

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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JUDICIAL WATCH, INC., et al.,	)	
Plaintiffs,	)	Civil Action
vs.	)	No. 14-CV-1242
	)	
U.S. DEPARTMENT OF STATE, et al.,	)	December 19, 2019
Defendants.	)	10:15 a.m.
	)	Washington, D.C.
	)	

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**TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE ROYCE C. LAMBERTH,  
UNITED STATES DISTRICT COURT SENIOR JUDGE**

**APPEARANCES:**

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**APPEARANCES (continued)**

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ALSO PRESENT:

Tom Fitton, Judicial Watch

Elizabeth Shapiro, DOJ, Deputy Director  
Joshua Gardner, Special Counsel  
Michael Lieberman, Department of State  
Elizabeth Grosso, Department of State

Court Reporter:

Elizabeth Saint-Loth, RPR, FCRR  
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U.S. Courthouse  
Washington, D.C. 20001

Proceedings reported by machine shorthand,  
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**P R O C E E D I N G S**

THE DEPUTY: Your Honor, we are on the record for Civil Case 14-1242, Judicial Watch, Incorporated, et al. versus U.S. Department of State, et al.

Counsel, please approach the lectern and identify yourselves for the record.

MS. COLCA: Good morning, Your Honor. Ramona Colca for plaintiff Judicial Watch. With me at counsel table is Lauren Burke. Also representing Judicial Watch is Tom Fitton, the client representative.

THE COURT: Okay.

MR. PEZZI: Good morning, Your Honor. Stephen Pezzi from the Department of Justice on behalf of defendant Department of State.

With me at counsel's table this morning from the Department of Justice are Deputy Director Elizabeth Shapiro; Special Counsel Joshua Gardner; Senior Trial Counsel Robert Prince; and from the Department of State attorney advisors Michael Lieberman and Elizabeth Grosso.

THE COURT: I'm sorry. I missed the last name.

MR. PEZZI: Elizabeth Grosso.

THE COURT: Okay. Thank you.

MR. KENDALL: Good morning, Your Honor. David Kendall representing intervenor Hillary Clinton. With me is my colleague Steve Wohlgemuth.

1 THE COURT: Thank you.

2 MS. WILKINSON: Good morning, Your Honor.

3 Beth Wilkinson on behalf of intervenor Cheryl Mills. And  
4 with me today is my colleague Hal Brewster.

5 THE COURT: Nice to have you.

6 Okay. Let's start with Judicial Watch first.

7 MS. COLCA: Thank you, Your Honor.

8 I will say that the parties have not agreed on  
9 almost everything in this case, particularly with respect to  
10 the discovery. But we do -- we can, I think, agree on one  
11 thing, and that's that we want to bring this case towards  
12 resolution; and that is why the additional discovery that we  
13 have requested is very limited.

14 We're asking for two State Department officials,  
15 one who is no longer there. They are both from the same  
16 office, the S/ES-IRM office, that dealt with the technical  
17 support for Secretary Clinton. They were both -- well, one  
18 was there during Secretary Clinton's tenure; and the other  
19 took over the office after Secretary Clinton as the  
20 director, and his name is Brett Gittleson.

21 It has been -- the State Department in its filing  
22 complains and argues it has been too long and too much  
23 discovery, and it has been five and a half years. However,  
24 you must remember the reason we're here; it is because the  
25 State Department was not truthful from the beginning about

1 Secretary Clinton's email use.

2 After taking the depositions in the last round of  
3 discovery, it is abundantly clear that everyone we have  
4 deposed from the State Department knew about Secretary  
5 Clinton's email use by the time this lawsuit was filed. The  
6 individuals who didn't know were plaintiffs' attorneys, this  
7 Court, and the public. And the State Department, from the  
8 beginning, has been trying to hide Secretary Clinton's email  
9 address and email use from the public.

10 In the last discovery -- and I just want to  
11 address and make this point just to reiterate why we're here  
12 and why this has taken so long. At the last hearing in  
13 August, the Court permitted our request for an unredacted  
14 version of a fifth email that the State Department had  
15 located in September of 2014 that was referenced in the  
16 State Department's OIG report from January of 2016.

17 Even after the Court's order, we actually had to  
18 have back-and-forth. And only until we threatened to come  
19 back to the Court and file a motion to compel did the State  
20 Department finally produce the unredacted version. And upon  
21 our review, it is -- on the face of the document, Your  
22 Honor, the entire -- the State Department's made the  
23 argument, well, its talking points about a call between  
24 Secretary Clinton and a U.S. senator whose first name is  
25 "John" or appears to be "John." The entire email after that

1 first sentence is about the talking points that were  
2 provided to Susan Rice. That email contains Secretary  
3 Clinton's email address. And that's -- it is incredulous to  
4 believe that a State Department FOIA official reviewing that  
5 email would not -- would have, in good faith, determined  
6 that that email was not responsive in this case. Again,  
7 this case is about communications regarding the talking  
8 points that were provided to Susan Rice. And so it's that  
9 gamesmanship that has brought us here today.

10 And I have to raise this again to the Court, it  
11 appears -- every single time we are in front of the Court,  
12 there is another new piece of information that has come to  
13 light that we didn't know before.

14 In this case, at this point, just in the last  
15 several days and several weeks, the State Department has  
16 revealed that the FBI just, I believe last month, produced  
17 additional emails that it had in its investigative file of  
18 Secretary Clinton to the State Department that the State  
19 Department did not previously have. As of this week, I  
20 believe they've narrowed it to 30 documents of emails that  
21 were not duplicative from before.

