suppose the answer has to be**
20 **yes.**
21 Q Do you recall any other FOIA requests
22 that did specifically address Hillary Clinton

30

1 e-mails on the face of the request?
2 **A Not that I can recall right now, no.**
3 Q And you mentioned a CREW request?
4 **A Yes.**
5 Q Were you assigned to handle that case,
6 that FOIA request?
7 **A To the best of my recollection the**
8 **request was not in litigation, so there wouldn't**
9 **have been an attorney assigned to it, per se.**
10 **So, no.**
11 Q Are you -- do you ever become involved in
12 a FOIA request prior to entering litigation?
13 **A Could you please clarify by -- what you**
14 **mean by "involved."**
15 Q Prior to a FOIA request going into
16 litigation, is there any point that you work on
17 the request itself?
18 MR. GARDNER: Objection. Form.
19 **A I'm not sure I know what you mean by**
20 **"work on."**
21 **There are -- yes, there are cases where**
22 **an attorney might receive a question from the**

31

1 **office responsible primarily at the department for**
2 **processing FOIA requests about a particular**
3 **request that hasn't entered litigation.**
4 Q Specifically related to the CREW request
5 that you identified, did you at any point receive
6 a question about the FOIA request itself?
7 **A Yes.**
8 MR. GARDNER: You can -- I was just going
9 to say, you can answer that with a yes or no.
10 Beat me to it.
11 Q Who raised that question?
12 MR. GARDNER: You can identify the
13 individual.
14 **A I recall meeting with Sheryl Walter.**
15 Q Anyone else?
16 **A Sorry. You're asking if anyone else**
17 **raised a question?**
18 Q Yes.
19 MR. GARDNER: About the CREW request.
20 **A About ...**
21 Q About -- specifically about the CREW
22 request.

32

1 **A Not that I can recall right now, no.**
2 Q And how did -- who is Sheryl Walter?
3 **A Sheryl Walter was the director of the**
4 **Office of Information Programs and Services within**
5 **the Bureau of Administration at the department.**
6 Q And how did she raise her question with
7 you?
8 MR. GARDNER: Objection. Form.
9 Do you mean in what mode?
10 MS. BURKE: Yes.
11 MR. GARDNER: Like phone, e-mail?
12 MS. BURKE: Phone, meeting, e-mail.
13 MR. GARDNER: You can answer that.
14 **A I can't recall.**
15 **Sorry. Let me add, I can't recall how**
16 **the question was raised. I do recall an in-person**
17 **meeting with Ms. Walter.**
18 Q And what was the concerns raised by
19 Ms. Walter?
20 MR. GARDNER: Objection. Calls for
21 information subject to privilege.
22 I instruct the witness not to answer.

33

1 MS. BURKE: Well, I'm asking about the
2 subject matter of the concern, not the
3 communication of any privileged information or ...
4 MR. GARDNER: At a high level, like a
5 privilege log, you could describe the general
6 subject matter of the conversation, without
7 disclosing the contents. To the extent you can.
8 **A I can tell you that the question related**
9 **to the department's legal obligations under the**
10 **Freedom of Information Act as they relate to that**
11 **particular request.**
12 Q Can you be -- in order -- can you
13 characterize what it related to a little bit more
14 specifically, without -- I'm not seeking
15 privileged information.
16 MR. GARDNER: Yeah, I -- I don't think he
17 can.
18 I mean, we can talk about that on the
19 break. But I think he has disclosed as much as he
20 can without revealing the privileged information
21 itself.
22 But we can discuss that at a break.

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1 Q And you mentioned that you do recall an
2 in-person meeting with Sheryl Walter?
3 **A Yes.**
4 Q Who else was in that meeting?
5 **A I recall a meeting at which, in addition**
6 **to myself and Ms. Walter, there was another**
7 **attorney within the Office of the Legal Advisor.**
8 Q Who was that?
9 **A His name was Jonathan Davis.**
10 Q Anybody else?
11 **A Not that I can recall.**
12 Q And how many times did you meet with
13 Ms. Walter regarding the CREW request
14 specifically?
15 **A I can vaguely recall one meeting. I -- I**
16 **can't recall whether there were others. There may**
17 **have been, but I just don't remember at this**
18 **point.**
19 Q And where was the meeting held?
20 **A The meeting that I recall was in**
21 **Ms. Walter's office.**
22 Q When was that meeting?

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1 **A I can't recall. It obviously would have**
2 **been after the CREW request came to the**
3 **department. So I would say at some point in 2013.**
4 Q Did you ever discuss the CREW request at
5 any point after the State Department provided a
6 response to the requester?
7 MR. GARDNER: Objection. Lack of
8 foundation.
9 You can answer that with a yes or no.
10 **A Yes.**
11 Q This meeting with Sheryl -- with
12 Ms. Walter and Jonathan Davis, was that prior to
13 when State sent out its response?
14 **A As far as I can recall, yes.**
15 Q And then the meeting or conversation that
16 you just identified postdates the State
17 Department's response was sent to the requester,
18 who was that with?
19 **A As far as I can recall, it was with the**
20 **same set of people that I had mentioned earlier,**
21 **that included Kate Duval and Andrew Keller and**
22 **James Bair.**

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1 Q And when was that meeting?
2 **A I can't recall exactly, but I think it**
3 **may have been the summer of 2014.**
4 MS. COTCA: I'm sorry. When was that?
5 THE WITNESS: That I believe, to the best
6 of my recollection, it was the summer of 2014.
7 MS. COTCA: December?
8 THE WITNESS: The summer.
9 MR. GARDNER: The summer.
10 THE WITNESS: Of 2014.
11 MS. COTCA: Okay. Thank you.
12 BY MS. BURKE:
13 Q And your prior meeting with those same
14 individuals you identified as being sometime in
15 2013?
16 **A I'm sorry. What?**
17 MR. GARDNER: Objection. Form.
18 Q I think earlier you had testified that
19 there was -- that you did have a meeting regarding
20 Hillary Clinton's use of a nonstate.gov e-mail
21 account with those identified individuals that you
22 just referenced.

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1 Am I -- I'm just -- I want to clarify.
2 That meeting was in 2013?
3 **A I believe I said 2014.**
4 Q Oh, okay. So, what, these are two
5 different meetings?
6 MR. GARDNER: Objection. Form.
7 **A I -- I believe that the meeting that I**
8 **referred to earlier I was thinking in my mind of**
9 **the same meeting that I'm just -- that -- at which**
10 **the CREW request was discussed.**
11 Q And so the meeting in the summer of
12 2014 -- strike that.
13 Why would you need to have a meeting
14 regarding a FOIA request that had already been
15 responded to?
16 MR. GARDNER: Objection.
17 To the extent it requires the disclosure
18 of information subject to privilege, I instruct
19 you not to answer. To the extent you can answer
20 that question without divulging privileged
21 information, you can do so.
22 To the extent you need to consult to

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1 determine that, we can obviously do that.
2 **A I think it may be helpful to consult.**
3 **But I would just note that the -- I don't agree**
4 **with the premise of the question that the meeting**
5 **was about that request.**
6 Q Okay. I'm going to back up a little bit.
7 Backtrack, just so that we have the record clear.
8 Because I don't know that I have it fully clear.
9 And I understand that you're answering the
10 questions and -- and pulling facts together.
11 Specifically relating to the CREW
12 request, was there a meeting -- strike that.
13 Was there ever a meeting related to the
14 CREW request after the State Department had sent
15 its response to the requester?
16 **A Could you please clarify what you mean, a**
17 **meeting about the CREW request.**
18 **Do you mean a meeting, the purpose of**
19 **which was to discuss the CREW request?**
20 Q I -- I mean a meeting related to the CREW
21 request.
22 So I think earlier -- and clarify, please

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1 correct me if I misunderstood. I believe your
2 earlier testimony was that there had been a
3 meeting regarding Hillary Clinton's nonstate.gov
4 e-mails.
5 And then you also identified a meeting
6 related to the CREW request that took place after
7 the State Department's response had been sent to
8 the requester.
9 MR. GARDNER: Objection. Form.
10 **A That's not exactly my recollection of the**
11 **question.**
12 **I recall you asked whether Hillary -- in**
13 **the first instance whether Hillary Clinton's use**
14 **of e-mail had been discussed. And then in the**
15 **second instance whether the CREW request had been**
16 **discussed after the department's response had gone**
17 **out to the requester.**
18 **And I answered yes in both cases,**
19 **referring to the meeting in 2014.**
20 Q So the answer yes to both instances is
21 the same meeting in the summer of 2014.
22 Is that correct?

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1 **A Yes. That's the meeting that I -- the**
2 **meeting that came to my mind when you asked me**
3 **those questions in both instances was the same**
4 **meeting.**
5 Q And why did the use of Hillary's
6 nonstate.gov e-mail account come up?
7 MR. GARDNER: Objection. Calls for
8 information subject to privilege.
9 I instruct the witness not to answer.
10 Q Do you recall what the -- the CREW
11 request was about?
12 **A In general terms, yes.**
13 Q Can you describe to me in the general
14 terms that you recall?
15 **A I'm not going to be able to cite it**
16 **exactly. But I think it was something along the**
17 **lines of documents sufficient to show the number**
18 **of e-mail accounts associated with then Secretary**
19 **Clinton.**
20 Q And do you recall what the State
21 Department's response to the CREW request was?
22 **A I believe -- I don't remember the**

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1 **response letter's language exactly.**
2 **But I believe that it was a no records**
3 **were found response.**
4 Q After that no records response was
5 sent -- strike that.
6 Following the no -- no records response
7 sent to the CREW requester, were there issues
8 raised regarding Hillary Clinton's nonstate.gov
9 e-mail address?
10 MR. GARDNER: You can answer that with a
11 yes or no.
12 **A Yes.**
13 Q What issues were raised?
14 MR. GARDNER: To the extent that answer
15 calls for the disclosure of privileged
16 information, I instruct you not to answer.
17 To the extent that you can answer that
18 question at a high level of generality without
19 disclosing privileged information, you may do so.
20 If we need to take a break to consult, we
21 can obviously do that.
22 THE WITNESS: It may be helpful to take a

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1 break to consult.
2 **A But I can say at a high level of**
3 **generality, about the issues related to the**
4 **department's legal obligations with regard to FOIA**
5 **processing and records management, and possibly**
6 **other issues that I'm not recalling.**
7 Q Were there issues raised specifically
8 regarding Hillary Clinton's e-mails?
9 MR. GARDNER: You can answer that request
10 a yes or no.
11 **A Yes, I believe the initial question was**
12 **whether -- yes. I'll just leave it there.**
13 Q Who raised those issued?
14 **A I don't purport to have a knowledge of**
15 **every -- every issue raised in -- in that sort of**
16 **category that you described at the department.**
17 **But I do recall the meeting that I**
18 **mentioned earlier at which these kinds of issues**
19 **were discussed. I mean, the -- the 2014 meeting.**
20 Q What do you mean by "kinds of issues"?
21 **A I mean the issues that I just**
22 **characterized as issues relating to the**

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1 **department's legal obligations under FOIA and**
2 **records management obligations, and possibly among**
3 **others.**
4 Q As they related to the CREW request?
5 MR. GARDNER: Objection. Form.
6 **A Could you please clarify the question?**
7 Q Sure. The -- you mentioned that the
8 kinds of issues were FOIA processing, legal
9 obligations. And I'm asking is that related
10 specifically to the CREW request, or related to
11 the CREW request?
12 MR. GARDNER: Objection. To the extent
13 that calls for the disclosure of privileged
14 information, I instruct the witness not to answer.
15 To the extent you can answer that
16 question in a way that doesn't disclose privileged
17 information, you may do so.
18 **A Yes. The department's -- I recall the**
19 **department's legal obligations relating to FOIA**
20 **being discussed specifically with regard to the**
21 **CREW request.**
22 Q Did these legal obligations involve

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1 Hillary Clinton nonstate.gov e-mail address?
2 MR. GARDNER: You can answer that with a
3 yes or no.
4 **A Yes.**
5 Q Did it involve other FOIA requests?
6 MR. GARDNER: Objection. Form.
7 **A I can't recall other specific requests**
8 **discussed in that meeting.**
9 Q Did it involve this request?
10 MR. GARDNER: Objection. Vague.
11 Q The request at issue here, the Judicial
12 Watch FOIA request at issue.
13 **A Are you asking if I can recall this**
14 **request being discussed at that meeting?**
15 Q Yes.
16 **A I cannot recall that.**
17 Q Do you recall the issues that were raised
18 at your meeting having -- relating to this FOIA
19 request at issue?
20 MR. GARDNER: Objection. Form.
21 **A I -- as I just mentioned, I don't recall**
22 **this FOIA request being discussed at that meeting.**

