

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

<b>FREEDOM WATCH, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	Civil Action
	)	No. 18-88
<b>v.</b>	)	
	)	May 24, 2018
<b>ROBERT S. MUELLER,</b>	)	10:30 a.m.
	)	
<b>et al.,</b>	)	Washington, D.C.
	)	
<b>Defendants.</b>	)	

**TRANSCRIPT OF STATUS CALL PROCEEDINGS  
BEFORE THE HONORABLE EMMET G. SULLIVAN,  
UNITED STATES DISTRICT COURT JUDGE**

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1                                    **MORNING SESSION, MAY 24, 2018**

2        (10:40 a.m.)

3                    THE COURTROOM CLERK:    Your Honor, this is Civil Action  
4        18-88, *Freedom Watch, Incorporated versus Robert S. Mueller, et*  
5        *al.*

6                    Will counsel please approach the podium and identify  
7        yourselves for the record, as well as any additional parties at  
8        your table.

9                    MR. KLAYMAN:    Larry Klayman, general counsel for Freedom  
10       Watch, Your Honor.

11                   THE COURT:    Good morning, Counsel.

12                   MR. KLAYMAN:    Good morning.

13                   MR. DUGAN:    And good morning, Your Honor.    I'm Joseph  
14       Dugan with the Department of Justice, civil division, and with me  
15       at counsel table is Marcia Berman, also with the civil division  
16       at the DOJ.

17                   THE COURT:    All right.    Good morning to you both.

18                   MR. DUGAN:    Thank you.

19                   THE COURT:    Mr. Klayman.

20                   MR. KLAYMAN:    Yes, thank you.

21                   THE COURT:    How are you?

22                   MR. KLAYMAN:    Good.    Nice to see you, Your Honor.    I  
23       haven't seen you in about 14 years.

24                   THE COURT:    It's been at least 14.

25                   MR. KLAYMAN:    Since the Cheney Energy Task Force Case.

1 THE COURT: Is that case still pending somewhere?

2 MR. KLAYMAN: No, I don't think it is.

3 THE COURT: All right.

4 MR. KLAYMAN: The Supreme Court --

5 THE COURT: Just kidding, just kidding.

6 MR. KLAYMAN: -- did a number on it, but you made the  
7 right decisions, believe me.

8 THE COURT: Reasonable people can disagree, but I think I  
9 did.

10 MR. KLAYMAN: I know.

11 THE COURT: The panel agreed with me, *en banc* agreed, and  
12 then it took on a life of its own.

13 MR. KLAYMAN: It did, and you were very courageous in that  
14 case.

15 THE COURT: Thank you. Thank you very much.

16 MR. KLAYMAN: I see that your scales of justice are equal;  
17 they're not tilted behind you.

18 THE COURT: Your motion is granted. Have a nice day.  
19 (Laughter).

20 MR. KLAYMAN: I mean it sincerely. I do.

21 THE COURT: I have to be careful about that, because  
22 people mention those scales, "They're leaning a certain way, what  
23 does that mean?" It means that they have dust on them.

24 MR. KLAYMAN: Well, the fact that it's not tilted means  
25 that you're nonpartisan, okay.

1 THE COURT: That's exactly true. Thank you.

2 MR. KLAYMAN: And I appreciate that.

3 THE COURT: Sure. So do I.

4 MR. KLAYMAN: So, I am, too, as you know.

5 THE COURT: I take a lot of comfort in that, and I think  
6 parties should, too. And even if parties don't prevail, they  
7 should take comfort in the fact that a judge should be impartial  
8 and make a decision. We're not a respecter of persons. That's  
9 part of the oath.

10 MR. KLAYMAN: That's very true. There are very few these  
11 days who are, and that's why I appreciate your position.

12 THE COURT: Thank you very much. You're very kind. Your  
13 motion is granted again.

14 MR. KLAYMAN: Yes, thank you. Well, Your Honor, you know  
15 what the FOIA request is about, I'm sure.

16 THE COURT: It is, and there should be a fair resolution  
17 here. I understand -- the government essentially, as I  
18 understand it, has identified about 11,000 pages, so it's just a  
19 timing factor that's at issue here, how quickly should you  
20 receive the documents. There could be 11,000 pages of "no  
21 comment," right?