22 As part of the meet-and-confer process for here  
23 today, we had a conference call with the State Department's  
24 attorneys and we requested information -- we understand that  
25 the State Department has searched those emails and said that

1       it has found that none of them are responsive. However,  
2       information as to where did those emails come from; how were  
3       they found; when did the FBI find them -- we are still  
4       looking for all the places where Secretary Clinton's emails  
5       reside. That's important relevant information. And as of  
6       today, the State Department has refused to provide that  
7       information to Judicial Watch. So this is just another  
8       piece of -- example of new information coming to light.

9               But even that being said, we have narrowed the  
10       additional discovery that we're seeking to the two State  
11       Department officials. The reason Brett Gittleson is  
12       important -- he's the director of S/ES-IRM.

13              The defendant argues that the reason we shouldn't  
14       be able to depose Mr. Gittleson is because there is an email  
15       communication that this Court has determined to be protected  
16       under attorney-client privilege. However, that doesn't  
17       shield Judicial Watch from deposing and asking Mr. Gittleson  
18       what he knew about Secretary Clinton's email use as the  
19       director of S/ES-IRM, and that's what we intend to do.

20              We are not asking him questions -- and we don't  
21       intend to ask him questions: What were your conversations  
22       with the attorneys in preparing for anticipated litigation?  
23       But rather: What are the facts, and when did you know them?  
24       That's what this discovery is about.

25              THE COURT: It doesn't matter what he said to the

1 lawyer. What he knew is what you would be asking.

2 MS. COLCA: I'm sorry?

3 THE COURT: It doesn't matter what he said to the  
4 lawyer. What he knew is what you could ask and would ask.

5 MS. COLCA: Right. Correct. Correct.

6 And also with respect to --

7 THE COURT: That was all a red herring in terms of  
8 their memo.

9 MS. COLCA: Yes. And with respect --

10 THE COURT: All right. Part of that was as to  
11 the -- what was her name?

12 MS. COLCA: Yvette Jacks.

13 THE COURT: Right.

14 MS. COLCA: Yes. What was Your Honor's question  
15 about it?

16 THE COURT: They say it's cumulative.

17 MS. COLCA: Oh. Yvette Jacks -- and this is the  
18 reason it's not cumulative, and this is what's important --  
19 again, the State Department says: We have already done  
20 discovery. We had the opportunity and we deposed a 30(b)(6)  
21 witness for the State Department.

22 Judicial Watch is more than happy to provide a  
23 complete copy of the transcript of that deposition. That  
24 witness that the State Department -- the witness the State  
25 Department chose was an IPS for a total of six months of her



1 decades of experience at the State Department. She was the  
2 deputy director on detail of IPS at the time we deposed her  
3 in June.

4 Ms. Pitterle who testified came in with six  
5 documents that were outlines of bullet points that were  
6 prepared and created by her attorneys who represented her at  
7 the deposition. And she was relying -- and that's what she  
8 was using in answering the questions.

9 As part of her preparation, Ms. Pitterle never  
10 spoke with her superior Eric Stein whose deposition we  
11 requested who was the director of IPS and has been within  
12 IPS or within the Global Information Services overseeing IPS  
13 since I believe 2007; and he has the knowledge. Had she  
14 spoken with him, she would have learned information that we  
15 learned after we deposed Mr. Stein; and that's significant.

16 One of the pieces of information we learned is  
17 that, in either July or August of 2014, the attorney  
18 representing the State Department in this case, the agency  
19 counsel, Jamie Bair had contacted -- had called Mr. Stein  
20 and asked him to run a search of Phillipe Reines' PST file  
21 for the email address of Secretary Clinton. And not only  
22 just one email address, but two email addresses; it was  
23 multiple email addresses.

24 It is unfathomable to believe that at that point  
25 State Department can argue that its attorney did not know

1       about Secretary Clinton's email use when he had contacted  
2       Eric Stein to ask to search whether her email address  
3       existed in Mr. Reines' PST file; and that's information that  
4       the 30(b)(6) did not provide. She never spoke with  
5       Mr. Stein even though he was available; he was in the  
6       office. And every single time that she came back after the  
7       breaks and every time there was either additional  
8       information to supplement the record or to correct the  
9       record -- after the follow-up questions of: How did you  
10      obtain this information, it was obtained from her attorneys.  
11      She never went back and picked up the phone to call the  
12      actual State Department officials with knowledge about that  
13      information. So while I appreciate that we did take a  
14      30(b)(6) deposition, it was not extremely helpful in this  
15      case.

16               Going back to Ms. Jacks. It isn't cumulative  
17      because we have Tasha Thian who we were able to depose. She  
18      was the agency's records officer. We deposed her in  
19      September. Ms. Thian and Mr. Finney, who is the director of  
20      S/ES, the correspondence office for Secretary Clinton's  
21      office -- both of them have testified that there were  
22      conversations with S/ES-IRM officials about asking: Does  
23      Secretary Clinton have an email account? Mr. Finney did not  
24      recall. He wouldn't identify anybody by name from the  
25      office. In fact, he didn't recall a lot of things; but he

1 didn't recall anybody from S/ES-IRM's office as to who he  
2 spoke with. Ms. Thian, however, did identify Ms. Jacks.