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1 Q And I apologize, I may not be clear.
2 The legal obligations and the FOIA
3 processing that was discussed at that meeting,
4 would they have -- would those same legal
5 obligations, FOIA processing, have applied to the
6 request at issue here?
7 MR. GARDNER: Objection. Form.
8 Also objection, to the extent you can
9 answer that question without disclosing privileged
10 information, you may do so.
11 Otherwise I instruct you not to answer.
12 **A Are you asking for my legal view as to**
13 **whether the FOIA processing issues discussed with**
14 **reference to the CREW request would have also**
15 **applied to this request, which wasn't discussed at**
16 **the meeting, to my recollection?**
17 Q I'm asking whether the issues raised at
18 that meeting where the CREW request was discussed
19 are issues that would have been raised generally
20 to this -- this FOIA request.
21 MR. GARDNER: Objection. Form. Also
22 objection to the extent it calls for the

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1 disclosure of privileged information, I instruct
2 the witness not to answer.
3 To the extent you can answer that without
4 disclosing privileged information, and you
5 understand the question, you may answer.
6 **A I'm sorry, I generally am not sure I'm**
7 **following the question.**
8 Q Strike that.
9 Was there a discussion about the need to
10 search Hillary e-mails in response to FOIA
11 requests?
12 MR. GARDNER: Can you ask that question
13 one more time, Lauren.
14 Q Was there a discussion about the need to
15 search Hillary e-mails in response to FOIA
16 requests?
17 MR. GARDNER: You can answer that
18 question with a yes or no.
19 **A Could you clarify what you mean by**
20 **"Hillary e-mails"?**
21 Q Any Hillary e-mails, Hillary Clinton
22 e-mails. If -- I think you testified earlier that

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1 you don't believe there was a state.gov e-mail
2 address. And so, if -- to the extent that there
3 were Hillary Clinton e-mail -- e-mails, was there
4 a discussion of a need to search for or search
5 Hillary Clinton e-mails in response to FOIA
6 requests?
7 MR. GARDNER: I actually misunderstood
8 your question.
9 So objection, foundation. Objection,
10 form.
11 But you can answer that question I
12 believe with a yes or no.
13 **A Are you asking whether I'm aware of any**
14 **discussion about having to look outside of the**
15 **State Department for other e-mails on which**
16 **Hillary Clinton was on, in order to respond to**
17 **FOIA requests?**
18 **I'm just trying to understand what the**
19 **question is.**
20 MR. GARDNER: I think, Lauren, if you
21 could rephrase your question again just so we have
22 a clear transcript.

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1 MS. BURKE: Sure.
2 MR. GARDNER: That might be helpful.
3 Q So at the meeting that we're discussing,
4 this is the summer of 2014.
5 **A Uh-huh.**
6 Q Was there a discussion of a need to
7 search for Hillary Clinton e-mails in response to
8 FOIA requests?
9 MR. GARDNER: Objection. To the extent
10 that that calls for the disclosure of privileged
11 information, I instruct the witness not to answer.
12 To the extent that you can answer that
13 either at a high level of generality or without
14 disclosing privileged information, you may do so.
15 **A I think all I could say at that level of**
16 **generality is that there was a discussion of the**
17 **department's legal obligations under the FOIA.**
18 Q And so are you not answering -- or are
19 you not answering that question specifically
20 because of the privilege that was asserted?
21 MR. GARDNER: I think I can take that
22 one.

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1 That -- that is correct. You're asking
2 about specific conversations, rather than the
3 general subject matter of the conversation.
4 MS. BURKE: I'm not asking about specific
5 conversations.
6 MR. GARDNER: You -- you are. You're
7 asking him whether something very specific was
8 discussed at a meeting where he already disclosed
9 to you what the general subject matter of the
10 meeting was. That calls for privileged
11 communications.
12 BY MS. BURKE:
13 Q Between --
14 MS. BURKE: And who's the client?
15 MR. GARDNER: These are conversations
16 between, as -- I'm not here to testify. He
17 testified between State Department attorneys
18 discussing legal issues.
19 Are you taking the position in this
20 litigation that when State Department attorneys
21 are conferring about legal issues that wouldn't be
22 privileged?

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1 MS. BURKE: I'm not taking that position.
2 MR. GARDNER: Okay.
3 MS. BURKE: I'm trying to clarify exactly
4 the privilege that you are asserting and making
5 sure that it's properly --
6 MR. GARDNER: Sure. It would be subject
7 to the attorney-client privilege as well as the
8 work product doctrine.
9 MS. BURKE: Okay. So the privilege of
10 both attorney-client and work product has been
11 applied to the question that I just asked as to
12 whether or not there was a discussion regarding a
13 need to search for Hillary Clinton e-mails during
14 that summer of 2014 meeting. Is that correct?
15 MR. GARDNER: Between a meeting amongst
16 attorneys where the general subject matter was
17 legal compliance with FOIA, your specific question
18 about a confidential conversation amongst
19 attorneys would absolutely be privileged and
20 subject to work product.
21 MS. BURKE: Okay. That's fine.
22 BY MS. BURKE:

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1 Q Do you recall a FOIA request in late
2 2013, early January 2014, a request for e-mails of
3 Sidney Blumenthal with Hillary Clinton?
4 A **That sounds vaguely familiar, but it's
5 actually, I don't have any specific recollection
6 of that request.**
7 Q Are you familiar with any Gawker requests
8 around that same 2013, early 2014 time frame?
9 A **Again, I vaguely remember hearing the --
10 the name of the requester Gawker, but I can't -- I
11 don't -- I can't at this point associate it with
12 any specific request.**
13 Q Do you recall ever having discussions
14 about records that identified an e-mail address
15 for Hillary Clinton that is a nonstate --
16 nonstate.gov e-mail address?
17 MR. GARDNER: And she's asking for a yes
18 or no there.
19 A **I just want to make sure I understand the
20 question.**
21 **What do you mean, "records identifying"?**
22 Q In the FOIA processing, if there were

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1 records that were retrieved, that within the
2 records identified a nonstate.gov e-mail address
3 for Hillary Clinton.
4 A **Not that I can recall, no.**
5 Q Do you know who John Hackett is?
6 A **Yes.**
7 Q Who is he?
8 A **John Hackett served as I believe the
9 acting director of the information -- Office of
10 Information Programs and Services within the
11 Bureau of Administration. And he may have at some
12 point held that position as director, but I'm not
13 sure.**
14 Q Did you ever have a meeting with
15 Mr. Hackett regarding concerns about Hillary
16 Clinton e-mails?
17 MR. GARDNER: You can answer that with a
18 yes or no.
19 A **Can you clarify what you mean by
20 "concerns"?**
21 Q Did Mr. Hackett ever raise the issue of
22 Hillary Clinton e-mails with you?

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1 A Yes, I believe so.
2 Q When was that?
3 A I can't recall when that would have been.
4 Q Was it prior to the meeting that you
5 were -- specifically related to the CREW request
6 that we were just discussing in --
7 MR. GARDNER: Object.
8 Q -- 2014?
9 MR. GARDNER: Objection. Form.
10 A Just to note that I -- I never testified
11 that the meeting was specifically about the CREW
12 request.
13 I can't recall whether the meeting with
14 Mr. Hackett would have been before or after that
15 meeting.
16 Q Who was in that meeting?
17 A I -- I can't recall anyone other than
18 myself and Mr. Hackett. But there may have been
19 other people, I just can't -- I don't have a great
20 recollection of that meeting.
21 Q Do you know who Margaret Grafeld is?
22 A Yes.

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1 Q Who is she?
2 A Margaret Grafeld was a Deputy Assistant
3 Secretary in the Bureau of Administration
4 overseeing the office of Information Programs and
5 Services.
6 Q Did you ever meet with her regarding --
7 did you ever meet with her regarding Hillary
8 Clinton e-mails?
9 MR. GARDNER: Objection. Form.
10 A Can you clarify what you mean by -- which
11 Hillary Clinton e-mails you're referring to?
12 Q Any Hillary Clinton e-mails.
13 MR. GARDNER: Objection. Form.
14 A I don't recall a meeting with her to
15 specifically discuss Hillary Clinton e-mails, no.
16 MR. GARDNER: We've been going for about
17 an hour. I don't want to take a break if you're
18 in the middle of a line of questions. But would
19 now be a good time for a break?
20 MS. BURKE: Yeah, we can go ahead.
21 MR. GARDNER: Thanks.
22 MS. BURKE: Okay.

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1 VIDEO SPECIALIST: We are going off the
2 record at 11:46.
3 (A recess was taken.)
4 VIDEO SPECIALIST: We are back on the
5 record at 12:16.
6 MR. GARDNER: During the break we
7 consulted about whether there is any additional
8 information he -- sorry, Mr. Smilansky can provide
9 that's not privileged.
10 I believe one of your questions was did
11 Mr. Smilansky ever have conversations with Rob
12 Prince or others at DOJ about Secretary Clinton's
13 use of private e-mail. That question he obviously
14 can answer, beyond any conversations we had in
15 preparation for his deposition.
16 So to the extent that you can answer, you
17 can answer that question.
18 MS. SHAPIRO: Why doesn't it get reasked
19 so we have a clear record.
20 MR. GARDNER: Sure. Do you want me to
21 reask the question or do you want to try it? I'm
22 happy to do it.

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1 MS. BURKE: I can ask.
2 BY MS. BURKE:
3 Q Did you ever inform attorney Rob Prince
4 or any of the DOJ attorneys about Hillary
5 Clinton's private e-mail use?
6 A No, not to my -- not to my recollection.
7 And, again, I would add the caveat that
8 Mr. Gardner just added, you know, outside of
9 preparations for this --
10 Q Sure.
11 A -- discussion.
12 MR. GARDNER: "This discussion" meaning
13 this deposition.
14 MS. BURKE: Sure.
15 THE WITNESS: Sorry.
16 MR. GARDNER: That's okay.
17 MS. BURKE: And I appreciate that. I
18 appreciate you conferring --
19 MR. GARDNER: Sure.
20 MS. BURKE: -- and providing that
21 information.
22 BY MS. BURKE:

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1 Q And I do want to go back, back up a
2 little bit and sort of try and clear -- clean up
3 the record and walk through a couple of things a
4 little bit more clearly.
5 So I want to go back to 2013. In 2013
6 you mentioned a meeting with Brett Gittleston?
7 **A I mentioned a conversation with Brett**
8 **Gittleston.**
9 Q A conversation.
10 **A Yes.**
11 Q I believe it was a telephone call with a
12 followup e-mail?
13 **A Yes, that sounds right.**
14 Q And Mr. Gittleston, you said he's with IT.
15 Is that -- is that the S/EC-IRM --
16 **A Yes.**
17 Q -- department?
18 **A I'm sorry, S/ES-IRM.**
19 Q S/ES.
20 And that was specifically related to
21 Hillary Clinton having a state.gov e-mail account.
22 MR. GARDNER: Objection. Form.