22 MR. KLAYMAN: Correct.

23 THE COURT: Could be.

24 MR. KLAYMAN: Correct, correct. And I tried to keep it  
25 simple. You know, when I was a Justice Department lawyer and I

1 went through litigation seminars -- I was a trial lawyer in the  
2 antitrust division --

3 THE COURT: I didn't know that, really.

4 MR. KLAYMAN: They taught us KISS, "keep it simple,  
5 stupid; keep it simple," so I tried to keep this FOIA request  
6 simple. All we want is communications to and from the media; not  
7 internal deliberations under exemption 5 or anything else, and  
8 that's all public, and it was Justice Ginsburg who actually  
9 issued a decision which, you know, dealt with that issue many  
10 years ago in 1992, the public nature of FOIA requests. That's  
11 the case *Petroleum Info Corp versus United States Department of*  
12 *Interior*, 976 F.2d 1429, 1992, two years before I founded  
13 Judicial Watch. So it's a relatively simple question. It's only  
14 a question as to how much time they should have.

15 Now, we know that the Department of Justice, at least the  
16 last time I checked, is over 7,000 lawyers -- I think even more  
17 than that, large resources -- and I'm prepared to compromise on  
18 what I ask for in our report, which kindly the judge sat down for  
19 a status report. They should produce all the documents by July  
20 9th. That's the date they said they would start rolling  
21 production, and that's seven weeks. That's a lot of time. So I  
22 came in here with a compromise over the 30 days I requested, and  
23 during that time period, you know, they can put their resources  
24 to work and produce it, but we know what happens with rolling  
25 production. You've seen it in other cases. That's just another

1 way of saying, Well, we're going to slow roll the process here.  
2 I have another case, if you can believe this, Your Honor, where I  
3 ask for documents -- I represented Cliven Bundy in his criminal  
4 matter and related matters in part in Nevada -- and I asked for  
5 all the documents from the FBI and the Justice Department dealing  
6 with his prosecution. I wanted to make sure that we had them all  
7 for what was going on with the prosecution in Las Vegas.

8 If you can believe this, they came back, the federal  
9 programs branch -- no, excuse me, it was the U.S. Attorney; I  
10 don't want to blame them -- and they said it will take us 400  
11 months, 41 years, 41 years, and I said that's impossible, but  
12 even if it was possible, I'll be dead, the judge will be dead,  
13 and even the young justice U.S. Attorney --

14 THE COURT: You're not referring to me, are you?

15 MR. KLAYMAN: We'll all be dead, right. So we know what's  
16 happening these days, it's our alma mater, and I'm proud of my  
17 alma mater, but these days it's slowing everything down, and  
18 there's politics, and this is very important for the American  
19 people to see what has been communicated with the media. And  
20 it's very important because every day, virtually every day since  
21 the special counsel was given his mandate, there appear to be  
22 leaks coming out of that office.

23 Now, maybe they're benign, maybe there's nothing related  
24 to Grand Jury material, but there may be, and this even bears on  
25 the prosecution that you had before you of General Flynn in that,

1 you know, he was subjected to possible leaks from the very start.  
2 So there's some related basis to your other case. I'm not here  
3 to represent General Flynn, I'm here to represent the American  
4 people and the public, and the public deserves to know this  
5 because -- I'm scratching my head. You know, I've sent in a  
6 number of status reports with newspaper articles. I don't know  
7 whether or not those are Grand Jury leaks or not, but some of  
8 them sure seem to be. There's no basis or there wouldn't be any  
9 logic for defendants to be leaking stuff which is harmful to  
10 them. So that's why this is so important, and my compromised  
11 position is, okay, on July 9th produce it all, and it's not the  
12 that difficult.

13 If they have anything they can't produce or that they  
14 think there's some question, I would ask that they give it to you  
15 in-camera, and I think you can take a look at it, and I think  
16 it's very reasonable, and it's also before the summer gets into  
17 full swing with vacations and everything else so we can get the  
18 job done. Anyway, a pleasure, Your Honor.

19 THE COURT: Likewise. Let me ask you a question, and I'll  
20 ask government counsel also. Have you been given a definition of  
21 what the potential equity owners are? The government has said  
22 that it needs time to have potential equity holders review the  
23 records before they're released.

24 MR. KLAYMAN: No, and I can't imagine there being equity  
25 holders, I really can't. This case is so simple, just the

1 communications that you made with the media. Now, if there are  
2 equity holders of the special counsel, the FBI shouldn't be  
3 disclosing the names of equity holders to the media, so it's a  
4 self-defeating proposition.

5 THE COURT: All right. Thank you very much, Counsel.

6 MR. KLAYMAN: Thank you.

7 THE COURT: All right. Let me hear from government  
8 counsel.

9 MR. DUGAN: Thank you, Your Honor.

10 THE COURT: My understanding counsel is that the  
11 government has already afforded Mr. Klayman's request expedited  
12 status, I believe; is that correct.