3 And upon another deposition that we were able to  
4 take from one of the officials who was named in the FBI 302  
5 notes from Mr. Pagliano's interview, we've learned that  
6 Ms. Jacks was the deputy director under Mr. Bentel. She is  
7 the one that was responsible -- the way that it was divided  
8 during that time frame, it was either by international  
9 travel or domestic; and she had the domestic subject area  
10 for the office. And she was also involved in helping with  
11 the troubleshooting of Secretary Clinton's server.

12 So what she knew -- what she knew about Secretary  
13 Clinton's email use but, also, what she told Ms. Thian, what  
14 she told Mr. Finney is extremely important in the discovery  
15 of this case; and it's not trivial and it is not cumulative.  
16 So those are the two State Department officials.

17 Otherwise, I will keep going as to the other  
18 ones --

19 THE COURT: All right. Tell me about Combetta.

20 Did you have any communication with his attorney  
21 about any reason to think he is not still going to take the  
22 Fifth? I mean, if he took it with Congress why wouldn't he  
23 do it now?

24 MS. COLCA: I don't know, Your Honor. We have not  
25 had any -- we have not reached out to Mr. Combetta or his

1 attorneys just because we didn't want to until we had a  
2 directive from the Court.

3 THE COURT: Why don't you contact his attorney.  
4 If he is still going to take the Fifth, I don't see any  
5 reason to get into the whole issue. I mean, if he took the  
6 Fifth with Congress, I don't -- he's not going to get  
7 immunity; so there is no real point in going through an  
8 exercise I don't think.

9 Who is his attorney, do you know?

10 MS. COLCA: The attorney that we know -- that I  
11 have seen -- but this was from, I think, a couple of years  
12 ago -- is out of Colorado, out of Denver, Colorado.

13 THE COURT: Okay. See if he still has the same  
14 attorney, if he's representing him.

15 MS. COLCA: The only other note I would --

16 THE COURT: We can go through the motions, but  
17 it's a waste of time if he's going to take the Fifth. I am  
18 going to honor it, obviously, so...

19 MS. COLCA: Thank you. It's well taken.

20 The only note I would just make with respect to  
21 Mr. Combetta and if he does take the Fifth -- we don't have  
22 any information with respect to the type of immunity  
23 Mr. Combetta received. So I think that would be important.

24 THE COURT: Well, he did have partial immunity?

25 MS. COLCA: That's not clear, as to the type of

1 immunity that he received. There's just been public reports  
2 that he received some immunity.

3 THE COURT: From who? Mueller? It would be from  
4 the AG?

5 MS. COLCA: That -- I believe FBI.

6 THE COURT: Well, they can't give it.

7 MS. COLCA: I don't know. It would be --

8 THE COURT: I will see if Justice knows.

9 MS. COLCA: Yes. But that's, I guess, my point.  
10 We don't have details with respect to the type of immunity  
11 he received.

12 THE COURT: I didn't realize he had some immunity.

13 MS. COLCA: With respect to the Google subpoena --

14 THE COURT: Well, his attorney would probably  
15 share that, if he wants to head off attorney's fees for  
16 having to file a motion to quash the subpoena or whatever.  
17 They probably would rather work it out if they could.

18 MS. COLCA: Okay. Right. Fair, Your Honor.

19 There are the two deposition requests that are  
20 still pending, and that is Secretary Clinton's --

21 THE COURT: I understand.

22 MS. COLCA: -- and Ms. Mills.

23 The only other thing I would just touch on with  
24 respect to Secretary Clinton -- in the last hearing, Your  
25 Honor, you had granted our request that she provide a copy

1 of the after-action memo. Judicial Watch's request was very  
2 specific, that we only asked for the facts contained in  
3 there with respect to the review and the search of her  
4 emails; no attorney opinions or legal conclusions.

5 Secretary Clinton has responded that the entire  
6 after-action memo is protected under attorney work product.  
7 We have had a confer call with her attorney, Mr. Kendall,  
8 saying it's not segregable.

9 I don't believe -- I haven't seen Secretary  
10 Clinton moving for a protective order in this case after the  
11 Court issued its order to produce it; but we are happy to  
12 brief it if Your Honor wants to proceed that way. But, at a  
13 minimum, Judicial Watch would request that there would be an  
14 in camera review of the memo to determine if there are any  
15 facts that can be disclosed pursuant to Judicial Watch's  
16 request.

17 THE COURT: Okay.

18 MS. COLCA: Then the only other discovery item  
19 that I just haven't touched on is the subpoena to Google;  
20 and that's to determine if any records --

21 THE COURT: Tell me more about that.

22 Well, maybe you can answer first: In the  
23 discovery you have had, did the FBI say that they have  
24 reconstructed the 30,000 deleted emails, and they turned  
25 over what they reconstructed to State? What is the FBI's

1 version of that?

2 MS. COLCA: In the discovery in this case?

3 THE COURT: Yes.

4 MS. COLCA: I don't think we have any information  
5 about that.

6 THE COURT: Well, did y'all ask the FBI when y'all  
7 did the depositions, what happened to the reconstructed  
8 emails?

9 MS. COLCA: We were only permitted to serve  
10 interrogatories, I believe, on Mr. Priestap --

11 THE COURT: Okay.

12 MS. COLCA: -- who conducted the investigation.

13 THE COURT: Right.

14 MS. COLCA: I will have to go back and check  
15 because it's been a few months --

16 THE COURT: Okay. Do you know what their version  
17 of that is?

18 MS. COLCA: Well, I don't know. It begs the  
19 question of where these other 30 emails just came from that  
20 were produced a month ago. So that is --

21 THE COURT: The 30?

22 MS. COLCA: The 30 emails that we just found out  
23 about.

24 THE COURT: Right.

25 MS. COLCA: So, I mean, five and a half years

1 later emails are still trickling in.