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1 Q Let me back up.
2 What was that conversation related to?
3 MR. GARDNER: Objection. To the extent
4 that that question called for the disclosure of
5 privileged information, I instruct you not to
6 answer.
7 To the extent you can answer that
8 question at a high level of generality without
9 divulging privileged information, you may do so.
10 **A At a high level of generality, the**
11 **conversation was related to the processing of the**
12 **CREW request, and was more specifically about the**
13 **issue of whether Secretary Clinton had a state.gov**
14 **e-mail account.**
15 Q And what was the answer?
16 MR. GARDNER: Objection. Calls for
17 information subject to privilege.
18 Instruct the witness not to answer.
19 Q Did you ever have any conversations with
20 John Bentel, Mr. Gittleston's predecessor at
21 S/ES-IRM?
22 **A Not that I can recall.**

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1 Q During the processing of -- of the CREW
2 request, or during the CREW FOIA request time
3 period, was there ever any discussion with the
4 Secretary's office while she was still there in
5 office -- she was, I believe, until February 1st,
6 2013 -- about her e-mail use or any e-mail
7 accounts?
8 MR. GARDNER: Objection. Form.
9 **A Could you please clarify what you mean**
10 **by, were there any discussions?**
11 **Discussions within the Secretary's**
12 **office? Discussions between whom and the**
13 **Secretary's office?**
14 Q Did anyone ask the Secretary's office,
15 the Secretary or her staff, while she was still in
16 office, about her e-mail use?
17 MR. GARDNER: Objection, form.
18 Objection, foundation.
19 **A I can't speak to whether anyone, what,**
20 **you know, the entire State Department did.**
21 Q Were you aware of any discussions about
22 Hillary Clinton's e-mail use prior to her leaving

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1 her position in 2013?
2 MR. GARDNER: You can answer that with a
3 yes or no. To the extent you can.
4 **A Sorry, I just want to make sure that I**
5 **understand the question.**
6 **Was I aware of any discussions with the**
7 **Office of the Secretary about Secretary Clinton's**
8 **e-mail use before she left office?**
9 Q Yes.
10 **A Not that I can recall.**
11 Q The conversation that you had with
12 Mr. Gittleston, what precipitated that discussion?
13 MR. GARDNER: Objection. Form.
14 Also, to the extent that that calls for
15 the disclosure of privileged information, I
16 instruct you not to answer.
17 To the extent that you can answer that
18 without divulging privileged information, you may
19 do so.
20 **A Well, as a -- I think I've said, the**
21 **conversation related to the processing of the CREW**
22 **request.**

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1 Q And what happened as a result of that
2 conversation?
3 MR. GARDNER: Objection. Form.
4 **A I'm not sure what you mean by "what
5 happened as a result of."
6 Could you please clarify?**
7 Q You said that the discussion was related
8 to the processing of the CREW request.
9 **A Uh-huh.**
10 Q What resulted from the conversation about
11 the processing of the CREW request?
12 MR. GARDNER: Same objection. Form.
13 **A I don't know, like, I understand what you
14 mean by what resulted from it.
15 But I can say that -- that at some point
16 following that conversation, the department
17 responded to the requester.**
18 Q Did you contact Mr. Gittleson or did he
19 contact you?
20 **A I believe that I contacted Mr. Gittleson.**
21 Q With a question related to the processing
22 of the CREW request?

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1 **A Correct.**
2 Q Did anyone contact you -- strike that.
3 What led you to contact Mr. Gittleson in
4 the S/ES-IRM office about the processing of the
5 CREW request?
6 MR. GARDNER: Objection. Form. Also,
7 objection to the extent that that calls for the
8 disclosure of information subject to privilege, I
9 instruct you not to answer. To the extent that
10 you can answer that in such a manner that does not
11 disclose privileged information, you may do so.
12 **A I think without disclosing privilege, I
13 think all I can say is that, as I mentioned
14 earlier, there was a meeting with Ms. Walter
15 about -- or at which the processing of the CREW
16 request was discussed. And following that, I had
17 a conversation with Mr. Gittleson regarding the
18 processing of the CREW request. But I -- I don't
19 think I can go beyond that without disclosing
20 privilege.**
21 Q So the -- and that was in 2013?
22 **A Yes.**

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1 Q And you are not answering specifics to
2 the question based on attorney-client or based on
3 work product?
4 MR. GARDNER: He is not answering
5 questions based on the attorney-client privilege,
6 as well as the work product doctrine, to those
7 specific questions.
8 Q With regard to the work product, what was
9 the anticipated litigation?
10 **A Sorry. Could you please clarify what you
11 mean by, those specifics that -- about which
12 you're asking about the privilege basis?**
13 Q In response to my question about -- I
14 apologize.
15 MS. BURKE: Can you read my question
16 back.
17 (A discussion was held off the record.)
18 Q What led you to contact Mr. Gittleson
19 about the processing of the CREW request?
20 MR. GARDNER: And the basis for the
21 objection and instruction not to answer is the
22 attorney-client privilege and the work product

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1 doctrine.
2 I think if your question is what
3 litigation was reasonably anticipated, obviously
4 these are FOIA cases. And FOIA lawsuits are
5 brought all the time, including possible
6 litigation about the CREW request itself.
7 Q So in 2013, what did you know about
8 Hillary Clinton's e-mail use?
9 MR. GARDNER: Objection. Form.
10 Also, objection. You can answer that
11 question to the extent it does not reveal
12 privileged information.
13 To the extent it does require the
14 disclosure of privileged information, I instruct
15 you not to answer.
16 **A Well, I knew what I knew as a result of
17 the conversation that I mentioned with
18 Mr. Gittleson.
19 Also, in the course of reviewing
20 documents that had been collected in response to a
21 congressional inquiry regarding the Benghazi
22 attacks, I recall at some point -- or, actually,**

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1 at several points in the course of that process
2 coming across a small number of e-mails on which
3 Secretary Clinton was -- was on. I can't remember
4 the exact content or context.
5 So -- so I was aware of -- I became aware
6 of those e-mails. And, again, it was a small
7 number. I can't remember exactly how many. And
8 that would have been at some point in 2013 and
9 probably extending in to 2014.
10 Q Who did you talk to about the e-mails
11 that you came across in relation to the Benghazi
12 congressional inquiry?
13 MR. GARDNER: Objection. Foundation.
14 Q Did you talk to anyone?
15 A Yes.
16 Q Who did you talk to?
17 A I recall several conversations. I
18 can't -- I can't recall every conversation that I
19 had on this matter.
20 But I recall one in particular with -- I
21 believe it would have been Rich Visek in the
22 Office of the Legal Advisor.

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1 Q Did you raise this issue with him?
2 A Sorry.
3 Q I apologize.
4 A Sorry.
5 And I also recall Paul Colborn at the
6 Department of Justice being present.
7 Q And was that one meeting with Mr. Visek
8 and Paul Colborn?
9 A I -- I am referring to a specific meeting
10 that I recall. But I -- I can't say for sure
11 whether there was more than one meeting at this
12 point in time.
13 Q Can you spell Paul's last name?
14 A To the best of my recollection, it would
15 be C-O-L-B-O-R-N.
16 Q And when was that meeting?
17 A I can't recall exactly. Probably at some
18 point in 2013.
19 Q Was that prior to the CREW request?
20 A I -- I can't remember exactly when it
21 was.
22 Q Was it -- the CREW request I believe came

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1 in about December of 2013.
2 Was it prior to that?
3 Oh, I apologize. Was the meeting prior
4 to the response to the CREW request?
5 MR. GARDNER: Objection. Lack of
6 foundation.
7 A I can't recall what the sequence of
8 events was.
9 Q Do you recall when the response was made
10 in the CREW request?
11 A I believe it was at some point in 2013,
12 but I don't know the exact time at this -- at this
13 point.
14 Q The e-mail that you're referring to that
15 showed up in the -- the small number of documents,
16 was that the hdr22@clintonemail.com?
17 MR. GARDNER: Objection. Form.
18 A I -- I can't recall what the e-mail
19 address was and what -- what would have -- I was
20 reviewing e-mails for content, not where they were
21 coming from. I can't recall what the e-mail --
22 how the Secretary's name or e-mail address looked

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1 on the document itself.
2 Q So what about -- what about these number
3 of e-mails made you recognize that it was an
4 e-mail address associated with Hillary Clinton?
5 A I don't recall at this point in time.
6 I -- I remember -- this is very vague. But I
7 remember someone mentioning that, in -- in the
8 course of reviewing those documents, because I
9 didn't come across the e-mail personally, that it
10 looked like it was from or to or cc'ing Secretary
11 Clinton. And I -- I don't recall now looking at
12 the documents how I was able to confirm that or
13 whether I was able to confirm that.
14 Q But you were able to confirm that it was
15 not a state.gov address.
16 A At the time I don't recall having reached
17 that conclusion. I'm -- I'm not saying I didn't;
18 I just don't have a recollection of having a view
19 one way or the other at the time. Because, as I
20 mentioned, I was focused on the content of the
21 e-mails.
22 Q So what did you -- what did you bring to

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1 Mr. Visek and Mr. Colborn?
2 MR. GARDNER: Objection to form.
3 Objection to the extent it calls for information
4 subject to privilege, I instruct you not to
5 answer. To the extent you can answer that
6 question without divulging privilege, you may do
7 so.
8 **A Without divulging privilege, I think I**
9 **can say that the discussion that I'm recalling**
10 **with Mr. Visek and Mr. Colborn included a**
11 **discussion of the content of this small number of**
12 **e-mails. I can't remember if it was at that point**
13 **one or more than one, but it was a small number.**
14 Q And the content identified an e-mail
15 address for Hillary Clinton?
16 MR. GARDNER: Objection. Form.
17 **A I was referring to the content of the**
18 **e-mail itself, not the e-mail address. I don't**
19 **have a recollection of the e-mail address.**
20 Q Who mentioned -- who mentioned the e-mail
21 address to you?
22 MR. GARDNER: Objection. Form.

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1 Can you please reask that? I just don't
2 understand that question.
3 MS. BURKE: Sure.
4 Q Earlier you testified that you remember
5 somebody mentioning to you that it looked like an
6 e-mail to Hillary Clinton. Who was that?
7 MR. GARDNER: Objection. Form.
8 You can answer.
9 **A So I think what I testified was that I**
10 **recall vaguely someone saying they thought the**
11 **e-mail was either to or from or cc'ing Secretary**
12 **Clinton. I can't remember which one of those**
13 **scenarios it was.**
14 **I don't remember saying anything about an**
15 **e-mail address. And I don't recall who it was at**
16 **this point.**
17 Q And who is Paul Colborn at the DOJ?
18 **A I don't know his exact title or role, but**
19 **I believe that he's in the Office of Legal**
20 **Counsel.**
21 Q And why did you raise it with the
22 Department of Justice?

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1 MR. GARDNER: Objection. To the extent
2 that that question calls for the disclosure of
3 information subject to privilege, to the extent it
4 does I instruct you not to answer.
5 To the extent that you can answer without
6 disclosing privileged information, you may do so.
7 **A I think without disclosing privilege, at**
8 **a high level of generality, I can say that the**
9 **discussion concerned the department's legal**
10 **obligations relating to responding to**
11 **congressional inquiries and document requests.**
12 Q Was it bought to Mr. Visek and
13 Mr. Colborn's attention that Hillary Clinton was
14 either a recipient, sender, or copied on the
15 e-mails that you were reviewing?
16 **A Yes, I believe so.**
17 Q So in -- was there any discussion about a
18 need to search Hillary's e-mails in response to
19 the congressional inquiry?
20 MR. GARDNER: Objection. A response to
21 that question calls for the disclosure of
22 privileged information. I instruct the witness

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1 not to answer.
2 THE WITNESS: Can we clarify what's meant
3 by Hillary's e-mails?
4 MR. GARDNER: Sure. Sure. I also object
5 on form grounds.
6 I -- I think, Lauren, that the problem --
7 and this is sort of pervasive today -- is, you say
8 "Hillary Clinton's e-mails" without any sort of
9 distinction between whether you're talking about
10 her personal e-mail usage, her official e-mail
11 usage. What?
12 So if you can be more specific with
13 e-mails, I think he might have a -- the witness
14 may have a better job answering your questions.
15 MS. BURKE: Sure.
16 BY MS. BURKE:
17 Q Was there any discussion of a need to
18 search Hillary Clinton's private e-mails in
19 response to the congressional inquiry?
20 MR. GARDNER: Same objection.
21 Same instruction.
22 Q I want to back up a little bit as well,

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1 as we move down sort of putting together a time
2 frame here.
3 You had mentioned a conversation or
4 meeting with Mr. John Hackett?
5 **A Uh-huh.**
6 Q Regarding -- scratch that.
7 What was the subject of that
8 conversation?
9 MR. GARDNER: You can disclose the
10 subject matter at a high level of generality,
11 without divulging privileged information.
12 Otherwise I instruct you not to answer on
13 the basis of privilege.
14 **A I actually don't recall in any specific**
15 **terms what the subject matter was.**
16 **But I think at a high level of generality**
17 **it would have had to do with the department's**
18 **legal obligations with regard to the FOIA.**
19 Q Do you recall a photograph showing
20 Hillary Clinton using a BlackBerry at any time
21 during the time frame that we're talking about,
22 2012 to 2014?

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1 **A I think I do recall having seen that**
2 **photo and -- in the media.**
3 Q Did anyone raise or show that photo to
4 you -- strike that.
5 Did Mr. Hackett come to you regarding
6 Hillary Clinton state.gov e-mail address?
7 MR. GARDNER: Objection. Form.
8 You can answer that question yes or no,
9 to the extent you can answer.
10 **A Could you please clarify what you mean**
11 **by, about Hillary Clinton's state.gov e-mail**
12 **address?**
13 Q Did Mr. Hackett ask you whether Hillary
14 Clinton had a state.gov e-mail address?
15 MR. GARDNER: Hold on, please.
16 Objection, to the extent that that answer
17 calls for the disclosure of privileged
18 information, I instruct you not to answer.
19 To the extent that you can answer that
20 without disclosing privileged information, you may
21 do so. To the extent that we need to take a break
22 to consult, we absolutely can do that.

