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|---|--|
| <p style="text-align: right;">Page 54</p> <p>1 Q. Was it a yearly training? 2 A. No. 3 Q. Was that the first time you ever received any 4 type of IPRA training? A. Formal training. 5 Q. And you were the athletics director for 11 years 6 you said? A. Yes. 7 Q. Was there a reason why you received this formal 8 training? Like did you request the IPRA training? A. I don't recall how the training came about. 9 Q. Were there any training materials, like were 10 there handouts given to you in the training? A. I don't recall. 11 Q. Did the individual or individuals giving the 12 training use a PowerPoint presentation? A. I don't remember. 13 Q. Who conducted the training? A. John Rodriguez 14 Q. Anybody else? A. I don't remember. 15 Q. Who attended the training other than you? A. There were a number of people from the University 16 in the meeting. 17 Q. Was this just a University training that you</p> | <p style="text-align: right;">Page 56</p> <p>1 A. No. I think it was a general understanding prior 2 to that. 3 Q. (By Mr. Hart) Can you -- when you said before 4 "routine things, routine communications could get 5 deleted," can you give an example of what you mean by 6 that? 7 MS. BELL: Form. A. Normal correspondence, it's my understanding that 8 could be deleted. 9 Q. (By Mr. Hart) What do you mean by "normal 10 correspondence"? A. Routine correspondence. 11 Q. With who? A. With anybody. 12 Q. Discussing -- what are topics of discussion that 13 you consider routine correspondence? 14 MS. BELL: Objection. Form. A. I just -- what I would consider to be routine. Daily communication on a subject matter. 15 MR. HART: Can we have a minute? 16 MS. BELL: You want to go off the record? 17 MR. HART: Can we go off the record a 18 minute? 19 (Off the record from 10:34 a.m. to 10:36 a.m. 20 and testimony continued as follows:)</p> |
| <p style="text-align: right;">Page 55</p> <p>1 attended? 2 MS. BELL: Objection. Form. A. Yes. 3 Q. (By Mr. Hart) Was it for the Athletics Department 4 specifically? A. Not that I recall. 5 Q. Was there any training during that -- was there 6 any discussion during that training regarding the 7 preservation of documents? A. I don't remember. 8 Q. You stated before that your understanding of the 9 obligations under IPRA to preserve public records are 10 that routine, ordinary things could get deleted but 11 important documents need to be preserved. Is that 12 correct? 13 MS. BELL: Form. A. I mean, you have my comments of what I said. 14 Q. (By Mr. Hart) That's a correct characterization 15 of your understanding of the obligation to preserve 16 documents under IPRA; right? 17 MS. BELL: Form. A. Sounds right. 18 Q. (By Mr. Hart) Did you gain that understanding 19 from the University's IPRA training that you attended? 20 MS. BELL: Form.</p> | <p style="text-align: right;">Page 57</p> <p>1 Q. (By Mr. Hart) Sorry about that. Let's come back 2 on the record. Is your testimony that what -- that it's 3 your -- to determine whether a communication is routine 4 and could be deleted is basically up to you? Is that 5 what you're testifying? 6 MS. BELL: I'm going to object to form. A. I believe that based on what I know, I had no 7 obligation to keep a routine correspondence. 8 Q. (By Mr. Hart) Would an email from a donor saying 9 "I want to give this contribution to the University's 10 basketball program" be routine correspondence? A. I typically didn't get that kind of email. 11 Q. If you did, would that be routine correspondence? A. I don't recall getting that kind of email. I'm 12 not going to speculate on it. I don't recall getting 13 emails like that. 14 Q. If you received an email from any donor, would 15 you consider those emails from donors to be routine 16 correspondence that didn't have to be preserved? 17 MS. BELL: Form. A. Depending upon the subject matter and the 18 severity of the conversation, yes. 19 Q. (By Mr. Hart) So explain to me your process, if 20 you get an email from a donor in determining whether it 21 is routine and could be deleted or is not routine and</p> |

15 (Pages 54 to 57)

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1 should be preserved?

2 **A. I typically did not -- I did not get emails from**
 3 **donors talking about large contributions. Those**
 4 **emails -- those are usually personal discussions or**
 5 **conversations that our Development staff dealt with**
 6 **donors. I typically did not receive those kind of**
 7 **emails.**

8 Q. That's not answering my question. My question
 9 is: So you get an email. You received emails while you
 10 were athletics director from donors; correct?