13 MR. DUGAN: Yes, sir, that's correct.

14 THE COURT: And in that regard, the Court should do so as  
15 well because I think everyone would agree this is a -- it's a  
16 high profile issue. The public certainly has an interest in this  
17 FOIA case, but I'm somewhat mystified. My understanding is that  
18 the government has already identified about 11,000 pages of  
19 potentially responsive documents. About 9,000 are from the  
20 Special Counsel's Office, and approximately 1400 are from the  
21 Department of Justice, and maybe 300 are from the FBI.  
22 Notwithstanding that, the government has proposed producing  
23 documents on a rolling basis commencing July the 9th and then  
24 status reports every 60 days thereafter. Why the delay? Why  
25 July the 9th for the first production of documents?

1 MR. DUGAN: Sure. So, I will answer Your Honor's  
2 question. Just for an update, and I think plaintiff's counsel  
3 may be interested in this as well, the numbers have come down  
4 slightly. This happens when we're scoping for responsiveness and  
5 we find duplicates and things, so the up-to-date hot off the  
6 press totals for the Special Counsel's Office records is 8,455  
7 pages. So I think that's about 500 down.

8 The Public Affairs Office at DOJ went down quite a bit,  
9 from 1400 to 450.

10 THE COURT: To what? I'm sorry, what's the new figure?

11 MR. DUGAN: I'm sorry, sir, 450 is the current number.

12 THE COURT: 450.

13 MR. DUGAN: Yeah. And for the FBI, that number only went  
14 don't a little bit. It went from 337 to 309, so I think actually  
15 it's about a little over 9,000 pages in total that we've  
16 identified --

17 THE COURT: 9,000 pages as opposed to 9,000 documents that  
18 have multiple pages?

19 MR. DUGAN: Correct, correct, 9,000 pages, yes. I think  
20 the documents are maybe like 2500 or so.

21 THE COURT: Then why isn't Mr. Klayman's proposed remedy  
22 of seven weeks, to July 9th, eminently reasonable if we're  
23 talking about that number of 9,000 documents --

24 MR. DUGAN: -- I think this goes to --

25 THE COURT: -- 9,000 pages.

1 MR. DUGAN: Pages, yes, Your Honor.

2 I think this goes to Your Honor's question about equity  
3 holders, which I understand the Court is curious about, and that  
4 was, perhaps, an imprecise term, so I apologize for that. What I  
5 meant to convey with that term is that after processing is  
6 complete -- processing is occurring at the DOJ. It's the Office  
7 of Information Policy that does most of the processing here, and  
8 that's almost done, and I can give the Court a little more  
9 information about that in a moment, but once that's finished --

10 THE COURT: I'm sorry, once what's finished?

11 MR. DUGAN: The processing of the records. So that's  
12 scoping for responsiveness and any exemptions for which there  
13 will be any --

14 THE COURT REPORTER: I'm sorry, slow down just a little  
15 bit.

16 MR. DUGAN: My apologies. Scoping for responsiveness,  
17 which is almost done, and then any possible exemptions. There  
18 won't be many, but there might be a little bit of B6 material, so  
19 they're checking for that right now. So that's OIP.

20 THE COURT: You're talking about exemptions. We're  
21 talking about -- If, hypothetically, there are X number of  
22 communications, what possible exemptions could apply?

23 MR. DUGAN: I would think the most likely exemption would  
24 be B6 for like a phone number, maybe a private cell phone number.

25 THE COURT: Oh, like a social security number, phone

1 number, something private.

2 MR. DUGAN: Yes, Your Honor. I'm not aware of any  
3 deliberative material in these e-mails. I wouldn't expect to see  
4 any.

5 THE COURT: Right.

6 MR. DUGAN: There is a press contact log, which is also  
7 included in the page counts that I've given Your Honor, and  
8 that's like a log where the Special Counsel's Office identifies  
9 communications that come in from the media, whether via e-mail or  
10 phone.

11 And I think there may be some internal material within  
12 that log that would be redacted, but certainly the e-mails and  
13 communications with the media would be non-deliberative.

14 THE COURT: Right.

15 MR. DUGAN: So, seven weeks is a while, although it does  
16 overlap with two federal holidays. But the main concern here is  
17 the key equity holder, and the key equity holder is the Special  
18 Counsel's Office. They have to look at everything before it goes  
19 out the door. They're not looking at it yet because, as I  
20 mentioned to Your Honor, it's OIP that does the processing. And  
21 the reason for that is the Special Counsel's Office does not have  
22 an in-house FOIA unit, so they don't have people who are trained  
23 to process documents. So OIP does that. They're almost done. I  
24 think the SCO records --

25 THE COURT: What does that mean, "they're almost done"?

1 How many more?

2 MR. DUGAN: I don't have a number, but they tell me  
3 they'll be finished next week, and that includes the holiday  
4 weekend as well.