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1 **A I -- this kind of makes it easy. But I**
2 **don't recall a specific conversation about that**
3 **with Mr. Hackett.**
4 Q Was that conversation in person or over
5 the phone, via e-mail?
6 **A I'm sorry, which conversation?**
7 MS. SHAPIRO: Hold on one second.
8 MR. GARDNER: Reask the question.
9 Q Was your conversation with Mr. Hackett
10 over the phone, via e-mail, or in person?
11 MR. GARDNER: Objection. Form.
12 **A Which conversation are you referring to?**
13 Q And correct me if I'm wrong, I believe
14 you mentioned that in -- that Mr. Hackett -- that
15 you spoke with Mr. Hackett with regard to Hillary
16 Clinton e-mail use?
17 MR. GARDNER: Objection. Form.
18 **A I -- I mean, it might be helpful to go**
19 **back to the record to establish exactly what we're**
20 **referring to. Because the last thing that you I**
21 **think had asked about was something that I had no**
22 **recollection of specifically discussing with**

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1 **Mr. Hackett.**
2 Q Sure.
3 So I think it was earlier before the
4 break and then just now I had said that you had
5 mentioned that you had had a conversation with
6 Mr. Hackett?
7 **A Sorry. Can -- is it possible to reread**
8 **from the transcript what ...**
9 Q Let's start over.
10 **A Okay.**
11 Q So that we can clarify the record. And I
12 apologize.
13 Prior to the break, it's my understanding
14 and recollection that you stated that you had had
15 a conversation regarding Hillary Clinton e-mail
16 use with Mr. John Hackett.
17 MR. GARDNER: Objection. Form.
18 Q Am I incorrect?
19 **A I -- I don't remember specifically having**
20 **said Hillary Clinton's e-mail use.**
21 Q Okay.
22 **A But I -- it might be helpful to -- maybe**

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1 my recollection of what I had said before the
2 break is -- is not -- is failing me, but ...
3 MR. GARDNER: Lauren, I think the
4 disconnect here is you're asking if he recalls
5 what he testified to before the break. Maybe just
6 ask him --
7 MS. BURKE: Sure.
8 MR. GARDNER: -- does he recall what he
9 discussed with Mr. Hackett.
10 Q Do you recall what you discussed with
11 Mr. Hackett during this time period of 2012 to
12 2014?
13 MR. GARDNER: You can answer that with a
14 yes or no.
15 A I discussed many, many issues with
16 Mr. Hackett over this time period. Mostly
17 relating to FOIA processing.
18 Q Do you know to Tasha Thian is?
19 A I believe -- I believe so. I could be
20 misremembering, but I believe so.
21 Q Who is she?
22 A I believe that she worked for the

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1 information -- the Office of Information Programs
2 and Services in records management.
3 Q Did Tasha Thian ever come to you
4 regarding Hillary Clinton's state.gov e-mail
5 address?
6 MR. GARDNER: Objection. Form.
7 A I can't recall any specific conversation
8 with that -- that individual about Hillary
9 Clinton's -- about a state.gov address relating to
10 Hillary Clinton.
11 Q Did you know in August of 2014 that
12 Hillary Clinton used a private e-mail address for
13 state business?
14 A I -- no. I -- I did not have that level
15 of specific knowledge that you described.
16 Q So what level of knowledge did you have
17 about Hillary Clinton's use of a private e-mail
18 address?
19 MR. GARDNER: Objection. Form.
20 Objection. And what time frame are you asking
21 about?
22 MS. BURKE: In August 2014.

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1 MR. GARDNER: To the extent you can
2 answer that question without disclosing privileged
3 information, you may do so.
4 To the extent that it would require you
5 to disclose privileged information, I instruct you
6 not to answer.
7 A I think on that it would be helpful to
8 confer about the scope of what is privileged.
9 MR. GARDNER: Okay. It's almost 1. I
10 know -- do you want to take the break now, we can
11 talk over lunch --
12 MS. BURKE: Yeah.
13 MR. GARDNER: -- the witness and I?
14 MS. BURKE: Let's do that.
15 MR. GARDNER: Yeah.
16 VIDEO SPECIALIST: We are going off the
17 record at 12:50.
18 (A recess was taken.)
19 VIDEO SPECIALIST: We are back on the
20 record at 14:01.
21 MR. GARDNER: Before we start, there was
22 one clarification that Mr. Smilansky wanted to

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1 make and one elaboration over a question you had
2 had where we had invoked privilege.
3 I think with respect to the
4 clarification, it related to the question you had
5 asked about the meeting with Mr. Visek and
6 Mr. Colborn and whether that related to Hillary
7 Rodham Clinton's e-mail usage. I don't know if
8 you recall that question. But Mr. Smilansky
9 wanted to clarify his testimony there.
10 THE WITNESS: Thank you. So I just
11 wanted to clarify that the meeting with
12 Mr. Colborn and Mr. Visek pertained to the content
13 of certain e-mails, including a small number of
14 e-mails that had Hillary Clinton on them, as that
15 relates to the department's legal obligations in
16 response to congressional inquiries, and not
17 Secretary Clinton's e-mail use per se.
18 MR. GARDNER: And then with respect to
19 the privileged issue that we had discussed right
20 before lunch, you had asked the question, and I
21 think I have this correct, did you know in August
22 of 2014 that Secretary Clinton used a private

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1 e-mail address for state business?
2 MS. BURKE: Correct.
3 MR. GARDNER: We've been able to confer
4 about that, and there is some nonprivileged
5 information that we can provide to you.
6 So either you can ask the question or I
7 can ask the question.
8 MS. BURKE: I'll let you go ahead.
9 MR. GARDNER: Okay. Mr. Smilansky, did
10 you know in August of 2014 that Secretary Clinton
11 used a private e-mail address for state business?
12 THE WITNESS: So prior to August '14, I
13 was aware of the small number of e-mails that I
14 had referred to earlier that surfaced in the
15 course of the processing of documents in response
16 to congressional requests. And I was aware at
17 that time that those e-mails were for official
18 business. And I was able to deduce by that time
19 that they were private e-mails because I had known
20 at that time that the -- that Secretary Clinton
21 had not had a state.gov e-mail address.
22 So that was the state of my knowledge up

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1 to August 2014.
2 After August 2014 I became aware that, in
3 addition to those isolated e-mails, there was a
4 larger volume of e-mails of Secretary Clinton's
5 e-mails that the department had not had in its
6 possession.
7 And I didn't know, I don't recall now
8 knowing as of August 2014 the character or the
9 content of those e-mails, so I can't say that they
10 were or were not for official business as of that
11 time.
12 BY MS. BURKE:
13 Q And what made you aware of the larger
14 volume of e-mails that the department had not had
15 in its possession?
16 MR. GARDNER: Objection. That calls for
17 information subject to privilege.
18 I instruct the witness not to answer.
19 Q When did you learn of the larger volume
20 of e-mails?
21 A In August 2014.
22 Q Who told you about the larger volume of

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1 e-mails?
2 MR. GARDNER: To the extent you can
3 answer that question without divulging privileged
4 information, you may do so.
5 Otherwise I instruct you not to answer on
6 the basis of privilege.
7 A I think I would need to confer --
8 MR. GARDNER: We need to --
9 A -- further in order to figure out what is
10 subject to privilege specifically.
11 Q Okay. We'll come back to that.
12 A Okay.
13 Q Regarding the -- the small number of
14 e-mails that you came across in the congressional
15 inquiry regarding Benghazi, you said that you
16 brought it to -- and I understand that you
17 clarified that you brought it to Visek and Paul
18 Colborn at the DOJ for content purposes.
19 Was that -- is that -- did I get your
20 clarification correct?
21 A I said that I had brought a small number
22 of e-mails in which Secretary Clinton was on to

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1 Rich Visek's and Paul Colborn's attention for
2 content purposes. But it wasn't necessarily all
3 of the e-mails that had come up in the course --
4 with Secretary Clinton on them that had come up in
5 the course of the congressional document review.
6 I was referring to a specific set of
7 e-mails. Maybe it was one, maybe it was a --
8 more, but it was a small number.
9 Q So at that time the documents that you
10 brought to Richard -- Mr. Visek and Mr. Colborn
11 would have been made aware that there were records
12 showing Hillary Clinton used e-mail?
13 MR. GARDNER: Objection. Form.
14 A Yes, I believe -- I believe they were --
15 I believe that they were aware through the course
16 of looking at those documents that Hillary Clinton
17 had used e-mail to some extent.
18 Q And --
19 A Sorry, document or documents. As I said,
20 I can't remember whether it was one e-mail or a
21 small number.
22 Q And you said that Paul Colborn is in the

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1 Office of Legal Counsel at Department of Justice?
2 **A That's my understanding, that he was at**
3 **the time of that meeting.**
4 Q Do you know what his position was at the
5 time of that meeting?
6 **A I do not.**
7 Q Is he still with the Office of Legal
8 Counsel, if you know?
9 **A I -- I do not know.**
10 Q Did you bring it to Mr. Colborn's
11 attention or did Mr. Vissek?
12 MR. GARDNER: Objection. Form.
13 **A Could you clarify what the "it" is,**
14 **please?**
15 Q The -- the small number of e-mails that
16 you had -- that you were bringing forward from the
17 congressional inquiry about Benghazi.
18 **A I can't recall the meeting in enough**
19 **detail to be able to answer that.**
20 Q Do you know, was there a discussion of
21 any need to search Hillary's private e-mails in
22 response to this congressional inquiry about

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1 Benghazi?
2 MR. GARDNER: Objection. Calls for
3 information subject to privilege.
4 I instruct the witness not to answer.
5 THE WITNESS: If I could just maybe
6 repeat what I had said earlier about the ...
7 MR. GARDNER: Sure.
8 **A Just restating what I had said earlier**
9 **about the meeting. The meeting was about the**
10 **content of a particular set of e-mails with regard**
11 **to the department's legal obligations in**
12 **responding to congressional inquiries; not about**
13 **Secretary Clinton's e-mail use, per se.**
14 Q And I understand that. But subsequently
15 was there any discussion of a need to search
16 for -- search Hillary Clinton private e-mails to
17 respond to the congressional inquiry?
18 MR. GARDNER: Objection. Form. Also,
19 objection to the extent that question calls for
20 information subject to privilege.
21 To the extent that your answer would
22 implicate privileged information, I instruct you

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1 not to answer.
2 To the extent you can answer that
3 question without divulging privileged information,
4 you may do so.
5 **A Yeah, I'm not -- I'm not sure that I can**
6 **beyond what I've already said about the meetings**
7 **that I was a part of.**
8 Q So at -- based on your attorney's advice,
9 you are not answering that question, based on
10 attorney-client privilege. Is that correct?
11 **A Well, it -- it would be helpful if you**
12 **could clarify the question. You asked were there**
13 **any discussions.**
14 MR. GARDNER: Yeah, I mean, Lauren, I
15 think the problem with your question is it's just
16 very -- I don't mean this to be pejorative, but
17 it's a little unfocused. You said subsequently
18 was there any discussion of a need to search for
19 Hillary Clinton's private e-mails to respond to
20 the congressional inquiry.
21 There's just -- you need more content
22 there.