11 **A. Yes.**

12 Q. When that email was in front of you, what is your
 13 criteria with an email to say "This is routine and I can
 14 delete it" or "This is not routine and needs to be
 15 preserved"? How do you make that determination?

16 MS. BELL: Form.

17 **A. I made a judgment call based upon the content of**
 18 **the email.**

19 Q. (By Mr. Hart) It's your subjective criteria for
 20 doing that; correct?

21 MS. BELL: Form.

22 **A. If I got that kind of email but I typically**
 23 **didn't.**

24 Q. (By Mr. Hart) Is there a University document that
 25 says "These types of communications are routine and

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1 don't need to be preserved"?

2 MS. BELL: Form and foundation.

3 **A. I don't know.**

4 Q. (By Mr. Hart) If you received an email from a
 5 member of your staff talking about any issue
 6 whatsoever -- well, if you received an email from
 7 someone on your staff, did you ever consider some of
 8 those emails -- any of those emails routine and delete
 9 them?

10 MS. BELL: Form.

11 Q. (By Mr. Hart) I'm sorry. Let me ask these -- did
 12 you ever delete an email that you received from a donor
 13 because you felt it was routine?

14 **A. Probably.**

15 Q. Did you ever delete a text message from a donor
 16 because you felt it was routine?

17 **A. I received -- I would guess I received over 200,**
 18 **250 emails a day. I don't know how many texts a day. I**
 19 **routinely deleted emails and text messages that were not**
 20 **of consequence.**

21 Q. When you say "not of consequence," that's by your
 22 subjective determination; right?

23 **A. Yes.**

24 Q. And those emails that you deleted because you
 25 subjectively determined they were not of consequence,

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1 did they involve communications from other University
 2 employees?

3 MS. BELL: Form.

4 **A. Probably.**

5 Q. (By Mr. Hart) Did they include communications
 6 from University of New Mexico Foundation employees?

7 **A. Probably.**

8 MS. BELL: Form.

9 Q. (By Mr. Hart) They included communications from
 10 donors; correct?

11 MS. BELL: Form.

12 **A. Probably.**

13 Q. (By Mr. Hart) And when you're saying that you
 14 deleted these emails or text messages, are you -- can
 15 you walk me through what you mean by that? Like are you
 16 just hitting "delete" in -- do you use Outlook at the
 17 University of New Mexico?

18 **A. I think so.**

19 Q. All right.

20 **A. I'm not very computer savvy.**

21 Q. When you are saying you are deleting an email,
 22 you are just hitting delete?

23 **A. I'm hitting delete.**

24 Q. Are you then going in and doing a permanent
 25 delete of those emails, like a permanent destruction of

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1 those emails that you delete?

2 MS. BELL: Objection. Form and foundation.

3 **A. Sometimes.**

4 Q. (By Mr. Hart) Did you ever ask the IPRA officer
 5 in your Department -- you said it was -- IPRA officer in
 6 your Department what the criteria were for deleting or
 7 preserving records?

8 MS. BELL: Form.

9 **A. I don't remember.**

10 Q. (By Mr. Hart) Did you ever ask John Rodriguez?

11 MS. BELL: Form.

12 **A. I don't -- I don't remember.**

13 Q. (By Mr. Hart) Okay.

14 **A. Possibly.**

15 Q. Did you ever ask the University counsel's office
 16 what the process was or the criteria were for
 17 maintaining or deleting emails?

18 MS. BELL: I'm going to allow him to answer
 19 the question, but caution the witness not to get into
 20 detail about what the response was from the Office of
 21 University Counsel because that's subject to privilege.
 22 You can answer whether you asked the question.