5 THE COURT: And that processing process encompasses what?  
6 What are they doing?

7 MR. DUGAN: So they take all the documents that were  
8 initially batched into their document review platform -- that's  
9 all the e-mails --

10 THE COURT: -- right --

11 MR. DUGAN: -- look at them all, make sure they're  
12 responsive, and check for any possible exemptions; again, mainly  
13 a little bit of B6 material.

14 THE COURT: Okay. So should be finished next week.

15 MR. DUGAN: Yes, sir.

16 THE COURT: So they would know the privacy information, if  
17 any, with those numbers --

18 MR. DUGAN: -- yes, sir --

19 THE COURT: -- social security numbers, other identifying  
20 factors, right?

21 MR. DUGAN: Yes, sir.

22 THE COURT: Okay. And then the next step would be --

23 MR. DUGAN: A small number of those documents have been  
24 identified for consults by other components. I think what we  
25 know so far is the FBI, who is in this anyway, the Public Affairs

1 Office, who is also in this, and the Executive Office of the U.S.  
2 attorneys. I don't know why. They just -- names in the e-mails  
3 or something that trigger a review. So that occurs.

4 And then the documents go to the Special Counsel's Office,  
5 and that's where we're concerned about a little bit of a  
6 bottleneck where I think July 9th might be a challenge. Because  
7 they don't -- again, they don't have a FOIA unit, they have  
8 people who work on mission critical responsibilities and who also  
9 in their spare time do FOIA review.

10 And it might help the Court to know, in addition to  
11 Mr. Klayman's request, I just checked yesterday to see how many  
12 other requests are directed to SCO, and there are -- let's see --  
13 11 that predated Mr. Klayman's request, though they were not  
14 expedited, and 14 since, so 25. Those are requests that are  
15 involving SCO searches. Additionally, they are consults where a  
16 request goes into a different agency or component and the SCO is  
17 somehow implicated, so they have to review the records. All that  
18 to say that we don't want to slow walk this case. I don't think  
19 we have so far. We've moved things along pretty quickly as  
20 modern FOIA processing goes. We're almost done with the  
21 processing. It's just an issue of getting the records finally  
22 reviewed and out the door.

23 THE COURT: Right, right. I guess -- and no one's  
24 accusing you of slow walking. It's just that it's a high  
25 profile -- the public has an interest, obviously, in this issue,

1 but the fact of the matter is that, to date, plaintiffs have not  
2 received any documents.

3 MR. DUGAN: That's true, Your Honor.

4 THE COURT: All right. Right. And it's difficult. You  
5 know, we're inundated with FOIA requests, and so is the  
6 government, but the judges on this court are, and I can speak for  
7 all my colleagues. That's not usually something I want to do, is  
8 speak for all my colleagues, but I think they would all agree  
9 that we're inundated with FOIA requests.

10 MR. DUGAN: Favorite topic of litigation.

11 THE COURT: All of us are. And we get these requests from  
12 plaintiffs. We want the documents, we want them yesterday, and  
13 the government, you know, has legitimate concerns about the  
14 adequacy of resources. One suggestion you can just pass on  
15 respectfully to the Office of Special Counsel, they have probably  
16 access to resources that other agencies probably don't have now.  
17 Possibly they should hire someone with FOIA expertise who can  
18 also assist in the review or someone from your office be sent  
19 over there.

20 MR. DUGAN: I'll pass it along to the client.

21 THE COURT: Sure. Look, believe me, I don't have any  
22 interest in micromanaging investigations by the government, but I  
23 did take note of the fact that they didn't have -- their job is  
24 to investigate and prosecute, and now they have to review also to  
25 see whether or not there are independent reasons why certain

1 documents shouldn't be produced.

2 MR. DUGAN: Yes, sir.

3 THE COURT: It may be of assistance to have someone with  
4 your expertise or someone else --

5 MR. DUGAN: Maybe more than my expertise, but yes, sir.

6 THE COURT: All right.

7 MR. DUGAN: I guess one other point that I want to make  
8 while we're talking about possible production rates or how  
9 quickly we get the documents out the door, because of sort of the  
10 evolution of this case, when I initially filed the 511 status  
11 report, at that point we just had kind of the first cut at the  
12 documents. We didn't know what they contained. I have had  
13 further conversations with my client in recent days to try to get  
14 a better sense for exactly what all is in there, and I can't -- I  
15 haven't reviewed it myself, but it sounds like a lot of it is  
16 fairly anodyne, and so it may be that my initial proposal with  
17 the 60-day status report is unrealistic given the type of issues  
18 here.