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1 Q Was there any discussion about the e-mail
2 account that appeared in the small batch of
3 documents that -- that you referenced?
4 MR. GARDNER: Again, objection, form.
5 I'm not trying to be obstreperous. With who?
6 MS. BURKE: Anyone.
7 MR. GARDNER: Objection. Form. Also,
8 objection, to the extent that that answer calls
9 for disclosure of privileged information, I
10 instruct the witness not to answer.
11 To the extent you can answer without
12 divulging privileged information you may do so.
13 **A I just -- are you asking whether I**
14 **specifically was part of any discussions about the**
15 **e-mail address referenced in or about where the**
16 **small number of e-mails came from?**
17 Q I'm asking in -- in the meeting with
18 Mr. Vissek and Mr. Colborn and yourself, if there
19 were any discussions regarding the e-mail account
20 that appeared in the documents.
21 MR. GARDNER: Yeah, objection. To the
22 extent that information is subject to privilege, I

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1 instruct you not to answer.
2 To the extent that you can answer that
3 question without divulging the contents of
4 privileged conversations, you may do so.
5 **A I mean, I -- I don't recall that issue**
6 **coming up, so I don't think that implicates**
7 **privilege.**
8 Q You mentioned the congressional inquiry
9 regarding Benghazi. Was this -- was this the
10 select committee on Benghazi?
11 **A There were many congressional inquiries**
12 **regarding Benghazi during the time that I was**
13 **serving as an attorney advisor in that role at the**
14 **department from various congressional committees,**
15 **including, but not limited to, the select**
16 **committee.**
17 Q What was the congressional request
18 related to this production of documents that
19 you're referencing?
20 MR. GARDNER: Objection. Form.
21 **A Well, as I just said, there were many**
22 **document requests from many different committees.**

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1 **And I can't recall which one or ones were**
2 **specifically at issue in the meeting with**
3 **Mr. Visek and Mr. Colborn, if that's what you're**
4 **asking.**
5 Q Okay. I'm going to -- I have a couple of
6 documents that I'm just going to introduce into
7 evidence here. And we can go through them
8 together, if that's okay.
9 **A All right.**
10 MR. GARDNER: We're going to start on
11 Exhibit 1 again?
12 MS. BURKE: Yes.
13 (A discussion was held off the record.)
14 (Smilansky Deposition Exhibit 1 marked
15 for identification, retained by counsel.)
16 BY MS. BURKE:
17 Q You've just been handed what's marked as
18 Exhibit 1 for identification purposes. It is
19 tagged at the bottom at DOS-897. And I represent
20 to you this was produced to Judicial Watch in
21 discovery by your attorneys.
22 **A Uh-huh.**

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1 Q If you could take a quick look at it.
2 And starting at the -- the bottom e-mail,
3 it appears to be from Clarence Finney to James
4 Bair, with a copy -- or I apologize. The subject
5 line, "Former Secretary e-mail account."
6 Who is Clarence Finney?
7 **A Clarence Finney I believe worked for the**
8 **Office of the Executive Secretary.**
9 Q And do you know what this e-mail is
10 about?
11 MR. GARDNER: You can answer that with a
12 yes or no.
13 **A Yes, to the extent that the subject is**
14 **identified on the e-mail. But otherwise, no, I**
15 **don't have any additional recollection.**
16 Q And "Former Secretary e-mail account,"
17 who is -- what is that referring to?
18 MR. GARDNER: Objection. Lack of
19 foundation.
20 **A As I noted, all -- I don't have a**
21 **specific recollection of this e-mail exchange. So**
22 **all I -- all I can comment on is what is on the**

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1 **face of the document.**
2 Q And I see that Mr. James Bair forwarded
3 it to Andrew Keller and yourself?
4 **A Yes, that's what --**
5 Q If that's what's represented there, is
6 that accurately what's represented?
7 **A I believe that is what's on the face of**
8 **the document, yes.**
9 Q And then you respond to Andrew and
10 Mr. Bair.
11 **A Yes, I believe so. It appears so.**
12 Q And have you -- you -- do you recognize
13 this e-mail?
14 **A I -- as I said, I don't have any**
15 **particular recollection of it, looking at it right**
16 **now.**
17 Q Would an unredacted version refresh your
18 recollection?
19 MR. GARDNER: Objection. Form.
20 **A It's a hypothetical question. I don't**
21 **know. I don't know what the unredacted version**
22 **would or wouldn't do.**

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1 MS. BURKE: And you can mark this Exhibit
2 2. You can just put that aside.
3 MR. GARDNER: The court reporter will
4 collect them all at the end. So, yeah.
5 THE WITNESS: Okay.
6 (Smilansky Deposition Exhibit 2 marked
7 for identification, retained by counsel.)
8 Q You've been handed what's been marked as
9 Exhibit 2. And I'll represent to you this is the
10 declaration of Richard C. Visek. It was produced
11 by your attorneys in -- as a part of this
12 discovery process as a supplemental declaration of
13 privilege log.
14 And if you can turn to Page 12.
15 If you could read Paragraph 30.
16 A Aloud or to myself?
17 Q To yourself.
18 A Okay.
19 Q Does this refresh any recollection of the
20 subject matter of this particular e-mail?
21 MR. GARDNER: Objection. Lack of
22 foundation.

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1 A Does this -- does this refresh my
2 recollection with regard to the e-mail in Exhibit
3 1?
4 Q Is there any information in here that
5 refreshes your recollection?
6 MR. GARDNER: Same objection.
7 **A I mean, I have no reason to question**
8 anything that is in the declaration, to the extent
9 it provides additional description. But it
10 doesn't refresh my recollection as to the redacted
11 portions of the e-mail.
12 Q Where it states, "Mr. Smilansky provides
13 additional information to assist Mr. Bair based on
14 his experience providing legal advice concerning
15 the CREW FOIA request."
16 A Uh-huh.
17 Q Is it fair to say that the additional
18 background provided concerning the CREW FOIA
19 request relates to Hillary Clinton's private
20 e-mail use?
21 MR. GARDNER: Objection. Calls for
22 information subject to privilege.

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1 I instruct the witness not to answer.
2 Q The last line also says, "This document
3 would not exist in substantially similar form if
4 litigation were not ongoing or anticipated."
5 Do you know what ongoing litigation this
6 is related to?
7 MR. GARDNER: Objection. Lack of
8 foundation.
9 A I don't have any information as to
10 Mr. Visek's mental state or as to what he was
11 describing. And I don't at this point recall what
12 litigation would have been at issue specifically.
13 (Smilansky Deposition Exhibit 3 marked
14 for identification, retained by counsel.)
15 MR. GARDNER: I think there was a problem
16 with the copying. We appear to only have Pages 1
17 and 3. Pages 2 and 4 are completely blank.
18 THE WITNESS: But this is Page 2, so it
19 looks like there's just a blank page.
20 MR. GARDNER: Oh, is there just an extra
21 slip sheet?
22 MS. BURKE: Sorry.

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1 MR. GARDNER: Don't be sorry at all.
2 Just making sure we're all on the same page,
3 literally. I'm here all week.
4 MS. BURKE: Yeah it, should be two pages.
5 THE WITNESS: Should I take out the blank
6 pages?
7 MR. GARDNER: You can leave yours as is.
8 Right? Thank you.
9 BY MS. BURKE:
10 Q Right. For your education purposes it's
11 tagged, this is an e-mail tagged at the bottom
12 with DOS 898. This is a series of e-mails. The
13 first starting at the bottom from Sheryl Walter to
14 Heather Samuelson, with a copy to yourself,
15 Jonathan Davis, and Karen Finnegan.
16 MS. SHAPIRO: We have a different copy.
17 MR. GARDNER: I think you have a
18 different document. We've got -- you handed us
19 one from Gittleson.
20 MS. BURKE: Can we go off the record for
21 a second?
22 MR. GARDNER: Sure.

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1 VIDEO SPECIALIST: We are going off the
2 record at 14:25.
3 (A recess was taken.)
4 (Smilansky Deposition Exhibit 4 marked
5 for identification, retained by counsel.)
6 VIDEO SPECIALIST: We are back on the
7 record at 14:26.
8 MR. GARDNER: So we'll mark this one
9 Exhibit 4?
10 MS. BURKE: Exhibit 4.
11 MR. GARDNER: Okay.
12 BY MS. BURKE:
13 Q You've been handed what's marked as
14 Exhibit 4, at the bottom identified as DOS 898.
15 And starting at the bottom, the first
16 e-mail, which I believe is at the bottom, is an
17 e-mail from Sheryl Walter to Heather Samuelson
18 with a copy to yourself, Jonathan Davis, and Karen
19 Finnegan.
20 Who is Sheryl -- I'm sorry, who is
21 Heather Samuelson?
22 **A I believe Heather Samuelson at the time**

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**1 was a department employee. But I'm not exactly
2 clear on what her role was.**
3 Q Where was her office located?
4 **A I don't know.**
5 Q Who did she work with?
6 **A I -- as I had mentioned, I -- I don't
7 know, or I don't remember now what exactly her
8 role was, or where she was placed within the
9 department.**
10 Q Did you work with her often?
11 **A No.**
12 Q And who is Jonathan Davis?
13 **A Jonathan Davis was also an attorney in
14 the Office of the Legal Advisor, as was I. As am
15 I.**
16 Q How about Karen Finnegan?
17 **A Karen Finnegan was an employee in the
18 Office of Information Programs and Services.**
19 Q And the e-mail reads, "Hi, Heather. Did
20 you ever get any intel regarding what other
21 agencies are doing regarding this FOIA request
22 that seeks records about the number of e-mail

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1 accounts associated with the Secretary? (But
2 isn't specifying personal e-mail accounts, so we
3 are interpreting as official accounts only." We
4 are considering contacting the requester to find
5 out exactly what it is they are looking for. Do
6 you have any concerns about that approach?
7 Thanks, Sheryl."
8 Again, you are copied -- you're copied on
9 this e-mail from Sheryl!
10 **A Uh-huh.**
11 Q What was this about? What was this
12 e-mail about?
13 MR. GARDNER: Objection. Form.
14 **A Well, I don't have any particular
15 recollection of this discussion beyond what's on
16 the face of the document.**
17 **But on the face of the document, the
18 subject line says CREW FOIA Request. So I assume
19 it was about the processing of the CREW FOIA
20 request.**
21 Q And if you notice the next e-mail up,
22 Heather responds. "White House counsel was

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1 looking into this for me. I will circle back with
2 them now to see if they have further guidance."
3 Why was the White House involved in the
4 CREW FOIA request?
5 MR. GARDNER: Objection, lack of
6 foundation. Objection, form.
7 **A I don't have any recollection as to why
8 they would have been.**
9 Q Was the --
10 **A Or whether they would have been, or the
11 extent to which they were.**
12 Q Do you know who was White House counsel
13 in January of 2013?
14 **A This is a little embarrassing, but I
15 can't recall the -- the name of the White House
16 counsel at that time right now.**
17 Q Was the White House counsel often
18 involved in FOIA requests --
19 MR. GARDNER: Objection.
20 Q -- at the State Department?
21 MR. GARDNER: Sorry. Objection. Lack of
22 foundation.

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1 **A I -- I can't really say, based on my**
2 **personal knowledge, whether the White House**
3 **counsel was often involved in FOIA requests that**
4 **went to the State Department.**
5 Q So in January 10, 2013, Hillary Clinton
6 was still in office.
7 In January -- on January 10, 2013, did
8 you know Hillary had -- Hillary Clinton had a
9 personal e-mail account that she used for State
10 business?
11 **A I -- as I mentioned earlier, I can't**
12 **recall when I came across the small number of**
13 **e-mails that -- that she was on that had surfaced**
14 **in the course of congressional review, or when it**
15 **became clear to me that those were from a private**
16 **e-mail.**
17 Q Do you know if anyone at State knew that
18 Hillary Clinton used a private e-mail account for
19 state business?
20 MR. GARDNER: As of January 10, 2013 --
21 MS. BURKE: Yes.
22 MR. GARDNER: -- or ever?

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1 MS. BURKE: As of January 10, 2013.
2 **A I'm sorry, could you repeat the question?**
3 Q Do you know if anyone at the State
4 Department knew Hillary Clinton had -- was using a
5 private e-mail account for conducting state
6 business?
7 MR. GARDNER: As of January 10 --
8 Q As of January 13, two thousand --
9 **A No, not that I can recall, no.**
10 Q Why would there be a distinction between
11 specifying personal e-mail accounts and official
12 accounts only?
13 MR. GARDNER: Objection, form.
14 Objection, foundation.
15 **A Are you asking me to interpret**
16 **Ms. Walter's e-mail?**
17 Q I'm asking you, yeah, what the -- why
18 would there be a distinction between personal
19 accounts and private e-mail accounts?
20 MR. GARDNER: Objection, form.
21 Objection, lack of foundation.
22 **A I mean, I'm happy to answer questions**

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1 **based on my personal knowledge. But I -- I would**
2 **hesitate to interpret someone else's words and ...**
3 Q Did you advise with regard to making this
4 interpretation distinction?
5 MR. GARDNER: Objection. Calls for
6 information subject to privilege.
7 I instruct the witness not to answer.
8 Q So you're not answering at the direction
9 of your attorney. Correct?
10 **A I will follow counsel's advice, yes.**
11 Q Do you know if White House counsel -- do
12 you know of any other FOIA requests that White
13 House was involved in?
14 MR. GARDNER: Objection. Form. Lack of
15 foundation.
16 **A Sitting here right now, no particular**
17 **requests come to mind.**
18 Q Okay.
19 MS. BURKE: I'm going to mark -- you can
20 set that aside.
21 I'm going to mark this as Exhibit 5.
22 (Smilansky Deposition Exhibit 5 marked

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1 for identification, retained by counsel.)
2 Q And you've been handed what's marked as
3 Exhibit 5. It is tagged at the bottom as DOS-899.
4 Who was Joshua Dorosin?
5 **A Joshua Dorosin was -- or is a lawyer in**
6 **the Office of the Legal Advisor. But his position**
7 **has changed over time. At what time frame are you**
8 **referring to?**
9 Q In April of 2013.
10 **A I believe in April of 2013 Josh Dorosin**
11 **was an assistant legal advisor.**
12 Q And is that in the office that you work
13 in?
14 **A He was in the office that I worked in.**
15 **And then he rotated to a different office, and I**
16 **can't recall exactly when that was. I believe it**
17 **was in 2013 at some point, but I can't remember**
18 **exactly.**
19 Q What was the different office?
20 **A It was the Office of Political Military**
21 **Affairs, within the Office of the Legal Advisor.**
22 Q Who is Brock Johnson?