2 THE COURT: Right.

3 MS. COLCA: And so since we do have the discovery,  
4 that is why -- to cover all bases -- we would ask to be  
5 able -- to be permitted to serve a subpoena on Google. And,  
6 specifically, not -- it would just be specific with respect  
7 to any records relevant to Secretary Clinton's emails from  
8 that Gmail account.

9 THE COURT: Now, what -- how do you get the idea  
10 that Google has something?

11 MS. COLCA: I'm sorry?

12 THE COURT: How do you get the idea that Google  
13 has something?

14 MS. COLCA: So Google was the provider of Carter  
15 Heavy Industries' email account, and that's the one that  
16 Paul Combetta had created --

17 THE COURT: That's what Combetta says he sent them  
18 to?

19 MS. COLCA: Correct, that's been the public  
20 reports. And that was in Senator Grassley's material that  
21 he made public in August just before the hearing that we  
22 had.

23 THE COURT: Right.

24 All right. And then you have some interrogatories  
25 about other cases.



1 MS. COLCA: Yes.

2 THE COURT: How would that -- why wouldn't that be  
3 available on just a review of our court's dockets anyway?

4 MS. COLCA: Well, it wouldn't be a review of  
5 dockets, but it would be a review of the lawsuits and  
6 that --

7 THE COURT: I mean, but you could pull those up on  
8 our court's website, any cases against State for FOIA.

9 MS. COLCA: But we wouldn't know with respect to  
10 whether there were any attempts to settle the cases. And  
11 the reason we brought --

12 THE COURT: Any what?

13 MS. COLCA: Attempts by the State Department to  
14 settle those cases before it became public.

15 THE COURT: But, as they say, that would be  
16 virtually impossible for them to figure out --

17 MS. COLCA: Well, one easy way would be --

18 THE COURT: I mean, does a phone call mean an  
19 "attempt"?

20 MS. COLCA: No. But one way would be what  
21 happened in this case, which is: Here are all of the  
22 documents. Here is a draft search declaration or a draft  
23 Vaughn. And we know in FOIA, when you're providing a draft  
24 Vaughn, that's moving in towards the process of: We'd like  
25 to settle the case.

1           We have done -- basically, that tells the  
2           requester -- the FOIA requester by the agency -- we have  
3           done everything we're supposed to do and that we're  
4           obligated to do under FOIA; so that really goes to the core.

5           I know that they have addressed that maybe,  
6           perhaps, the way it is written it's a little bit vague.  
7           We're happy to rephrase it and come up with something that  
8           is more direct if the Court believes that it should be  
9           reworded in some way.

10           But the issue is: The State Department's  
11           attorneys at the last hearing -- their argument was: You  
12           know, Judge, State Department didn't do anything nefarious  
13           here. It didn't try to lie to Judicial Watch or to the  
14           Court when it provided a draft Vaughn and when it attempted  
15           to settle this case; it was just a matter of ordinary  
16           business. Well, that's the reason that these  
17           interrogatories -- I mean, if they're making the argument,  
18           then we're entitled to ask for the evidence to see whether  
19           it supports their argument or it doesn't; and so that's the  
20           reason that we have asked for that information.

21           THE COURT: Okay. Thank you.

22           MS. COLCA: Sure.

23           MR. PEZZI: Good morning, Your Honor.

24           THE COURT: Good morning.

25           MR. PEZZI: Stephen Pezzi from the Department of

1 Justice. There are a lot of factual points that I would, in  
2 a perfect world, like to correct from my friend on the other  
3 side.

4 THE COURT: Okay.

5 MR. PEZZI: I think the most significant one is  
6 the suggestion that every single deponent in this case  
7 knew -- either as of or before Judicial Watch's filing of  
8 this lawsuit -- about Secretary Clinton's email practices.  
9 That is simply and demonstrably untrue.

10 Off the top of my head, as I am sitting here, at  
11 least Clarence Finney, Jonathon Wasser, Monica Tillery,  
12 Patrick Scholl, Sheryl Walter -- there are many others, I am  
13 sure, who testified that they learned of these events well  
14 after the fact, including many of them from the media  
15 itself. So I just wanted to get that factual correction out  
16 of the way because it's important to the government.

17 Most of what Ms. Colca had to say was not even  
18 really tied to the specific discovery that Judicial Watch is  
19 requesting at this point. But I also do think it important  
20 to be clear, with respect to the fifth document that  
21 Ms. Colca was describing, she said that somehow it  
22 reflects -- in her view, it was clearly responsive; it  
23 should have been produced. That should not be news to Your  
24 Honor.

25 In the summer of 2015 there was a declaration

1 filed in this case that described the precise error that  
2 Ms. Colca is talking about. We agreed then and we agree now  
3 that the document is responsive, and that is why we produced  
4 it once the error was noticed and corrected.

5 I don't know what else to say about that other  
6 than: The full story there is not only described in our  
7 declaration, it's described in the inspector general's  
8 report. They now have an unredacted version of the document  
9 and they can see what we saw when we provided that  
10 declaration to Your Honor. It's responsive. That's why we  
11 fixed the mistake in 2015 and produced a less redacted  
12 version at that time.