19 THE COURT: I appreciate your candor.

20 MR. DUGAN: Yes, sir. So it may be the Court could today  
21 reach a resolution that is more accelerated than proposed. I  
22 frankly think July 9th would be really rough. I have some ideas  
23 of different numbers, but --

24 THE COURT: Why don't you share your ideas, because I'm in  
25 an awkward situation, too, because I don't work for the

1 government. I'm sensitive to the fact that there's a press on  
2 resources. I'm sensitive to that, and I'm not going to be  
3 arbitrary in what I do, but I'm interested in your  
4 counterproposal is to what Mr. Klayman says. It may be more  
5 reasonable than what I'm thinking about, but I want you to tell  
6 me.

7 MR. DUGAN: I don't know. The first thing I would say is  
8 I think we can probably get records out the door in June, and one  
9 of the reasons I say that is because the processing, as I  
10 mentioned, is almost complete, so I don't think we need to wait  
11 until July. In terms of numbers, I think we could easily commit  
12 to production on a monthly basis of a thousand pages a month as a  
13 floor. I don't know that we would, you know limit ourselves to  
14 that. Maybe we could get it done much faster, but I think that  
15 would be a convenient floor that would accommodate shifts in work  
16 flow, demands, peaks and valleys, and summer scheduling. So  
17 that's an idea that I have. Obviously --

18 THE COURT: Then that would roll this out eight or nine  
19 months or so.

20 MR. DUGAN: If we were to do only 1,000 pages a month,  
21 that's true, but my other thought is -- if that was a floor --  
22 maybe we could reconvene either in court or by phone after the  
23 first production to see how much we actually managed to do, the  
24 idea being if we could aim for something better than 1,000, we  
25 would bring that to the Court's attention and say, Look, we got X

1 number of records out, and the Court could look at that and say,  
2 All right, well, that's okay, or you have to be kidding me, or  
3 somewhere in-between, and maybe the Court could then enter a more  
4 specific order. That's one thought that I have, but happy to  
5 discuss further or answer further questions.

6 THE COURT: Suppose the Court were to give you just a date  
7 to produce everything by a date, Labor Day, period, just produce  
8 it; just start producing it, final production by the day after  
9 Labor Day?

10 MR. DUGAN: That looks like a little over three months  
11 from now.

12 THE COURT: Right.

13 MR. DUGAN: A final date sort of proposal seems fine. I  
14 guess I would ask for something a little bit later than Labor  
15 Day. I'm just thinking again about the numbers. I'm not great  
16 at math, but maybe something in the October/November area would  
17 be more manageable for my client. We don't want this to go on  
18 forever, and certainly not 41 years. That seems excessive by any  
19 stretch of the imagination.

20 THE COURT: Okay. Thank you.

21 MR. DUGAN: Thank you, sir.

22 THE COURT: All right. Mr. Klayman, what about that Labor  
23 Day or the day after -- not Labor Day, but maybe the day after as  
24 opposed to getting into the number of pages of documents per  
25 month? I actually thought about, Well, let's see, what would the

1 first thousand pages look like? If there are a thousand pages of  
2 "no comment," then it suggests to me that maybe 30 or 40 days  
3 after that might be realistic, because that might be a benchmark  
4 for previewing just what all the documents look like, "no  
5 comment." But the alternative was to just give them a final date  
6 and just say produce everything by that date.

7 MR. KLAYMAN: We've been asking for an earlier date. I  
8 appreciate Your Honor's suggestion.

9 My colleague here is between a rock and a hard place.

10 THE COURT: I know.

11 MR. KLAYMAN: They have a client, the client wants to have  
12 this thing moved past any more indictments, impeachment reports  
13 and everything else. That's the motivation here. You don't have  
14 to be a rocket scientist to figure that out. So they're going to  
15 slow roll it.

16 THE COURT: When I agreed with you about a rock and a hard  
17 place, I meant that they're strapped for resources. I know that.  
18 I've heard that in other cases. And believe me, these are  
19 complicated -- I mean, we're trying to figure out what's fair and  
20 reasonable when the government says it will take years -- and it  
21 can't be years -- and someone wants documents yesterday. What do  
22 we do? It's very, very difficult, but go ahead.

23 MR. KLAYMAN: As my grandmother used to say, you and I, we  
24 weren't born yesterday, okay. We know the way Washington works,  
25 okay. And where there's a will, there's a way. That's another

1 proverb. So I appreciate your suggestion, Your Honor, but we  
2 need it sooner, the public needs it sooner than Labor Day.  
3 Again, so I'll compromise again with my proposal, by the end of  
4 July, and they have the resources to do it. And I know from  
5 experience --

6 THE COURT: How do I balance that statement with the  
7 government saying they don't have their -- actually, you didn't  
8 make that argument today, did you, about the lack of resources?  
9 Did you?