23 **A. Yes.**

24 MR. HART: Can I just clarify? Is the
 25 University's position with that objection that

16 (Pages 58 to 61)

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| <p style="text-align: right;">Page 62</p> <p>1 discussions with whether Mr. Krebs had the ability to 2 delete or maintain public emails is -- extends to the 3 University's privilege with the University counsel?</p> <p>4 MS. BELL: Well, I presume in your question 5 that what you're asking is whether Mr. Krebs sought a 6 legal interpretation or opinion from an attorney in the 7 Office of University Counsel, and in that regard, I 8 would assert that the University counsel's response, the 9 office's response would be privileged.</p> <p>10 MR. HART: Okay.</p> <p>11 Q. (By Mr. Hart) So putting aside what Ms. Bell just 12 talked about, which I agree is privileged, right, which 13 is you asking for a legal opinion, were there -- I asked 14 that earlier. When you received these IPRA -- when the 15 University Athletics Department received these IPRA 16 requests, what is your understanding -- sorry. Strike 17 that.</p> <p>18 When the University Athletics Department received 19 IPRA requests, did the IPRA office perform an 20 independent search of the Athletics Department's records 21 to determine whether anything was responsive?</p> <p>22 MS. BELL: Objection. Form and foundation.</p> <p>23 A. I don't know.</p> <p>24 Q. (By Mr. Hart) Did the University counsel's office 25 perform independent searches to determine whether or not</p> | <p style="text-align: right;">Page 64</p> <p>1 Q. (By Mr. Hart) Did you ever redact any documents 2 before turning them over?</p> <p>3 A. No.</p> <p>4 Q. Did anyone in the -- did Ms. Espindola, in her 5 role as your department -- as the Athletics Department 6 IPRA officer -- did she ever redact documents before 7 turning them over?</p> <p>8 A. I don't know.</p> <p>9 Q. Did you ever -- if there was a document where you 10 weren't sure if it needed to be turned over, did you 11 ever give it -- what is your process, you know, for 12 determining -- let me -- what is your process for 13 determining whether a document in your possession needs 14 to be turned over because of an IPRA request?</p> <p>15 A. What is my process?</p> <p>16 Q. When you got an IPRA request to yourself, what 17 was your process for determining whether a document 18 needed to be turned over?</p> <p>19 A. If I had a request, I would contact Kaley or 20 contact John Rodriguez, typically John Rodriguez.</p> <p>21 Q. What was your -- do you ever make an independent 22 determination that a document did not need to be 23 disclosed because of an IPRA request?</p> <p>24 MS. BELL: Objection. Form.</p> <p>25 A. I don't recall. The IPRA requests were typically</p> |
| <p style="text-align: right;">Page 63</p> <p>1 records were responsive to IPRA requests?</p> <p>2 MS. BELL: Objection. Form and foundation.</p> <p>3 A. I don't know.</p> <p>4 Q. (By Mr. Hart) Did you ever consult with anybody 5 when you received the IPRA requests personally to 6 determine whether documents that you had in your 7 possession needed to be turned over under IPRA?</p> <p>8 MS. BELL: Form.</p> <p>9 A. I'm aware of communication with the University's 10 IPRA office seeking clarification on IPRA requests.</p> <p>11 Q. (By Mr. Hart) Does the Athletics Department have 12 its own server, like its own computer system?</p> <p>13 A. No.</p> <p>14 MS. BELL: Form.</p> <p>15 Q. (By Mr. Hart) It is part of the University's 16 system?</p> <p>17 MS. BELL: Form and foundation.</p> <p>18 A. That's my understanding.</p> <p>19 Q. (By Mr. Hart) Did you ever make a determination 20 of whether a document -- email, text message, 21 whatever -- in your possession, which you are about to 22 give to the IPRA office to turn over, needed to be 23 redacted?</p> <p>24 MS. BELL: Objection. Form and foundation.</p> <p>25 A. No.</p> | <p style="text-align: right;">Page 65</p> <p>1 very broad.</p> <p>2 Q. (By Mr. Hart) So when you received a broad IPRA 3 request, how did you go about identifying documents that 4 were subject to that request?</p> <p>5 A. My experience was pretty self-explanatory in the 6 IPRA requests what they were asking for.</p> <p>7 Q. So you're saying you did a search for what they 8 were asking for; right?</p> <p>9 A. Either myself or my admin.</p> <p>10 Q. And did either yourself or your admin ever come 11 across a document in your experience that you weren't 12 sure whether or not it was responsive to that IPRA 13 request?</p> <p>14 MS. BELL: Form.</p> <p>15 A. I don't remember anything like that.</p> <p>16 Q. (By Mr. Hart) Did you ever have a document where 17 you weren't sure whether it was a private record or a 18 public record?</p> <p>19 MS. BELL: I'm sorry. Can you repeat the 20 question? I didn't hear it.</p> <p>21 MR. HART: No problem.</p> <p>22 Q. (By Mr. Hart) Did you ever come across a document 23 when doing this search where you were not sure whether 24 it was a private record or a public record?</p> <p>25 MS. BELL: Form.</p> |