13 With respect to the interrogatories, I think Your  
14 Honor is absolutely right; that although there are certainly  
15 some ambiguities in what they're asking for, I think the  
16 core of what they sound like they want would be available  
17 from a review of the docket in this courthouse. The sort of  
18 information she's talking about, this case as an example,  
19 where the parties discuss the possibility of exchanging a  
20 Vaughn declaration -- this case is a good example. All of  
21 that information is reflected on the public docket and  
22 status reports that the parties have filed.

23 I would also point out that Judicial Watch was  
24 opposing counsel in at least a plurality, perhaps even a  
25 majority, of the relevant cases. So large chunks of that

1 information are equally available to Judicial Watch even if  
2 we agreed -- which we don't, of course -- that there is a  
3 relevance to that material here.

4 With respect to the 30(b)(6) deposition, again, I  
5 don't think that's really relevant to any of the topics that  
6 they're seeking discovery on now. I just want to be clear.  
7 I mean, we had an obligation to reasonably prepare our  
8 designee; we've met that obligation. And Judicial Watch --  
9 I think that took place June 15th or June 19th, that was  
10 quite some time ago. So if they thought there was a problem  
11 with the 30(b)(6) deposition, the time has long since passed  
12 for them to raise that. So I just want to clarify the  
13 record on that.

14 With respect to the FBI's investigation, Your  
15 Honor asked a question or two. This, again, is reflected in  
16 a variety of inspector general reports. But the FBI moved  
17 heaven and earth to reconstruct and locate any email they  
18 could possibly find from any source that was connected to  
19 Secretary Clinton. They used compulsory process, grand jury  
20 subpoenas.

21 With respect to Mr. Combetta and Google, in  
22 particular, they used -- they got an order from a district  
23 judge in Alexandria under the Stored Communications Act to  
24 get emails from this particular Gmail account that Judicial  
25 Watch is now asking about.

1           Our understanding, and the way the FBI has  
2       described it is, at the end of their criminal investigation,  
3       they compiled all of the emails that they thought might be  
4       unique federal records; they provided them to the State  
5       Department. Those were all processed and released publicly,  
6       primarily in a case in front of Judge Boasberg, also with  
7       Judicial Watch, I should add. So --

8           THE COURT: So those that they did retrieve they  
9       turned over to State?

10          MR. PEZZI: Yes. That is my understanding. And  
11       to be clear --

12          THE COURT: So why did these 30 suddenly appear  
13       later?

14          MR. PEZZI: So it's a fair question, Your Honor.

15                The reference to 30 new documents, that is a  
16       status report that I filed a few weeks ago in the case in  
17       front of Judge Boasberg. Actually, Judicial Watch and  
18       Ms. Burke are counsel on the other side.

19          THE COURT: Right.

20          MR. PEZZI: So as part of the routine sort of  
21       consultation process, as the FBI is responding to FOIA  
22       requests that it receives, it is constantly sending  
23       documents to other government agencies, including the State  
24       Department, for consultation and referral.

25                And in this instance, there were a small number --

1 I think fewer than 30 is the number of documents that were  
2 identified as potentially responsive to the FOIA request in  
3 that case that were unique and had not yet been processed.  
4 They have already been reviewed for purposes of this case.  
5 And we determined, and we told counsel for Judicial Watch --  
6 this is on the record in one of the depositions -- that none  
7 of the documents at issue are responsive to the FOIA request  
8 at issue in this case. So I don't think there is any  
9 relevance to any of the proceedings before Your Honor.

10 With respect to the discovery that they --

11 THE COURT: So how does that impact whether or not  
12 they had -- these were new documents that they had not  
13 previously forwarded? I don't really understand.

14 MR. PEZZI: It's a fair point, Your Honor.

15 It's a bit complicated in part because the FBI got  
16 documents from a large number of sources inside and outside  
17 the government. One of the largest sources was from the  
18 State Department. So most of the emails that were provided  
19 from the State Department to the -- excuse me, vice versa --  
20 when the FBI turned over documents at the end of its  
21 investigation, large chunks of those are duplicates that the  
22 State Department already has, for example. So it's a bit of  
23 a process to figure out the precise history of each  
24 particular document. There have been filings in the case in  
25 front of Judge Boasberg about that, and we're working on it

1 still.

2 But, again, I think the relevant point for Your  
3 Honor is that they have already been reviewed. None of them  
4 are responsive to the FOIA request in this case. So I don't  
5 think they have anything to do with the issues before Your  
6 Honor.

7 THE COURT: It doesn't impeach what you first told  
8 me, that all of those that the FBI retrieved were turned  
9 over previously?

10 MR. PEZZI: I certainly don't think it materially  
11 impeaches anything about the FBI's exhaustive investigation  
12 and the work that they have done.

13 To be clear, I mean, we're still working to  
14 process those records and get the full story. And again,  
15 Ms. Burke, as counsel of record for Judicial Watch on the  
16 other side -- I am sure if she has any concerns about what  
17 is learned there she won't hesitate to raise it to Your  
18 Honor. But, again, since none of them are responsive to the  
19 requests in this case I don't think it matters.

20 The FBI, as Your Honor is familiar, did conduct a  
21 very exhaustive investigation. They did find a significant  
22 number of emails that had not been previously public; and  
23 those were processed through the normal FOIA process  
24 primarily in that case in front of Judge Boasberg. They are  
25 all available on the Internet and to Judicial Watch now and



1 have been for quite some time.