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1 **A Brock Johnson was, I believe worked in**
2 **the Office of the Counselor at the State**
3 **Department.**
4 Q What's the Office of the Counselor?
5 **A The Office of the Counselor is a**
6 **senior -- it's the Office of the Counselor to the**
7 **Secretary of State, who I believe was -- who at**
8 **this time was I believe Cheryl Mills. Although**
9 **I'm not -- I'm actually -- let me rephrase that.**
10 **I'm not sure at what time Ms. Mills**
11 **ceased being the counselor to the Secretary,**
12 **so ...**
13 Q Do you recognize this e-mail?
14 **A I recognize that -- from the face of the**
15 **document that I'm copied on it. I don't have any**
16 **particular recollection of its content beyond**
17 **what's on the document.**
18 Q If you could look at the bottom of Page
19 3.
20 And Sheryl Walter sends an e-mail to --
21 who is Rosemary Reid?
22 **A Rosemary Reid was an employee in the**

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1 **Office of Information Programs and Services.**
2 Q And how about Patrick Scholl?
3 **A Also an employee in IPS.**
4 Q And she says, White House -- "WH called.
5 Have we received a FOIA request from CREW,
6 Citizens for Responsible Ethics in Washington, on
7 the topic of personal use of e-mail by senior
8 officials? Apparently other agencies have. If we
9 have it, can you give me the details so I can call
10 the White House back. I think they would like a
11 quick turn-around. Thanks, Sheryl."
12 And as you -- you mentioned, you are
13 eventually copied on this e-mail chain. Do you
14 have any knowledge of what Sheryl is writing about
15 in this e-mail that I just read?
16 **A As I mentioned earlier, I -- I have some**
17 **recollection of the processing of the CREW FOIA**
18 **request, but I don't have any particular**
19 **recollection of this specific e-mail conversation**
20 **beyond what's on the face of the document itself.**
21 Q And do you know why you would have been
22 added and copied on the latter part of this e-mail

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1 chain?
2 MR. GARDNER: Objection. Form.
3 **A Sorry, I'm just trying to see when I was**
4 **copied.**
5 **No. I, sitting here right now, I have no**
6 **recollection of -- of why that would have been, or**
7 **knowledge of why that would have been.**
8 Q This second e-mail from the top on the
9 first page, Brock Johnson writes, "Do we have a
10 draft response I could review or a copy of the DHS
11 letter yet?"
12 Do you know what the DHS letter is?
13 **A No. Again, sitting here right now, that**
14 **does not ring any bells.**
15 Q Okay. And if you could turn back to what
16 was marked as Exhibit 3.
17 And on Page 2, the e-mail at the bottom
18 is -- appears to be from yourself, to Brett
19 Gittleson.
20 Is that who you were speaking of earlier?
21 **A I -- I was -- or I did refer earlier to a**
22 **conversation with Brett Gittleson, yes.**

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1 Q So this is dated April 24, 2013. And the
2 subject is "FOIA request for documents related to
3 S e-mail accounts."
4 What's S e-mail accounts?
5 **A S is a shorthand often used in the**
6 **department for the Office of the Secretary, or the**
7 **Secretary, him or herself. So I assume that's**
8 **what the reference here is.**
9 Q And what is this e-mail about?
10 MR. GARDNER: Objection. To the extent
11 that question calls for privileged information, I
12 instruct you not to answer.
13 To the extent that you can answer that
14 question without disclosing privileged
15 information, you may do so.
16 **A Looking at the face of the document, the**
17 **e-mail at the very bottom, the e-mail from myself**
18 **to Mr. Gittleson says, I'm writing to follow up**
19 **about the attached FOIA request for documents**
20 **pertaining to any e-mail accounts associated with**
21 **then Secretary Clinton.**
22 **So I assume, sitting here right now, that**

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1 that is referring to the CREW request. But
2 it's -- it's a logical deduction.
3 Q Does this refresh your recollection as to
4 when Mr. Gittleston approached you regarding then
5 Secretary Clinton e-mail accounts FOIA -- the CREW
6 request? I apologize.
7 MR. GARDNER: Objection. Form.
8 **A I don't recall having said that**
9 Mr. Gittleston approached me. But --
10 Q Did he?
11 MR. GARDNER: I think he was answering a
12 first question. So if you want to finish your
13 answer, please do.
14 THE WITNESS: Sure.
15 **A To the extent that I'm assuming that this**
16 conversation was about the processing of the CREW
17 FOIA request, it does indicate that that was
18 happening in April and May of 2013.
19 Q And in April and May of 2013, were you
20 aware that Hillary Clinton used a private e-mail
21 account for state business?
22 **A As I think I mentioned earlier, at some**

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1 point in the course of processing documents for a
2 congressional request, I had become aware of a
3 small number of e-mails that had Secretary Clinton
4 on them. But I can't recall when that was exactly
5 in relation to the date of this conversation.
6 MS. BURKE: Would you mark this as
7 Exhibit 6.
8 (Smilansky Deposition Exhibit 6 marked
9 for identification, retained by counsel.)
10 Q You've been handed what's been marked as
11 Exhibit 6. It's tagged at the bottom with
12 DOS-901.
13 If you could go ahead and take a quick
14 look through it. And this is an e-mail chain
15 dating back to March 2013, and runs through May
16 2013, with the subject matter
17 "F-2012-40981-WHNS/Clinton's e-mail."
18 Do you know what these e-mails are
19 about -- this e-mail chain is about?
20 MR. GARDNER: Objection. Form.
21 **A Again, only based on what's on the face**
22 of the document. It looks like on Page 4 there's

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1 an e-mail from Ms. Walter that says, This is the
2 CREW request. So I assume, based on that, that
3 this e-mail is about the processing of the CREW
4 request.
5 Q On Page 2, the second from the bottom
6 e-mail, Sheryl asked, "Did we hear back from DHS?
7 We have not responded yet, per the below."
8 Do you know what, "Did we hear back from
9 DHS" is referring to?
10 MR. GARDNER: Objection. Lack of
11 foundation.
12 **A Sitting here right now, I have no**
13 recollection of what that would have been about.
14 Q And do you recollect what your
15 participation in this e-mail conversation was on
16 May 1st, 2013?
17 MR. GARDNER: You can answer that with a
18 yes or no.
19 **A Yes, to the extent that I can see from**
20 the face of the document that I sent two e-mails
21 in -- as part of this e-mail conversation on that
22 date.

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1 Q And what were the e-mails referring to?
2 MR. GARDNER: Objection. Calls for
3 information subject to privilege.
4 I instruct the witness not to answer.
5 **A And also to the -- to the extent it's**
6 relevant, I -- sitting here right now, I can't
7 recall what these blacked-out e-mails from six
8 years ago were.
9 Q The subject matter again is
10 WHNS/Clinton's e-mail. Are you aware of any
11 other -- and I may have already asked this. And I
12 apologize if I have, in being repetitious.
13 But are you aware of any other FOIA
14 requests that the White House would be involved
15 in, or was involved in around this time?
16 MR. GARDNER: Objection, form.
17 Objection, foundation.
18 **A Sitting here right now, again, no**
19 particular requests come to mind.
20 Q Do you know why the White House was
21 interested in FOIA requests regarding Secretary
22 Clinton's private e-mails?

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1 MR. GARDNER: Objection, form.
2 Objection, foundation.
3 **A I mean, I think the premise of your**
4 **question is that they were interested. And,**
5 **again, I don't have any particular recollection of**
6 **their role or -- or degree of interest.**
7 Q If I could turn -- if I could turn your
8 attention to Page 4.
9 On the bottom, the e-mail at the bottom,
10 from Edgar Jaramillo.
11 Do you know who that is?
12 **A I believe Edgar was also an employee in**
13 **the Office of Information Programs and Services.**
14 Q Edgar writes, "FYI. I had tasked S/ES-CR
15 and IRM with the attached requests regarding S
16 Clinton's private e-mails, which the White House
17 also had an interest in knowing about from us at
18 FOIA. Both bureaus reported zero relevant docs
19 found, and we will draft a Oglesby letter for the
20 requester. Sheryl's e-mail is attached. Edgar."
21 It's later up the chain that you -- it
22 appears Sheryl Walter copies you on this e-mail

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1 dialogue.
2 Why would -- why would Sheryl add you
3 to -- I'm sorry. Strike that.
4 Why would Sheryl need to copy or forward
5 you the FOIA requests that retrieved zero
6 responsive documents?
7 MR. GARDNER: Objection. Form. Lack of
8 foundation.
9 **A I can't really speak to what was in**
10 **Ms. Walter's mind at the time that she did that.**
11 Q What was the nature of the advice that
12 was being sought by you here?
13 MR. GARDNER: Objection. Calls for
14 information subject to privilege. I instruct the
15 witness not to answer.
16 I mean, certainly I would let the witness
17 say that he was providing -- that legal advice was
18 being sought. But if you're asking about the
19 substance of the advice, that's obviously
20 privileged.
21 MS. BURKE: Well, there doesn't appear to
22 be any legal advice sought here. It's just

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1 factual information back and forth which he is
2 eventually copied on.
3 MR. GARDNER: I -- I appreciate that's
4 your view of things. That's -- you haven't
5 established that.
6 MS. BURKE: Just give me one second.
7 MR. GARDNER: We've been going about an
8 hour. Totally up to you. But do you want a few
9 minutes to sort of reorganize? Do you want to
10 keep going?
11 MS. BURKE: You know, why don't we give
12 it another couple of minutes, we'll just keep
13 going.
14 MR. GARDNER: Sure. Of course.
15 MS. BURKE: And then we'll take a quick
16 break and hopefully be able to wrap everything up.
17 MR. GARDNER: Whatever you want to do.
18 MS. BURKE: Actually, why don't we take a
19 few minutes.
20 MR. GARDNER: Of course.
21 MS. BURKE: That would be great.
22 VIDEO SPECIALIST: We are going off the

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1 record at 14:58.
2 (A recess was taken.)
3 VIDEO SPECIALIST: We are back on the
4 record at 15:16.
5 BY MS. BURKE:
6 Q Mr. Smilansky, I just have a couple more
7 questions, a few more documents, and we'll try and
8 get out of here shortly.
9 And I think before we went on break we
10 did have a pending question that you discussed
11 with your attorneys. And I understand that you
12 may be able to answer the question as it's posed
13 now.
14 And it relates to the August 2014, you
15 became aware of a larger volume of e-mails and
16 that the department did not previously have in its
17 possession. And I asked who made you aware of
18 that.
19 MR. GARDNER: Objection. Form.
20 THE WITNESS: Sorry, could I understand
21 the -- I'm not sure I understand the nature of the
22 objection.

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1 MR. GARDNER: Sure. I don't think she
2 properly characterized your previous testimony.
3 So the objection was form for mischaracterizing.
4 **A So I -- I believe that I -- I said that I**
5 **think after August 2014 I was aware of this larger**
6 **volume of -- of e-mails of Hillary Clinton that**
7 **had not been in the department's possession.**
8 **And you had asked me who had made me**
9 **aware of that. And that was Kate Duval, I**
10 **believe, to the best of my recollection now.**
11 Q And why did she make you aware?
12 MR. GARDNER: Objection. Calls for
13 information subject to privilege.
14 I instruct the witness not to answer.
15 Q And who else in your office was aware?
16 MR. GARDNER: Objection. Lack of
17 foundation. Form.
18 **A I -- I mean, I can speak to what I knew**
19 **at the time. I don't know that I can comment on**
20 **other people's state of knowledge.**
21 Q How did you become aware -- strike that.
22 How did Ms. Duval inform you of this

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1 larger volume of e-mails?
2 MR. GARDNER: Objection. Form.
3 Just to be clear, are you asking the mode
4 of communication?
5 MS. BURKE: Yes.
6 MR. GARDNER: Okay.
7 **A Verbally.**
8 Q Was it in a meeting?
9 **A It -- it was in person, yes.**
10 Q And who else was there?
11 **A To the best of my recollection, it would**
12 **have been Andrew Keller, and James Bair I believe**
13 **was there. But my recollection is a little bit**
14 **hazy on that front. And that's -- those are the**
15 **only people who are coming to mind.**
16 Q And when you became aware of this larger
17 volume of Hillary Clinton e-mails, was there any
18 discussion regarding the need to search those
19 e-mails to respond to pending FOIA requests?
20 MR. GARDNER: Objection. Calls for
21 privileged information.
22 I instruct the witness not to answer.