10 MR. DUGAN: I will, Your Honor. And that is our --

11 THE COURT: I don't want to make it for you, but --  
12 Mr. Klayman, I want you to respond to what counsel is going to  
13 say about resources, because you didn't make that argument now.

14 MR. DUGAN: I think I jumped straight to numbers, but --

15 THE COURT: Let me hear from him, Mr. Klayman, and then  
16 I'll give you a chance to respond to it.

17 MR. KLAYMAN: All right.

18 THE COURT: All right.

19 MR. DUGAN: So I think -- I mean, Your Honor is correct.

20 THE COURT: I don't want to make your argument now.

21 MR. DUGAN: Yes.

22 THE COURT: But it is significant that you did not make  
23 that argument, that you didn't --

24 MR. DUGAN: What my clients have told me specifically at  
25 the SCO as recently as yesterday is that their main concern is

1 that all the people who are on FOIA duty, that is to say they're  
2 involved in looking at records, also have mission critical  
3 responsibilities. So there isn't -- as I understand it -- from  
4 what they have told me, there isn't a single individual in that  
5 office who is dedicated to FOIA full-time.

6 As a result, when you're working on your mission critical  
7 responsibilities 9 to 5 or 8 to 10, or whatever it ends up being,  
8 it's hard to fit in time for FOIA.

9 I can say candidly to the Court just convening with the  
10 client to discuss FOIA-related matters can be challenging because  
11 of deadlines, investigative and prosecutorial tasks, and I did  
12 start to talk a little bit about the other FOIA requests also  
13 pending for the SCO or that involve SCO equities. That also cuts  
14 at the limited resources. And again, they're not expedited.  
15 Mr. Klayman's request should receive priority.

16 THE COURT: What exactly does that even mean, expedited --  
17 internally within the Department of Justice?

18 MR. DUGAN: So, it means priority and to produce --  
19 process and produce the records as expeditiously as reasonably  
20 practicable. So it's not a hard standard, as I understand it.  
21 And as I understand it, even when we expedite a request, that  
22 doesn't necessarily mean that we take all resources from the  
23 other requests. It's a balancing act which prioritizes the  
24 expedited requests. And then from within the expedited requests,  
25 we sort of prioritize first in time, unless there are court

1 orders or extenuating circumstances.

2 Now, here again, none of the pending requests that are  
3 directed to the SCO, so far as I am aware, are expedited. There  
4 are other consults with which SCO is involved, and I don't know  
5 if some of those may be expedited, I don't have that information.  
6 So limited resources in a general sense, but also specifically to  
7 the SCO's sort of office structure -- again, they don't have a  
8 FOIA unit. I will pass on Your Honor's suggestion about,  
9 perhaps, looking to see if they can find a dedicated FOIA person,  
10 but at this point it's a lot of people who are splitting their  
11 time between FOIA and other tasks as well.

12 THE COURT: All right. Mr. Klayman.

13 MR. KLAYMAN: Yes. I have one major point, maybe two.  
14 It's been five months already since the FOIA request, Your Honor,  
15 so their statement that they don't have the resources -- they  
16 know the importance of this at the Special Counsel's Office, and  
17 they know at the FBI, and we know what's been going on with the  
18 FBI and other entities of our alma mater here, and they obviously  
19 can do this faster, and they don't want to do it faster, I'll  
20 just be straight up, because they don't want it out now. This is  
21 a very sensitive period, but the American people deserve the  
22 right to know, and there are no exemptions here. That's why I  
23 kept it so simple.

24 THE COURT: Let me ask you -- and that caught the Court's  
25 attention as well. I can't imagine there are any exemptions,

1 but, you know, who knows. I don't know. If the Court were to  
2 impose a date certain for production of all documents, would it  
3 prejudice you if during the interim between now and that date  
4 certain you didn't receive any documents?

5 MR. KLAYMAN: If I didn't receive any documents?

6 THE COURT: Right.

7 MR. KLAYMAN: I would go along with that as long as  
8 everything was due on July 31st.

9 THE COURT: Right.

10 MR. KLAYMAN: Okay. And -- okay. I mean, produce it. I  
11 know the way it works. In the *Bundy* case, what I had gotten in a  
12 year and a half with the rolling production of 41 years are press  
13 clips. They're meaningless. And yet they had all of that --

14 THE COURT: What did the judge do in that case? Did he  
15 order --

16 MR. KLAYMAN: It was Judge Kotelly. She just went along  
17 with the government, much to my chagrin. I have not had a great  
18 relationship with Judge Kotelly over the years, honestly. Maybe  
19 she doesn't like me or whatever.