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1 **A. I had been informed that anything that was done**
 2 **related to the University in my capacity was a public**
 3 **record.**

4 Q. (By Mr. Hart) We talked about two email accounts
 5 before: The University email account and the personal
 6 gmail account. Do you have any other -- do you
 7 currently have any other email accounts?

8 **A. I have another personal email account.**

9 Q. Is it also through gmail?

10 **A. No.**

11 Q. What --

12 **A. It is through AOL.**

13 Q. Do you still use your University email account?

14 **A. My understanding is that as a retiree of the**
 15 **University, that's a benefit to me. I typically only**
 16 **use it for -- if I get information on my benefits and**
 17 **some personnel information that comes my way. I**
 18 **typically don't use it.**

19 Q. Did you have any other email accounts other than
 20 the three we have now talked about during your tenure as
 21 athletics director?

22 **A. No.**

23 Q. Were you given the privilege to continue use of
 24 your Bowling Green State email account when you left?

25 **A. I don't recall.**

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1 Q. So you didn't conduct -- you didn't use your
 2 Bowling Green State University email account after you
 3 left Bowling Green State University?

4 **A. No.**

5 Q. Do you keep paper files in your house?

6 MS. BELL: Form.

7 **A. Taxes.**

8 Q. (By Mr. Hart) Do you keep paper files related to
 9 work in your house?

10 **A. No.**

11 Q. But do you keep paper files in the Athletics
 12 Department?

13 **A. My administrative assistant did and I had limited**
 14 **files.**

15 Q. When you conducted the searches we've been
 16 talking about, that included searching these paper
 17 files?

18 **A. I asked her to search the paper files, yes,**
 19 **because she had the paper files.**

20 Q. Are you aware whether the University has a policy
 21 for the preservation, maintenance, or destruction of
 22 public records?

23 MS. BELL: Form.

24 **A. I don't know if the University has a policy or**
 25 **not.**

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1 Q. (By Mr. Hart) Does the Athletics Department have
 2 a policy regarding the maintenance, preservation, or
 3 destruction of public records?

4 MS. BELL: Form.

5 **A. Not that I'm aware of.**

6 Q. (By Mr. Hart) Were you aware that the state of
 7 New Mexico has a policy regarding the preservation of
 8 public records?

9 MS. BELL: Form.

10 **A. No.**

11 Q. (By Mr. Hart) Were you aware that they also have
 12 a policy for the destruction -- regarding the
 13 destruction of public records?

14 MS. BELL: Form.

15 **A. No.**

16 Q. (By Mr. Hart) Were you aware that this policy
 17 requires that even routine communications must be
 18 maintained for a full calendar year after they are
 19 received or sent?

20 MS. BELL: Objection. Form and foundation.

21 **A. I believe I was following University policy.**

22 Q. (By Mr. Hart) Were you aware that the state of
 23 New Mexico has a policy that even routine communications
 24 may not be deleted for at least one calendar year after
 25 they are sent or received?

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1 MS. BELL: Objection. Form and foundation.

2 **A. No.**

3 Q. (By Mr. Hart) Have you ever directed any
 4 employees of the Athletics Department to delete public
 5 records?

6 MS. BELL: Form.

7 **A. Only -- I think our staff deletes routine**
 8 **correspondence given the volume they get.**

9 Q. (By Mr. Hart) My question was: Have you ever
 10 directed an employee of the Athletics Department to
 11 delete a public record?

12 MS. BELL: Form.

13 **A. No, not what I would consider a public record.**

14 Q. (By Mr. Hart) Would University -- would you
 15 consider, in this subjective criteria, a University
 16 press release to be a public record?

17 MS. BELL: Objection. Form.

18 **A. I would consider a press release to be public**
 19 **record.**

20 Q. (By Mr. Hart) Have you ever directed any employee
 21 of the University Athletics Department to delete emails
 22 containing University press releases?