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1 MS. BURKE: Whether there was a
2 discussion?
3 MR. GARDNER: Correct.
4 MS. COTCA: Just for the record, she just
5 asked a yes-or-no question.
6 MR. GARDNER: Oh, I understand exactly
7 what she asked.
8 MS. COTCA: And what's the privilege
9 you're claiming, attorney-client or work product?
10 MR. GARDNER: Yes. Both attorney-client
11 and work product.
12 MS. COTCA: Both?
13 MR. GARDNER: Correct.
14 BY MS. BURKE:
15 Q And at that time were you aware that the
16 State Department was going to be requesting
17 records be returned by Secretary Clinton?
18 MR. GARDNER: Objection. Lack of
19 foundation.
20 **A Could you clarify what you mean by "at**
21 **that time."**
22 Q In August of 2014 when you were made

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1 aware of the large volume of records.
2 **A I don't -- I -- I recall at some point**
3 **becoming aware that there were going to be steps**
4 **taken to get that information. But I don't recall**
5 **when I became aware of -- that there would be such**
6 **steps.**
7 **I don't recall if it was in August of**
8 **2014 or later.**
9 Q Were you aware -- strike that.
10 Were you involved in the return of those
11 records by Hillary Clinton in December 2014?
12 MR. GARDNER: Objection. Form.
13 **A Could you clarify what you mean by**
14 **"involved in the return"?**
15 Q Did you have any role in the return or
16 collection or -- of Hillary records that were
17 returned in December 2014?
18 MR. GARDNER: You can answer that with a
19 yes or no.
20 **A No.**
21 Q Do you know what Jim Bair's role was in
22 the return of Hillary records in December 2014?

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1 MR. GARDNER: I think Jamie Bair?
2 MS. BURKE: Jamie Bair. Sorry.
3 MR. GARDNER: That's okay.
4 Objection -- sorry. Objection, lack of
5 foundation.
6 **A Beyond having a -- a vague recollection**
7 **that he was present when I learned about this set**
8 **of e-mails from Ms. Duval, I don't recall any**
9 **other particular role that Mr. Bair had, sitting**
10 **here now.**
11 Q Let me just go through these two, then I
12 have just a couple last questions, last few
13 questions.
14 MS. BURKE: I think we are on Exhibit 7.
15 (Smilansky Deposition Exhibit 7 marked
16 for identification, retained by counsel.)
17 Q And you've been handed what's been marked
18 as Exhibit 7.
19 **A Uh-huh.**
20 Q Take a quick look through it.
21 What is the HSGA --
22 MR. GARDNER: Wait. Yeah, I think he was

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1 reviewing the document.
2 MS. BURKE: I apologize. I did not look
3 up.
4 MR. GARDNER: That's okay. That's okay.
5 **A It's kind of long, so I just want to make**
6 **sure I'm ...**
7 Q Sure.
8 **A Okay. Thanks for giving me time.**
9 Q What is the HSGAC?
10 **A I believe that would have been the**
11 **Senate -- sorry, the -- the Homeland Security and**
12 **Government Affairs Committee of the Senate.**
13 Q Okay. And who is Josh Blumenfeld?
14 **A Sorry, which part of the e-mail are you**
15 **looking at? Oh, I see. It's at the bottom.**
16 **I believe Josh Blumenfeld was in the**
17 **Bureau of Congressional Affairs, or sorry,**
18 **Legislative Affairs at the Department of State.**
19 Q How about Jeremy Freeman?
20 **A Jeremy Freeman was also an attorney**
21 **advisor in the Office of the Legal Advisor.**
22 Q And Theresa Bridgeman?

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1 **A Also an attorney.**
2 Q Josh Dorosin?
3 **A I think I mentioned earlier Josh was at**
4 **some point my boss and assistant legal advisor,**
5 **and then moved over into a different office within**
6 **the Office of the Legal Advisor. But I can't**
7 **recall exactly when.**
8 Q Amy Johnston?
9 **A I believe Amy Johnston was in also the**
10 **Bureau of Legislative Affairs at the State**
11 **Department.**
12 Q De'Ara Balenger?
13 **A De'Ara, I'm not sure what bureau she was**
14 **in. But I believe that she was on some kind of**
15 **detail relating to the document review effort,**
16 **so ...**
17 Q Robert Fallon?
18 **A I believe he was in the Bureau of**
19 **Legislative Affairs at the State Department.**
20 Q And Andrew O'Connell?
21 **A I believe Andrew was also on detail for**
22 **the document review effort, but I'm not sure what**

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1 **his home bureau was.**
2 Q A Nima Abbaszadeh?
3 **A Nima also I believe was on detail for the**
4 **document review effort.**
5 Q And what is -- what is this document that
6 is in front of you?
7 MR. GARDNER: Objection. Form.
8 **A I mean, looking at the face of the**
9 **document, it appears to be an e-mail discussion**
10 **involving the individuals you mentioned and some**
11 **others. Someone from the Department of Defense.**
12 Q It looks to be -- the subject matter is
13 regarding, you said the Homeland Security
14 Government Affairs Committee Benghazi request.
15 Were you involved in this congressional
16 request?
17 **A Could you please clarify what you mean by**
18 **"involved"?**
19 Q Did you -- did you work on this e-mail --
20 or this congressional request?
21 **A I can't recall, looking at this document**
22 **at this point, what specific document request was**

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1 at issue in this e-mail.
2 **But based on the face of the e-mail, it**
3 **looks like there were plans for some State**
4 **Department representatives to review documents at**
5 **the Department of Defense.**
6 Q Is this the same -- is this the same
7 congressional inquiry that you referenced
8 previously that produced the small batch of
9 documents which indicated an e-mail address for --
10 or e-mail communications by Hillary Clinton?
11 MR. GARDNER: Objection. Form.
12 A **Well, I just want to clarify a few things**
13 **with regard to my testimony.**
14 **I think I had said that there were**
15 **numerous congressional requests from various**
16 **committees, and that I couldn't recall which**
17 **particular request had -- had surfaced the small**
18 **number of e-mails that I had referred to.**
19 **And -- and I -- and I don't -- I can't**
20 **recall sitting here now what specific request is**
21 **at issue here, other than that it appears to be**
22 **from the Homeland Security and Government Affairs**

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1 **Committee.**
2 **So I -- I mean, not recalling which**
3 **particular request the small number of e-mails**
4 **surfaced in reference to, and not recalling what**
5 **specific request is at issue here, I can't really**
6 **compare them to tell you whether it was the same**
7 **request.**
8 Q That's fair.
9 If you can look on Page 2.
10 It's the -- I'm looking at the e-mail
11 that's in the middle of the page. It's from
12 yourself. And it's dated November 11, 2012, to a
13 number of people.
14 If you could look. The second sentence
15 starts, "DoD believes the" -- blank -- "e-mails to
16 be largely unresponsive, with the exception of one
17 that discusses the Cretz/Ham meeting regarding SST
18 extension."
19 Is that redacted name Hillary Clinton
20 e-mails?
21 A **I -- I have no recollection of what is**
22 **under this redaction.**

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1 Q And down in the next paragraph,
2 "Regarding the gap in the" -- blank --
3 "e-mails" -- blank -- "ascribed this to keyword
4 search done by Africom," and was offered -- "and
5 offered to put us in touch with people who ran the
6 search if we needed more detail. He noted there
7 was no gap in the sent mail items, only the Inbox
8 items."
9 Do you recall what that was referring to,
10 the gap?
11 A **I have no recollection of what is under**
12 **that redaction, no.**
13 Q And if you look, turn now on the first
14 page, it appears that this e-mail chain was
15 forwarded to Cheryl Mills. Sorry. One second.
16 Why would -- why would this information
17 be forwarded to Cheryl Mills?
18 MR. GARDNER: Objection. Lack of
19 foundation.
20 A **I can't really speculate as to why**
21 **somebody would decide to forward this to Cheryl**
22 **Mills.**

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1 Q What was her involvement in the Benghazi
2 congressional inquiries?
3 MR. GARDNER: Objection. Lack of
4 foundation.
5 A **I'm not sure I -- what do you -- what do**
6 **you mean, "what was her involvement"?**
7 Q To the best of your knowledge, how was
8 she involved in the congressional inquiries and
9 records that would -- were produced from those
10 requests?
11 MR. GARDNER: Objection. Form.
12 A **I mean, again, based on the face of this**
13 **e-mail, it looks like she was looped in to certain**
14 **requests. But I -- I can't purport to speak to**
15 **the extent of her involvement.**
16 Q Did you have a conversation with Cheryl
17 Mills regarding this topic?
18 MR. GARDNER: Objection. Form.
19 Also, I think we are getting a little bit
20 beyond the scope of the court permitted discovery.
21 I'll obviously give you a little bit of latitude,
22 but I think we're getting pretty close to

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1 exceeding that scope.
2 **A And could you clarify, please, what you**
3 **mean by "this topic"?**
4 **Do you mean the -- the Benghazi request**
5 **in this e-mail.**
6 Q Yes. I'm looking at the first e-mail on
7 the first page, or the top e-mail on the first
8 page. "CDM, probably best if Gene follows up with
9 you. He can provide insight from the calls he had
10 with DOD yesterday and today. Thanks."
11 Did you ever have a conversation with
12 Cheryl Mills regarding this or other congressional
13 inquiries?
14 MR. GARDNER: Objection. Form.
15 **A I mean, sitting here right now, I can't**
16 **remember any followup with Cheryl Mills from**
17 **what's referenced here.**
18 Q Did you work -- did you work closely with
19 Cheryl Mills and Brock Johnson?
20 MR. GARDNER: Objection. Form.
21 **A Did I work closely with them? In -- in**
22 **what respect? Can you clarify it, what you mean**

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1 **by "work closely with"?**
2 Q Did you often work with Cheryl Mills and
3 Brock Johnson?
4 MR. GARDNER: Are you asking now about
5 the Benghazi work?
6 MS. BURKE: No.
7 MR. GARDNER: Just ever?
8 MS. BURKE: Yes. Yes.
9 MR. GARDNER: Objection. Form.
10 **A Well, Brock Johnson at some point was**
11 **involved in the document-review effort for**
12 **congressional responses on Benghazi. So in that**
13 **respect I wouldn't say we worked closely, but I**
14 **had some interactions with him.**
15 **And Cheryl Mills I had many fewer**
16 **interactions with.**
17 Q Were you aware that -- were you aware
18 that Cheryl Mills was interested in the CREW
19 request in December 2014?
20 MR. GARDNER: Objection. Lack of
21 foundation. Also form.
22 **A I don't recall having been aware of that**

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1 **sitting here now, no.**
2 Q Did you have any communications with
3 Cheryl Mills regarding the CREW FOIA request?
4 **A Not that I can recall, no.**
5 MS. BURKE: I am going to ask you to mark
6 this last, Exhibit 8.
7 (Smilansky Deposition Exhibit 8 marked
8 for identification, retained by counsel.)
9 Q Have you ever seen this, what -- what has
10 been marked as Exhibit 8? Have you ever seen this
11 document before?
12 MR. GARDNER: And just to be clear, have
13 you had an opportunity to review the full
14 document?
15 THE WITNESS: No.
16 MR. GARDNER: Okay. Well, review it.
17 And to speed this along a little bit, if
18 you have specific questions about --
19 MS. BURKE: Yes. I apologize. I'm just
20 going to ask about a very specific paragraph on
21 Page 1.
22 **A Okay.**