20 THE COURT: Oh, I doubt that.

21 MR. KLAYMAN: Yeah.

22 THE COURT: She's too professional.

23 MR. KLAYMAN: She doesn't love me, but --

24 THE COURT: That's something different now.

25 MR. KLAYMAN: I could not imagine her going along with 41

1 years, particularly since the government put all of these  
2 documents together for the prosecution. I mean, that's -- and  
3 then they produced it in discovery. I wanted to make sure we had  
4 everything, okay.

5 So, I know Your Honor's different. I do respect you a  
6 great deal, and it's quite -- Like I said, I'm not flattering  
7 you. It's quite rare these days that a judge doesn't lean one  
8 way or the other, and so --

9 THE COURT: And we're all doing different things with  
10 these FOIA cases. I know we are.

11 MR. KLAYMAN: I know that, but this one is at the pinnacle  
12 of national importance. People deserve to know. People are  
13 scratching their heads. How is all this stuff getting leaked,  
14 you know.

15 THE COURT: That's assuming that there are leaks. There  
16 may be 9,000 pages of no comment, no comment, no comment. I  
17 mean, hypothetically what happens, someone e-mails that office  
18 and says, "Can you comment on this?" And there's a response,  
19 hypothetically, or "no comment."

20 MR. KLAYMAN: Yeah.

21 THE COURT: Would you be shocked if there were 9,000 pages  
22 of no comment?

23 MR. KLAYMAN: Yes, I'd be shocked.

24 THE COURT: Really?

25 MR. KLAYMAN: Yeah. People can't resist. You know, when

1 I ran Judicial Watch, and even today, I don't let people e-mail.  
2 They just spew forth and uncontrolled. And we know of a variety  
3 of e-mails and text messages that have come out recently with  
4 trained FBI agents like Peter Strzok and Lisa Page and others.

5 I mean, they just don't think it's ever going to be  
6 revealed. It's not the way things work, but the American people  
7 are becoming very knowledgeable and they're becoming very  
8 skeptical, and I want to see the integrity restored in our  
9 justice system and in our Department of Justice and in our FBI  
10 and in the Special Counsel's Office. Candidly, I just don't see  
11 it. I'm understating how I feel on that, okay, so I, therefore,  
12 urge you, Your Honor, to have it released by July 31st. I've  
13 given ground twice here, and I'm doing it for the American  
14 people, like you are. Thank you.

15 THE COURT: Thank you. What I'm going to do is take about  
16 a ten-minute recess. As you can see, I have ten brilliant law  
17 students over here and this is a learning experience for them as  
18 well, so I would like to spend ten minutes with them. This is a  
19 very important case for the government, as well as for the  
20 plaintiffs, as well as for the American public. It's about FOIA.  
21 It's about understanding what the government's doing. So I want  
22 to share a few thoughts with them.

23 Anything further from government counsel?

24 MR. DUGAN: Your Honor, just two quick points, if I may.

25 THE COURT: Sure.

1 MR. DUGAN: The first quick point, and this, I think,  
2 probably is obvious to the Court, but when we talk about the fact  
3 that Mr. Klayman's request has been pending for five months, I do  
4 want to stress that we haven't just been sitting for five months.  
5 Again, we've nearly completed processing, so search and  
6 processing, that takes time. It takes a fair amount of time. So  
7 it --

8 THE COURT: You do a name search -- a word search, don't  
9 you?

10 MR. DUGAN: They pull the e-mails. I think the Justice  
11 Management Division goes in and pulls e-mails, batches them into  
12 a system, and then they're reviewed manually. So it does take  
13 time. I understand that doesn't answer the problem today, but I  
14 just wanted to point out -- it's not as though we're starting  
15 from scratch today.

16 And the other final point that I wanted to make, although  
17 I agree with Your Honor and Mr. Klayman that likely the vast  
18 majority of the records will be produced again with maybe cell  
19 phone numbers redacted or something like that, the concern and  
20 the reason we have to go through very carefully at this last  
21 stage is it's always possible that something got mixed in, right,  
22 because they're e-mails, so it's possible that a totally  
23 nonresponsive e-mail, some internal deliberation or something, or  
24 some sensitive material that would not be responsive to the  
25 request could, nonetheless, have found itself into the system.