23 MS. BELL: Objection. Form.

24 **A. Our press releases are on file, and I don't**
 25 **recall -- I don't recall that. I don't recall that. A**

18 (Pages 66 to 69)

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1 press release? No, I don't recall that.

2 MR. HART: We can mark this as Exhibit 1.
3 (Exhibit 1 marked.)4 Q. This is the exhibit. You obviously can review
5 it. Please don't write on it. If you could, take a
6 moment to read that email, please.

7 A. (Witness complies.)

8 Q. Do you recognize this email?

9 A. I do.

10 Q. Is it from your email address pkrebs@unm.edu?

11 A. It is.

12 Q. Is it to Kaley Espindola and Frank Mercogliano?

13 A. It is.

14 Q. And are Kaley Espindola and Frank Mercogliano
15 University employees?

16 A. They are.

17 Q. And does this email include a statement from
18 acting President Abdallah regarding the men's and
19 women's ski teams of the University of New Mexico?20 A. There's a statement at the bottom from President
21 Abdallah, yes.22 Q. If you look at this email, is it correct that it
23 says -- that you emailed to Kaley Espindola and Frank
24 Mercogliano, "Suggest you delete all texts and any
25 emails related to reinstatement skiing"? Is that

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1 correct?

2 A. Yes.

3 Q. Is it also correct that you said "Delete this
4 email"?

5 A. Yes.

6 Q. Is it your position that issues related to the
7 reinstatement of a University sports team is not a
8 public record?

9 MS. BELL: Form.

10 A. That public record existed. The president's --
11 we were not erasing the president's email. That was out
12 there. It was readily available.13 Q. (By Mr. Hart) Do you consider this email to be a
14 routine email?15 A. I consider this email, the top part of it to be
16 somewhat routine, yes, knowing that there was some
17 unresolved issues that were highly sensitive that had
18 yet to be determined.19 Q. Let's unpack that for a second. So the top part,
20 which are these two paragraphs, these two lines, you're
21 saying that that part is, in your view, a routine email?

22 MS. BELL: Form.

23 A. Potentially, yes.

24 Q. (By Mr. Hart) So is it your position that it's a
25 routine email to instruct your other -- to instruct

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1 employees of your department to delete public records?

2 A. No.

3 MS. BELL: Form and foundation.

4 Q. (By Mr. Hart) So what makes that email routine,
5 these top two lines?

6 MS. BELL: Object to form.

7 A. I thought there was some -- I thought in my mind
8 there was some routine elements to it and some issues
9 that we were working through that were highly sensitive
10 and not ready for public consumption.

11 Q. (By Mr. Hart) What were the routine elements?

12 A. I thought it was an appropriate thing to do at
13 the time.

14 Q. My question is: What were the routine elements?

15 A. I can't answer that right now. I don't know.

16 Q. So is it your opinion that looking at this email
17 right now, that this is not a routine document?

18 MS. BELL: Form.

19 A. Potentially. Perhaps. It is easy in retrospect
20 to say that.21 Q. (By Mr. Hart) So does this email represent the
22 type of communication that your understanding is you had
23 the discretion to permanently delete?

24 A. No.

25 Q. But you instructed employees of the Athletics

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1 Department to delete it anyway?

2 MS. BELL: Form.

3 A. Those were my instructions, yes.

4 Q. (By Mr. Hart) You also said previously that there
5 were sensitive things in here that you felt weren't
6 ready for public consumption. Is that correct?

7 A. I just said that, yes.

8 (Mr. Boyd leaves the room.)

9 Q. What do you mean by "sensitive"?

10 A. This was a very unique -- there's nothing routine
11 about this in some respects. This was very unique, and
12 we were working through the issue of bringing back
13 skiing. Not all decisions had been made yet, and we
14 were waiting until we had all the answers before we
15 released any information, and any draft, any premature
16 information would have been very damaging to the ski
17 program.18 Q. But is it correct that when you say "sensitive,"
19 you don't mean that this wasn't a public record?

20 MS. BELL: Form.

21 A. I don't know.

22 Q. (By Mr. Hart) You also say in this "We just need
23 to be prepared" -- and I'm -- I'm going to paraphrase --
24 for Libit to have this within 30 minutes. In your
25 opinion, is this a public record?