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1 Q I should have ...
2 MR. GARDNER: That's okay.
3 Q If you draw your attention to the third
4 paragraph down on Page 1.
5 **A Okay.**
6 Q Have you seen this document before?
7 **A I don't recall ever having seen this**
8 **document before, no.**
9 Q Do you know what it is?
10 MR. GARDNER: Objection. Lack of
11 foundation.
12 Q I'm going to -- again, I'm drawing your
13 attention down to the third paragraph.
14 **A Okay.**
15 Q And it is -- the last sentence in that
16 paragraph. Around the same time blank received a
17 telephone call from blank attorney, Office of the
18 Legal Advisor who asked blank if there were any
19 Clinton-related e-mails in the blank dot PST file
20 that blank had from a previous FOIA request.
21 Do you know who is being referenced
22 there, the attorney from the Office of the Legal

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1 Advisor?
2 MR. GARDNER: Objection. Lack of
3 foundation.
4 **A I mean, as I mentioned, I haven't seen**
5 **this document before, and the name is redacted.**
6 **So -- so, no, I don't know who this is referring**
7 **to.**
8 Q Do you know what the Clinton-related
9 e-mails in the blank PST file is?
10 MR. GARDNER: Objection. Lack of
11 foundation.
12 **A I -- I don't know what this is -- what**
13 **this sentence -- what PST file this sentence is**
14 **referring to.**
15 Q Are you aware of any calls from the legal
16 advisor to Eric Stein asking about Clinton-related
17 PST files --
18 MR. GARDNER: Objection.
19 Q -- Clinton-related e-mails?
20 MR. GARDNER: Sorry.
21 Objection. Form.
22 **A I don't personally recall any, any such**

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1 **calls.**
2 Q Were there any discussions in your
3 office, in the Office of the Legal Advisor,
4 regarding Clinton-related e-mails in a PST file
5 from a previous FOIA request?
6 MR. GARDNER: You can answer that with a
7 yes or no. To the extent you know.
8 **A Sorry, could you please clarify what --**
9 **are you talking about a specific PST file or a**
10 **specific period of time? I mean, none -- none of**
11 **that rings any bells. But perhaps if you could be**
12 **a little more specific, I could -- it would -- it**
13 **might help jog my memory.**
14 **But none of -- the way that you described**
15 **it just now does not --**
16 Q Sure.
17 **A -- sound familiar.**
18 Q In or -- in or around August 2014 were
19 there any requests or calls made regarding
20 Clinton-related e-mails in a PST file from a
21 previous FOIA request?
22 MR. GARDNER: Just to be clear, Lauren,

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1 requests or calls to or from whom?
2 MS. BURKE: From -- I apologize.
3 MR. GARDNER: That's okay.
4 Q Were there -- well, strike that. I'm
5 going to start again here.
6 In or around August of 2014, were there
7 any discussions within your office regarding
8 Clinton-related e-mails in a PST file that -- from
9 a previous FOIA request?
10 **A Sitting here right now, I don't recall**
11 **any such discussions being -- having been a part**
12 **of any such discussions.**
13 Q I'm going to switch gears a little bit
14 and just sort of finish up with a couple of
15 questions, moving aside from the PST file here.
16 I'm going to draw your attention back to
17 the congressional -- the Benghazi congressional
18 inquiry that you referenced previously that
19 produced a small number of e-mails, Hillary
20 Clinton e-mails.
21 Were Clarence Finney and Jonathon Wasser
22 made aware of those -- of those documents?

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1 MR. GARDNER: Objection. Lack of
2 foundation.
3 **A I just want to again clarify that what I**
4 **had said previously was that there were numerous**
5 **congressional requests from numerous committees.**
6 **And I -- I can't recall that -- which one or ones**
7 **in particular had -- were at issue when the small**
8 **number of -- of Hillary Clinton e-mails surfaced.**
9 **I -- I don't personally recall right now**
10 **any conversations with Clarence Finney -- sorry.**
11 **Who was the second person you said?**
12 Q Jonathon Wasser.
13 **A Jonathon Wasser.**
14 **-- or Jonathon Wasser about those -- that**
15 **small number of e-mails with regard to the**
16 **congressional request. That's not ringing any**
17 **bells for me.**
18 Q Do you know who did the search for those
19 records?
20 MR. GARDNER: Objection. Form.
21 Which records are you now talking about?
22 MS. BURKE: The congressional inquiry

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1 regarding Benghazi.
2 MR. GARDNER: Same objection. Form.
3 **A Like I said, there were various requests**
4 **over a long period of time. That spanned my**
5 **entire tenure in that particular office, in the**
6 **Office of the Legal Advisor.**
7 **So I -- I can't purport to speak to every**
8 **search conducted for every set of documents. And**
9 **in fact, a large set of documents in response to**
10 **congressional requests relating to Benghazi had**
11 **been done before I joined the department and were**
12 **coming in and had already in fact been collected**
13 **when I became involved in the document-review**
14 **effort.**
15 **So I can't speak firsthand to how they**
16 **were collected.**
17 Q What was your role in the document-review
18 process?
19 MR. GARDNER: Objection. Form.
20 **A If you're referring to the -- the process**
21 **for reviewing documents relating to Benghazi that**
22 **had been collected for -- in response to**

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1 **congressional requests, I worked for the office**
2 **that advised the department on legal obligations**
3 **relating to congressional responses and**
4 **congressional document requests.**
5 **So my role was varied. Sometimes it**
6 **included reviewing specific documents. Sometimes**
7 **responding to specific questions. It's hard to**
8 **answer in a general way.**
9 Q Were you aware of any State Department or
10 State counsel meetings at the White House
11 regarding records or FOIA requests?
12 MR. GARDNER: Objection. Form.
13 **A Sorry, did you -- could you clarify. Did**
14 **you refer to State counsel?**
15 Q Or State Department -- State Department
16 or State Department counsel meetings.
17 **A Oh, I see.**
18 MR. GARDNER: Same objection.
19 **A Relating to -- could you -- could you**
20 **repeat that?**
21 Q Relating to records or FOIA requests.
22 MR. GARDNER: Same objection.

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1 **A Was I aware of any State Department**
2 **meetings with the White House regarding FOIA**
3 **requests.**
4 Q Yes.
5 MR. GARDNER: Actually, your question was
6 were you aware of any State Department or State
7 counsel meetings at the White House regarding
8 records or FOIA requests.
9 THE WITNESS: Oh, at the White House.
10 MR. GARDNER: I'm -- if you want to ask a
11 different question, that's fine. But to be clear,
12 that was the question that was pending.
13 **A I don't, sitting here right now, remember**
14 **any specific meetings. But, I mean, just as a**
15 **general matter, it wouldn't be unusual for the**
16 **State Department to talk to other agencies about**
17 **FOIA processing. But I don't -- I don't remember**
18 **anything specifically, no, at --**
19 Q You may have -- go ahead.
20 **A Sorry. I was just going to restate the**
21 **question. I don't remember anything specific at**
22 **the White House.**

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1 Q And I believe you did just answer this,
2 but that includes records retention.
3 Do you have any specific recollection of
4 meetings regarding records retention with the
5 White House?
6 **A Again, sitting here right now, I have no**
7 **recollection of such meetings.**
8 Q In August of 2014, were you aware that
9 Jamie Bair informed John Hackett and Clarence
10 Finney of the congressional documents that would
11 be released would generate some publicity?
12 MR. GARDNER: Objection. Lack of
13 foundation.
14 **A I -- sitting here right now, I have no**
15 **recollection of such a communication at that time,**
16 **no.**
17 Q Do you recall in August 2014 Jamie Bair
18 requesting John Hackett and Clarence Finney to
19 provide a briefing on Hillary Clinton e-mail?
20 MR. GARDNER: Objection. Lack of
21 foundation.
22 **A I -- again, I don't have any recollection**

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1 right now of any such communication.
2 Q In -- were you aware of a conversation or
3 discussion between Sheryl Walter and John Hackett
4 regarding -- strike that.
5 In 2013 were you present at a meeting
6 with Sheryl Walter and John Hackett where there
7 was a discussion of no more "no records
8 responsive" replies until questions about Hillary
9 Clinton's e-mail use on a BlackBerry were further
10 investigated?
11 MR. GARDNER: Objection. Form.
12 A I don't remember such a meeting, sitting
13 here right now.
14 MS. BURKE: If you just want to give me a
15 moment or two, and -- and then we ...
16 MR. GARDNER: You -- you want to take a
17 break, you mean, or you want to --
18 MS. BURKE: Yeah.
19 MR. GARDNER: -- on the record --
20 MS. BURKE: No.
21 MR. GARDNER: Which would you prefer?
22 MS. BURKE: Take a quick break.

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1 VIDEO SPECIALIST: We are going off the
2 record at 15:54.
3 (A recess was taken.)
4 VIDEO SPECIALIST: We are back on the
5 record at 16:03.
6 BY MS. BURKE:
7 Q Thank you, Mr. Smilansky, for your
8 patience and your cooperation today. I just have
9 a last few questions and potentially your trusty
10 counsel will have some followup, but you'll be
11 done with me.
12 So when the -- the small batch of records
13 that were brought -- that you brought to the
14 attention of Richard Visek and Paul Colborn, at
15 that time were there any efforts to determine what
16 the -- what Hillary's e-mail account was or how it
17 was used?
18 MR. GARDNER: Objection. Form.
19 A I think the premise of your question
20 assumes that there was knowledge of the e-mail
21 account. But I think as I -- I mentioned earlier,
22 I don't recall now having focused on where the

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1 e-mail came from; but, rather, on the contents of
2 the e-mail, or e-mails.
3 Q And in August of 2014, when you learned
4 of the larger volume of Hillary e-mails, was there
5 any discussion about its impact on pending FOIA
6 lawsuits?
7 MR. GARDNER: Objection. Calls for
8 information subject to privilege.
9 I instruct the witness not to answer.
10 Q Are you not answering at the instruction
11 of your client -- or --
12 MR. GARDNER: Counsel.
13 Q -- your counsel?
14 A So I will follow the advice of counsel.
15 MS. BURKE: And is that under
16 attorney-client or work product?
17 MR. GARDNER: Correct. It's under both.
18 Q Did you ever see former Secretary Hillary
19 Clinton using a BlackBerry?
20 A Firsthand?
21 Q Yes.
22 A Did I see her in real life using a

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1 BlackBerry? No. Not that I can recall.
2 Q I would say in fake life, but ...
3 MR. GARDNER: I could say in virtual
4 reality.
5 Q In any other portrayal of Hillary using a
6 BlackBerry?
7 MR. GARDNER: Objection. Form.
8 Can you rephrase that question?
9 Q Did you ever see Hillary Clinton using a
10 BlackBerry in a picture or an article, a magazine?
11 Was it ever shown to you?
12 MR. GARDNER: Objection. Form.
13 A I believe I mentioned earlier that I -- I
14 had at some point seen a photograph that was
15 widely circulated online of Secretary Clinton
16 using some kind of -- what appeared to be some
17 kind of mobile device. I don't know what brand it
18 was or ...
19 Q And did you have any thoughts on her use
20 of that BlackBerry, or mobile device?
21 MR. GARDNER: Objection. Form. Also,
22 objection to the extent that the answer to that

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1 question would call for the disclosure of
2 information subject to privilege.
3 To the extent that you can answer that
4 question without disclosing privileged
5 information, you may do so. Otherwise I instruct
6 you not to answer.
7 **A I don't recall having any particular**
8 **thoughts about that image.**
9 Q Did anyone raise this issue with you?
10 MR. GARDNER: Objection. Form.
11 And just to be clear, Lauren, the issue
12 being the photo of Hillary Clinton using a
13 BlackBerry? I just -- if you could rephrase the
14 question, let's do it that way.
15 Q Did anyone ever raise Hillary Clinton's
16 use of a BlackBerry as an issue with you?
17 MR. GARDNER: You can answer that
18 question with a yes or no.
19 **A No, not that I can recall.**
20 MS. BURKE: I think that's all I have.
21 MR. GARDNER: We have no questions
22 either. I believe we already reserved the right


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1 to read and sign.
2 VIDEO SPECIALIST: If there are no
3 further questions, then this ends the deposition
4 and we are going off the record at 16:08.
5 COURT REPORTER: Mr. Pezzi, same order?
6 MR. PEZZI: Yes, please.
7 (Off the record at 4:08 p.m.)
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1 ACKNOWLEDGMENT OF DEPONENT
2 I, GENE SMILANSKY, do hereby acknowledge
3 that I have read and examined the foregoing
4 testimony, and the same is a true, correct and
5 complete transcription of the testimony given by
6 me, and any corrections appear on the attached
7 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 11th day of June,
14 2019.
15
16 My commission expires:
17 September 14, 2023
18 
19 _____
20 NOTARY PUBLIC IN AND FOR THE
21 DISTRICT OF COLUMBIA
22

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