2 To the extent there is any small delta, like these  
3 30 additional documents, we have already committed to Judge  
4 Boasberg that unless there are additional referrals or  
5 consultations required, the State Department intends to have  
6 those released publicly no later than January 8th. So,  
7 again, I don't think that casts any doubt on the bigger  
8 picture of the FBI's investigation.

9 THE COURT: Because they have already been  
10 reviewed and they have no relevance to this case?

11 MR. PEZZI: To this case.

12 THE COURT: But they -- some of them may be  
13 publicly releasable in other --

14 MR. PEZZI: That's right.

15 In fact, in Judge Boasberg's case, the FOIA  
16 request is literally for every single email to or from  
17 Secretary Clinton during her time as Secretary of State and  
18 so the response of this criteria is much broader --

19 THE COURT: Right.

20 MR. PEZZI: -- and a significant chunk of them  
21 will more likely be responsive to that request.

22 THE COURT: Right.

23 MR. PEZZI: With respect to the discovery that  
24 Judicial Watch has --

25 THE COURT: I thought his case was over. So I

1 take it -- how did that come about in his case?

2 MR. PEZZI: So the case isn't over.

3 We had thought that all of the documents had been  
4 produced, so we were in the process -- and Ms. Burke and I  
5 are still in the process actually -- of trying to narrow the  
6 universe of documents that Judicial Watch may ultimately  
7 seek to challenge in that case. Those negotiations are  
8 ongoing.

9 In fact, we filed a status report yesterday. And  
10 then this small number of additional documents the State  
11 Department intends to complete processing by January 8th,  
12 again, absent the potential need for referrals to other  
13 agencies.

14 THE COURT: All right. Okay.

15 MR. PEZZI: With respect to the depositions  
16 requested by Judicial Watch --

17 THE COURT: Okay.

18 MR. PEZZI: -- setting aside all of our threshold  
19 arguments that Your Honor is familiar with about discovery  
20 generally -- I mean, so we're now at a point where all of  
21 the requested depositions are various IT officials, current  
22 and former, from the State Department and, obviously,  
23 Mr. Combetta who never worked for the State Department. I  
24 do think they're cumulative of existing depositions that  
25 have taken place.

1           In discovery, you never get to depose every single  
2       employee of the company or agency. There have been --  
3       there's already been State Department IT officials who were  
4       deposed in this case who have acknowledged at least some  
5       awareness of the Secretary's email practices dating back  
6       several years.

7           So I guess I have a hard time saying: Even  
8       accepting that that information is relevant -- and as Your  
9       Honor knows, that's not the government's view -- but even if  
10      it is relevant, as Judicial Watch argues, I am not sure why  
11      knowing that also Yvette Jacks knew or didn't know -- and to  
12      be clear, I don't know what she knew or didn't know.

13          But if Yvette Jacks knew something and Brett  
14      Gittleson didn't know something -- or however the facts turn  
15      out to be, there are already officials in S/ES-IRM, the  
16      relevant office, who have been deposed in this case and who  
17      are described in inspector general reports as having had at  
18      least some knowledge. So whatever significance that fact  
19      holds, it is already in the record and for the parties and  
20      the Court to decide at a later date.

21          Unless Your Honor has any further questions, I  
22      think our position is presented in the papers, both in the  
23      last status report and in this one.

24          THE COURT: What is the -- if I agree with your  
25      position, what is it you're seeing at the end of this road

1 in terms of what is going to happen? You are going to --  
2 you are seeking to file a motion for what?

3 MR. PEZZI: It's a good question, Your Honor.

4 I think -- I mean, in the first instance, the  
5 simplest answer is I think the parties should have an  
6 opportunity to meet and confer to discuss that topic.

7 THE COURT: No. I understand.

8 MR. PEZZI: During that meet and confer, our  
9 proposal will be that the government files a motion for  
10 summary judgment in which we defend -- assuming they  
11 dispute --

12 THE COURT: Saying you have done an adequate  
13 search?

14 MR. PEZZI: Assuming they dispute the adequacy of  
15 the search, we will argue in support by a declaration that  
16 we did an adequate search. That we produced --

17 THE COURT: Assisted by the FBI and with what they  
18 have now turned over --

19 MR. PEZZI: I mean -- that's right.

20 I mean, the process by which the FBI turned over  
21 records of the State Department, as appeared in FOIA search  
22 declarations in many other cases to my knowledge. And to  
23 the extent it's relevant to the search here -- that appear  
24 here, they may disagree that we have conducted an adequate  
25 search, and Your Honor can decide. And if Your Honor thinks

1 additional searches are --

2 THE COURT: So that will be the first step, the  
3 adequacy of the search?

4 MR. PEZZI: I think that will be one of the  
5 questions, assuming they dispute it.

6 Also, I mean, we have produced -- I think it gets  
7 lost in the shuffle of the history of this case; but we did  
8 produce some relatively small number of documents.

9 THE COURT: Right.

10 MR. PEZZI: There are still some redactions on  
11 those documents. Judicial Watch --

12 THE COURT: Right. So we'll have a Vaughn as to  
13 those redactions?

14 MR. PEZZI: That's right. They have a right to  
15 challenge those redactions, and Your Honor can decide  
16 whether they're appropriate or not. If they are, summary  
17 judgment will be appropriate. If not, we can release more  
18 documents or even conduct additional searches as  
19 appropriate.