1 That's how these e-mail system searches go. And that's why we  
2 have to be careful to look at each one and say, yes, no comment,  
3 no comment, no comment, or whatever, and, Oh, look at this, this  
4 doesn't belong in this set. So we want to make sure we have  
5 adequate time to conduct that review. That being said, if there  
6 are any further questions.

7 THE COURT: Let me ask you this. I think I know the  
8 answer, but would it be beneficial or not if the Court were to  
9 give the government a final production date and not order rolling  
10 production during the interim, or would it make any difference?

11 MR. DUGAN: I don't know that it would affect our work  
12 because we're moving into the production stages anyway. Our  
13 expectation is, if the Court were to order a final date whenever  
14 the Court deems appropriate, we would do, I think, a rolling  
15 production in the interim anyway. I think it's easier for us.

16 THE COURT: I appreciate that. Thank you.

17 MR. DUGAN: Yes, sir. Thank you.

18 THE COURT: I'll take no more than a ten-minute recess.  
19 No one needs to stand. Thank you.

20 (Thereupon, a recess in the proceedings occurred from  
21 11:10 a.m. until 11:18 a.m.)

22 THE COURT: First of all, let me give credit where credit  
23 is due. I want to applaud the government's efforts in getting to  
24 the point where it is. It's completed. It sounds like the  
25 process of identifying is going through what I'm sure is a very

1 time-consuming process of determining what privacy issues there  
2 may be to address. I'm also sensitive to the fact that the  
3 government has to check with other agencies of the government,  
4 including the Special Counsel's Office, to determine whether  
5 there are other cogent objections to the release of information,  
6 so I'll give credit where credit is due. This is a very  
7 important case. The public has a significant interest in not  
8 only this case, but the issues of what the government is doing  
9 with respect to the investigation. I don't know. I may be  
10 somewhat cynical. My guess is that you'll probably receive a lot  
11 of -- hundreds of pages of documents that essentially say no  
12 comment, but I may be shocked if that's not the case. You seem  
13 to think that's not the case, though, correct?

14 MR. KLAYMAN: Correct.

15 THE COURT: But whatever the case is, I'm sensitive to the  
16 fact that there's also a strain on resources, and we are  
17 inundated, probably this Court more so than any other court in  
18 the country, is inundated with FOIA requests. Having said all  
19 that, I think it eminently fair and reasonable, given the  
20 juncture where the government is at this point with having  
21 identified documents and proceeding with the process, to direct  
22 the government to produce all produceable documents by no later  
23 than -- I don't want to keep saying the day after Labor Day.  
24 I'll give you a date certain. And I'm not going to try to  
25 determine what's fair and reasonable to produce on a rolling

1 basis. It looks like September the 4th. I accept the  
2 government's representations that, as identified, and after the  
3 government determines that certain documents should be produced  
4 they'll just start rolling those documents out, but I'm not going  
5 to -- it would seem to me, if I were in the government's position  
6 and the judge said, "You're not obligated to produce on a rolling  
7 basis, but here's the drop dead date," it seems to me that would  
8 benefit me, but I don't know. I'm not going to impose any  
9 further production requirements. If the government does produce,  
10 I think it probably can produce during the interim months, that's  
11 fine, but the final date for production will be September the  
12 4th, and that's the best I can do under the circumstances.

13 It's not quite July the 7th or the 31st, but you're going  
14 to get the documents, and it will be before the fall. And I  
15 think that's a good time, too. It's an election year. This case  
16 will be moot then in early September, hopefully. So I've done  
17 the best I can do. I'm going to deny the motion for summary  
18 judgment as moot because I've ordered production of documents --  
19 or I can either grant it. It really doesn't make much  
20 difference. I don't think anyone opposed production of  
21 documents. The main issue was the timeliness of production of  
22 documents. All right. You've had my best thoughts. All right.  
23 Good to see everyone.

24 MR. KLAYMAN: Thank you, Your Honor.

25 MR. DUGAN: Thank you.

1 THE COURT: Have a nice day and summer. I'm not going to  
2 schedule another hearing. I think that's eminently fair and  
3 reasonable, that date, so everyone enjoy the summer, all right.  
4 Good to see you. I'm sure I'll see you again tomorrow, next week  
5 or in the next case, the next FOIA case. Okay. Take care. Good  
6 to see you again, Mr. Klayman.

7 (Proceedings adjourned at 11:22 a.m.)

8 **C E R T I F I C A T E**

9  
10 I, Scott L. Wallace, RDR-CRR, certify that  
11 the foregoing is a correct transcript from the record of  
12 proceedings in the above-entitled matter.

13 /s/ Scott L. Wallace

5/24/18

14 -----  
15 **Scott L. Wallace, RDR, CRR**  
16 **Official Court Reporter**

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17 **Date**