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1 MS. BELL: Form.

2 **A. I don't know.**3 **(Mr. Boyd enters the room.)**4 Q. (By Mr. Hart) Why didn't you want Mr. Libit to
5 have this document?

6 MS. BELL: Form. Foundation.

7 **A. I don't know. I don't remember.**8 Q. (By Mr. Hart) Now, having looked at this
9 document, are there any other times where you directed
10 University employees to delete emails?11 **A. I don't believe so.**12 Q. Are there any other times that you instructed
13 University employees to delete text messages?14 **A. I don't believe so.**15 Q. Were there any other times that you directed
16 University employees to destroy public records?

17 MS. BELL: Objection. Form and foundation.

18 **A. I don't recall ever directing anybody to destroy
19 public records.**20 Q. (By Mr. Hart) Did you delete as routine any
21 emails related to the WisePies naming agreement?

22 MS. BELL: Objection. Form.

23 **A. I think all the WisePies naming agreement
24 documents have been submitted.**

25 MS. BELL: When you are done with the

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1 exhibit, can we take a break?

2 MR. HART: Sure. Kim is asking if we can
3 take a break. We can take one.

4 MR. BOYD: Sure.

5 MS. BELL: I wanted to make sure that the
6 issues with the exhibit were dealt with.7 (Recess taken from 11:03 a.m. to 11:11 a.m.
8 and testimony continued as follows:)9 Q. (By Mr. Hart) Let's come back on the record. I
10 just want to clarify real quick a couple of things that
11 we talked about. You testified that if an IPRA response
12 is received by the University that deals with you,
13 specifically, that it will get sent to you to look for
14 documents responsive to that request. Correct?

15 MS. BELL: Form.

16 **A. Yes. I believe that's what I said.**

17 Q. (By Mr. Hart) Okay. So --

18 **A. Now, it may go through Kaley to me through that
19 route, but typically, that's my understanding, yeah.**20 Q. So let's use a hypothetical. You get a request,
21 and that request is for all communications that you sent
22 or received relating to the ski program. Right? What
23 is your process for searching your emails and text
24 messages and records for responsive communications?

25 MS. BELL: Form.

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1 **A. I would go through my emails and search for
2 skiing, the topic "skiing."**3 Q. (By Mr. Hart) So you go into your email folder
4 and you type in "ski"?

5 MS. BELL: Form.

6 **A. I would type in the subject matter that the
7 request covered.**

8 Q. (By Mr. Hart) Okay.

9 **A. Or the request may cover names, emails between me
10 and X.**

11 Q. And what was your process for paper records?

12 MS. BELL: Form.

13 **A. My administrative assistant kept most of the
14 paper files where I would -- if they were of significant
15 nature, I would store them in my computer.**16 Q. (By Mr. Hart) And what I'm asking is: What was
17 the process that you had used to search those paper
18 records, those records stored on your computer to find
19 responsive documents?20 **A. What was the process?**

21 Q. Yes.

22 **A. I would identify the subject matter in question
23 and begin to search.**

24 Q. By "search," you mean just thumb through things?

25 MS. BELL: Form.

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1 **A. On the paper -- if there were paper documents --
2 I tended not to have a lot of paper documents. My
3 administrative assistant would have paper documents or I
4 would store files in my computer that -- to my
5 knowledge, I didn't have a lot of paper documents.**6 Q. (By Mr. Hart) Did you do the same thing for the
7 files on your computer? Do you go in and just put in
8 your search term?9 **A. I tried, yes.**10 Q. If nothing came up, did you do any other looking
11 through those documents?

12 MS. BELL: Form and foundation.

13 **A. Potentially. Depending upon the subject matter,
14 yes.**15 Q. (By Mr. Hart) What did your administrative
16 assistant -- what was her process for going through your
17 paper records?18 **A. I don't know.**

19 MS. BELL: Form.

20 Q. (By Mr. Hart) You testified before that you from
21 time to time delete what are in your view routine
22 communications from your emails. Correct?23 **A. I believe I said that, yes.**24 Q. Just to go through the process with that, when
25 you say "delete," you are just hitting delete; correct?

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1 MS. BELL: Form.