20 And, you know, in opposition to our motion for  
21 summary judgment, of course -- to the extent Judicial Watch  
22 thinks any of the material they have uncovered in discovery  
23 is relevant, they can make that a part of their opposition  
24 or even a cross-motion for summary judgment. We might have  
25 a dispute at that point as to what is relevant and what's

1 not; but that's something that Your Honor can decide in the  
2 normal course.

3 THE COURT: And you are assuming they're going to  
4 raise the good faith to those issues in their cross motion?  
5 There won't be a new motion?

6 MR. PEZZI: To the extent the government's good  
7 faith is relevant to any of those issues -- and, obviously,  
8 that's one of the sort of threshold questions we focused  
9 more on our status report the last time around --

10 THE COURT: Right.

11 MR. PEZZI: But to the extent that's relevant, I  
12 would think it would be on Judicial Watch to articulate what  
13 they --

14 THE COURT: To raise that in their cross motion?

15 MR. PEZZI: Right. I mean, they have never,  
16 frankly, really articulated exactly what their theory of  
17 "bad faith" is. And if they think that the government acted  
18 in bad faith and if they think that that bad faith is  
19 relevant to an issue that Your Honor has to decide, I think  
20 it's up to them to put it in a opposition, in a cross  
21 motion, and of course for the Court to decide.

22 THE COURT: Right. And all of that, y'all would  
23 talk about at a meet and confer and hopefully have a  
24 proposed schedule is your notion?

25 MR. PEZZI: Yes. I mean, it's not something that

1 we have really had an opportunity to discuss, as all of the  
2 meet and confers thus far have been about Judicial Watch's  
3 desire for additional discovery.

4 THE COURT: Right.

5 MR. PEZZI: We have generally opposed any  
6 additional discovery. So that is our proposal, and that is  
7 what we think is the appropriate course at this point.

8 THE COURT: All right. Thank you.

9 MR. PEZZI: Thank you.

10 THE COURT: Mr. Kendall, Ms. Wilkinson, if y'all  
11 want to say anything additional -- I am not ruling today,  
12 but I can hear anything if y'all want to say anything  
13 additional about the two depositions.

14 MR. KENDALL: Your Honor, may I take you up very  
15 briefly on that kind offer.

16 In the status report that Judicial Watch has just  
17 filed, I think there is a very interesting revelation. We  
18 have them quoting, in their six-page status report, some  
19 language from a deposition by an unnamed redacted identity  
20 S/ES-IRM official.

21 This is what that official testified: But in 2009  
22 it was normal for the Secretary to keep the private email  
23 address. It was -- as it conveyed to us, it was the email  
24 that she used during the campaign; she was just comfortable.  
25 It already worked. She didn't want to change it. We said

1       okay, and we supported it. Then there is a description of  
2       how they helped troubleshoot problems when it occurred in  
3       that email.

4               In Exhibit 1 to the status report, there is more  
5       testimony from this witness who says -- refers back to 19 --  
6       '09 when the administrations change. Blackberries did  
7       change that world. It was in the midst of that change of  
8       the world. So at the time it was like, okay, she's going to  
9       use her private; and the official communicate will either go  
10      through whom -- or Mr. Jake Sullivan, and that would have  
11      been how it was done for secretaries before. And,  
12      certainly, we have changed our posture with it, but at that  
13      time it was still the norm.

14             I think that does speak to the situation as it was  
15      in 2009, Your Honor.

16             THE COURT: All right.

17             MS. WILKINSON: Your Honor, first, I'd like to  
18      tell you I appreciate you hearing from us, and so I am going  
19      to keep it brief.

20             I want to make it clear that I misspoke.

21             THE COURT: That's the first good sign; always  
22      good for a lawyer to say.

23             MS. WILKINSON: Yes. I have learned that -- yes,  
24      sir. I have learned that over the last few years.

25             I misspoke when I introduced myself because I



1 represent a nonparty. I know Ms. Mills would like to keep  
2 it that way.

3 THE COURT: I understand. I understand.

4 MS. WILKINSON: So I don't want to have that  
5 erroneously stated in the record.

6 I really just want to emphasize the big point  
7 here. I know, Your Honor, when this case started many years  
8 ago, the Court was very concerned about public interest.

9 You reluctantly granted discovery because it's not  
10 normally occurring in FOIA cases because of that interest.  
11 But this is unusual in the sense that over the last many  
12 years there's been an incredible investigation, as you know.

13 Ms. Mills sat for nine hours in front of the  
14 House, plus committee on Benghazi. I was there with her  
15 when representative Gowdy and his colleagues asked many,  
16 many questions. That transcript was provided to Judicial  
17 Watch as a matter of public record. And then the FBI  
18 interviewed Ms. Mills on two occasions. Those notes are  
19 available to Judicial Watch.

20 But, most importantly, these folks have already  
21 taken a deposition of Ms. Mills, and it was seven hours; and  
22 I was there. And they did a very good job and asked her  
23 every question based on the review of that prior transcript.

24 So the things that they have brought in front of  
25 you that they want to ask her about either they have already

1       asked her about or she has no knowledge.

2               So I would ask you -- if you feel like anything is  
3       necessary, we could provide an interrogatory very clearly  
4       that: Topic No. 2, she has no knowledge; and if the Court  
5       would like that representation, we'd be happy to make it.  
6       But on categories 1 and 3, they have asked her all of those  
7       questions.

8               Thank you, Your Honor.

9               THE COURT: All right. Thank you, Ms. Wilkinson.  
10       Okay. I will give you the last word.

11       MS. COLCA: Thank you, Your Honor.

12               Just very briefly. With respect to Ms. Mills,  
13       there was a lot of information that we do know today that we  
14       didn't have available when we deposed Ms. Mills. And, also,  
15       her own records are at issue in this case which were not in  
16       the case that was pending before Judge Sullivan in this  
17       courthouse, and so -- that's addressed in our briefs. So I  
18       won't repeat it, but I just wanted to point the Court to  
19       that.

20               The only other thing, to correct the record, I did  
21       misspeak. With respect to Ms. Walter, she did not recall  
22       anything with respect to Secretary Clinton's email.

23               However, with respect to Mr. Finney, Ms. Thian  
24       testified very clearly that when she informed Mr. Finney  
25       that she was leaving the State Department in April of 2014,

1 sort of to say her good-byes, he told her: By the way,  
2 Secretary Clinton used her private email about Benghazi.  
3 Immediately, Ms. Thian went to Mr. Hackett, as the director  
4 of IPS at the time, and to inform Mr. Hackett of that  
5 information.

6 Now, while Mr. Finney may not have recalled it,  
7 Ms. Thian was very clear about her recollection and the  
8 fact -- this was April of 2014, before Judicial Watch had  
9 filed its complaint. And I think we have addressed most of  
10 the other items.

11 But just with respect to these 30-some emails or  
12 less than 30 emails that the FBI just returned to the State  
13 Department, the issue isn't so much -- we understand they're  
14 not responsive in this case. But we have asked -- and my  
15 colleague, Ms. Burke, has asked Mr. Pezzi representing the  
16 State Department to provide information of where did they  
17 come from. If the State Department needs to go to the FBI  
18 and request that information, that's fine. But the State  
19 Department, as far as we know, hasn't provided that  
20 information to us. So I don't even know if they have  
21 reached out to the FBI; they wouldn't tell us at this point.  
22 But, obviously, that information is relevant to the  
23 discovery in this case.

24 THE COURT: What he just told me is they came from  
25 the State Department.

1 MS. COLCA: I'm sorry. Your Honor?

2 THE COURT: I thought he just told me they came  
3 from the State Department.

4 MS. COLCA: Well, I don't believe they could have  
5 come from the State Department because they're not  
6 duplicative. They're Secretary Clinton's emails that they  
7 didn't have --

8 THE COURT: I thought that's what he just said.  
9 Am I -- did I mishear you?

10 MR. PEZZI: Just quickly, Your Honor. The records  
11 were transferred from the FBI to the State Department.

12 THE COURT: I understand.

13 MR. PEZZI: The State Department identified a  
14 small number, fewer than 30, that appeared to be unique,  
15 potentially responsive records in the Judge Boasberg case  
16 and thus need to be processed under FOIA. Exactly where the  
17 FBI got all of those records is something that we're still  
18 working on.

19 THE COURT: All right.

20 MR. PEZZI: Again, the FBI collected records from  
21 a whole host of locations. So it's not a quick or easy  
22 question to figure out where did this one -- or all 26, 30,  
23 wherever it is -- come from.

24 THE COURT: All right. I misunderstood you.

25 MS. COLCA: And the only other housekeeping matter

1 I would just ask -- I understand that Your Honor is not  
2 going to rule today from the bench.

3 But if the additional discovery is permitted, we  
4 would ask for up to four months to be able to conduct --  
5 it's not a lot of discovery. But with all of the schedules  
6 coming up and the conflicts, we would ask for that amount of  
7 time.

8 THE COURT: Right.

9 MS. COLCA: And also because we -- I actually have  
10 another case for Judicial Watch in which -- that is  
11 currently stayed because of the discovery in this case.

12 I would just ask that if discovery is permitted --  
13 if Your Honor could just agree to have a status conference  
14 or something to have a trigger point for us to be able to  
15 file in the other case and so we can provide an update to  
16 the Court.

17 THE COURT: All right.

18 MS. COLCA: Thank you.

19 THE COURT: Would you, after you talk to the  
20 Combetta attorneys, file just a short report with me  
21 about -- whether they indicate he would take the Fifth, and  
22 whether you could learn anything about any immunity?

23 MS. COLCA: Certainly.

24 THE COURT: And then -- I probably would -- I  
25 would be interested in the Combetta angle; but there is no

1 use going through a lot if he's going to invoke it. And I  
2 don't want to have him spend a lot of money on attorney's  
3 fee expenses to just move to quash it.

4 MS. COLCA: I understand.

5 THE COURT: Because it just is going to make him  
6 spend a lot of money.

7 MS. COLCA: I understand, Your Honor. We will do  
8 that. We will submit a public filing.

9 THE COURT: All right. I will take under  
10 advisement these and the motions to depose Ms. Clinton and  
11 Ms. Mills -- Secretary Clinton and Ms. Mills, and rule as  
12 promptly as I can after I look at the papers on this.

13 All of you-all have a nice holiday if you can.

14 The Court will take a short recess.

15 Thank you, all, counsel, for helping me.

16 THE DEPUTY: All rise.

17 (Whereupon, the proceeding concludes.)

18 **CERTIFICATE**

19 I, ELIZABETH SAINT-LOTH, RPR, FCRR, do hereby  
20 certify that the foregoing constitutes a true and accurate  
21 transcript of my stenographic notes, and is a full, true,  
and complete transcript of the proceedings to the best of my  
ability.

22 Dated this 20th day of December, 2019.

23  
24 /s/ Elizabeth Saint-Loth, RPR, FCRR  
25 Official Court Reporter