2 **A. I don't recall.**3 Q. (By Mr. Hart) Like so if you are in your email --
4 we talked before about the fact that there's a
5 difference between just deleting an email and
6 permanently deleting them out of the deleted box in your
7 email. And you understand the difference, right,
8 between just deleting an email and going through and
9 permanently deleting it from the delete portion of your
10 inbox? Right?

11 MS. BELL: Form and foundation.

12 **A. I believe I understand the difference.**13 Q. (By Mr. Hart) Okay. What's your understanding of
14 that difference?15 **A. Well, the delete goes to -- what you deleted goes
16 to a delete file.**17 Q. When you delete things from that larger delete
18 file, a box pops up that says "You are going to
19 permanently delete. Are you okay with that?" Right?
20 It says "yes" or "no"?

21 MS. BELL: Form and foundation.

22 **A. Yeah, sounds familiar.**23 Q. (By Mr. Hart) Okay. So you do permanently delete
24 some communications that you have decided are routine?

25 MS. BELL: Form and foundation.

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1 **A. I don't know how to answer that.**2 Q. So you testified earlier regarding this exhibit
3 that this included information that you didn't want
4 public at the time?5 **A. Let me be clear. The email from the president
6 was not deleted. That was on our server, the
7 president's server. That piece of it, what I was
8 talking about, were those first two paragraphs. I
9 viewed that as a draft of a document that was not ready
10 for public consumption.**11 Q. So is your view that this email -- that if any
12 portion of an email chain includes a, in your view,
13 routine email that can be deleted, that the entire email
14 chain should be deleted?

15 MS. BELL: Objection. Form and foundation.

16 **A. Yeah, I can't answer that. It's not -- every
17 situation is different.**18 Q. (By Mr. Hart) Is one of these criteria that you
19 apply -- is one of the reasons why you delete something
20 as routine because it's sensitive?21 **A. I get -- I got hundreds of emails. In order to
22 operate efficiently, I didn't need a lot of emails on my
23 computer. If I didn't view it as critical, it
24 potentially could be deleted.**

25 Q. So is the reinstatement of the ski program not a

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1 **A. I delete communications. It seemed to be helpful
2 to keep things neat and tidy.**3 Q. (By Mr. Hart) You go into the delete box and do a
4 permanent delete of some files; right?5 **A. Yes.**

6 Q. Why do you permanently delete those files?

7 **A. That seems like the prudent thing to do.**8 Q. And by the prudent thing to do, what do you mean?
9 Like why are you making the decision to permanently
10 delete an email that's in the delete box of your
11 Outlook?

12 MS. BELL: Form.

13 **A. It seemed appropriate to do. I'm not a computer
14 expert.**15 Q. (By Mr. Hart) Would you consider, say, an email
16 from Kaley Espindola saying, "Paul, do you want to get
17 lunch today" a routine communication that would get
18 deleted?19 **A. Yes.**20 Q. And if you deleted that, would you then go into
21 your delete inbox and permanently delete it?22 **A. I might at times. Yeah.**23 Q. Is there a reason why you do more than just
24 delete and go into the permanent -- you go in and
25 permanently delete a document?

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1 critical -- is the reinstatement of the ski program,
2 which is the discussion of this email, not a critical
3 issue in your view that the public has the right to know
4 about?

5 MS. BELL: Objection. Form and foundation.

6 **A. It is. It is a critical issue. That was a draft
7 of the document to Frank Mercogliano.**8 Q. (By Mr. Hart) And is it your understanding that
9 drafts are not public records and can be deleted?

10 MS. BELL: Form.

11 **A. I typically did not keep drafts. I kept the
12 final document.**13 Q. (By Mr. Hart) Is it also your view that a
14 document that you subjectively believe is not ready for
15 public consumption is a document that doesn't need to be
16 preserved and can be deleted?

17 MS. BELL: Form.

18 **A. That's a very open-ended question.**19 Q. (By Mr. Hart) You testified that this email in
20 Exhibit 1 was not ready for public consumption?21 **A. I testified it was a draft.**22 Q. And you also testified that before, in your view,
23 it was sensitive and not ready for public consumption?

24 MS. BELL: Form.

25 **A. Because it was a draft.**

21 (Pages 78 to 81)

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