

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
RACHEL TUDOR,)	
)	
Plaintiff-Intervenor)	
v.)	CASE NO. 5:15-CV-00324-C
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY, and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendants.)	

**UNITED STATES’ MOTION TO COMPEL DEFENDANTS’ PRODUCTION OF
ELECTRONICALLY STORED INFORMATION WITH INCORPORATED
BRIEF**

Pursuant to Rule 37(a) of the Federal Rules of Civil Procedure, Plaintiff, the United States of America (“United States”), requests that the Court compel Defendants Southeastern Oklahoma State University and the Regional University System of Oklahoma to produce electronically stored information (“ESI”) that the United States requested on January 15, 2016. *See* Exhibit 1. The United States, Dr. Tudor, and Defendants have conferred multiple times, via email, letters, and in telephone conferences, but have not been able to resolve this dispute.¹

¹ The United States, Dr. Tudor, and Defendants could not confer in-person because counsel for the United States is located in Washington, D.C. Thus, a personal conference was “infeasible.” *See* Local Rule 37.1.

I. Background

On January 15, 2016, the United States served Defendants with the request for ESI that is the subject of this motion. *See* Exhibit 1. The January 15 request asked the Defendants to run certain specified searches on certain email accounts and produce the search results. Before serving this request, the United States had requested that Defendants provide search results from only two email accounts so that the United States could gain a better understanding of Defendants' email practices. Defendants produced emails from the searches of those two email accounts and the United States used the information that it gleaned from those search results to tailor its January 15 request in an effort to limit the number of irrelevant emails that the search instructions in the January 15 request would yield. *See* Exhibit 1 at 1.

Defendants did not produce emails in response to the January 15 request and also did not provide any written objections to the January 15 request. Instead, Defendants requested a teleconference to discuss an alternative method for producing ESI. The United States and Defendants held this teleconference on February 10, 2016. *See* Exhibit 2.

During the February 10 teleconference, Defendants proposed that, instead of providing the email search results requested in the January 15 request, Defendants could produce large volumes of email to the United States pursuant to a procedure governed by Federal Rule of Evidence 502(d). *Id.* at 1. Under Defendants' proposal, Defendants would produce large volumes of email without reviewing the email first and would reserve the right to assert privilege over the emails after the United States reviewed the

emails. After the United States completed its review of the emails, the United States would identify emails that it believed were discoverable and Defendants would then have an opportunity to review those emails and assert privilege over ones that they believed were privileged. After any disputes over privilege were resolved, the parties would have a set of non-privileged emails that could be used in connection with the case. Defendants represented that this process would be more efficient because the United States has email search tools that Defendants do not possess which would enable the United States to more efficiently search through a large volume of emails.

On February 17, 2016, the United States sent a letter to Defendants requesting that Defendants provide the number of emails in certain email accounts for certain periods of time. *Id.* The United States requested this information so that it could determine how much email the Defendants might produce if it went forward with the Defendants' proposal discussed during the February 10 teleconference. The United States asked Defendants to produce these email counts by February 29, 2016, but stated that the United States was open to discussing a different deadline if the February 29 deadline would not work for Defendants. *Id.* at 2.

On February 25, 2016, the United States emailed Defendants to determine whether they believed they could meet the February 29 deadline. *See* Exhibit 3. Defendants did not reply to this email. On March 21, 2016, the United States emailed Defendants to ask if and when Defendants intended to provide the email counts requested in the United States' February 17 letter. *Id.* Defendants did not reply to this email either.

On April 7, 2016, the parties convened for a teleconference where they discussed a

variety of discovery issues. The United States raised its outstanding February 17 request for email counts during this teleconference. Defendants stated during the teleconference that they wanted the United States to specify email search terms so that they could run those searches before producing emails pursuant to a FRE 502(d) order. This was not consistent with Defendants' representation of their proposal as discussed during the February 10 teleconference. Despite the intervening communications from the United States intended to effectuate the Defendants' original proposal, this was the first time Defendants stated that they did not intend to proceed with that proposal. Regardless, the United States agreed to consider Defendants' new proposal.

The United States responded to the proposal that Defendants raised during the April 7 teleconference in a letter that the United States emailed and mailed to Defendants on April 8, 2016. *See* Exhibit 4. The United States' April 8 letter requested that Defendants produce the emails requested in the United States' January 15 letter (Exhibit 1) by April 15, 2016. *See* Exhibit 4 at 2. The United States stated that it would be willing to agree to a FRE 502(d) order that would cover the ESI requested in the January 15 letter if such an order would be needed in order for Defendants to meet the April 15 deadline. The United States attached a proposed FRE 502(d) order (*id.* at 4-6) to the April 8 letter and asked Defendants to notify the United States, by April 13, 2016, if they wanted the United States to prepare a joint motion requesting that the Court enter the proposed FRE 502(d) order. *Id.* at 2. To date, Defendants have not responded to the United States' April 8 letter. As such, more than three months after the United States' January 15 request for production of emails, Defendants have yet to produce a single

responsive document and have failed to agree to a time frame for doing so.

II. Argument

Under Rule 34 of the Federal Rules of Civil Procedure, Defendants were required to respond to the United States' January 15, 2016, request for ESI or object in writing if they believed the request was objectionable. Defendants did not provide any written objection to the United States' request and, as such, they have waived any and all objections. *Pham v. Hartford Fire Ins. Co.*, 193 F.R.D. 659, 661-62 (D. Colo. 2000) (defendant waived objections to document requests because of untimely objection).

While Defendants' waiver of objections to the January 15 request includes all objections, the United States would agree to permit Defendants to retain the right to assert privilege objections if they produce the ESI pursuant to the process described in the proposed FRE 502(d) order attached to the United States' April 8 letter. *See* Exhibit 4 at 4-6. Based on the teleconferences that the United States and Defendants have had, it appears as though Defendants' primary concern with the January 15 request for ESI relates to the burden associated with reviewing the requested emails. This burden would be greatly alleviated if the Court entered the FRE 502(d) order attached to the United States' April 8 letter because Defendants would only need to review the subset of emails responsive to the January 15 request that the United States wants to use in connection with this litigation.

III. Request for Relief

Given the delay caused by Defendants' failure to respond to the United States' January 15 request and subsequent communications related to that request, the United

States asks that the Court require the Defendants to produce the ESI requested in the United States' January 15 request within one week of the date of its order. If the Court determines that the United States' proposed FRE 502(d) order (Exhibit 4 at 4-6) should govern the production of ESI responsive to the United States' January 15 request, the United States asks that the Court enter that order as well.

Respectfully submitted,

Date: April 18, 2016

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

DELORA L. KENNEBREW
Chief
Employment Litigation Section

MEREDITH L. BURRELL (MD no number issued)
Deputy Chief
Employment Litigation Section

/s/ Allan K. Townsend
ALLAN K. TOWNSEND (ME Bar No. 9347)
SHAYNA M. BLOOM (D.C. Bar 498105)
Senior Trial Attorneys
Employment Litigation Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Patrick Henry Building, Fourth Floor
Washington, DC 20530
Telephone: (202) 616-9100
Facsimile: (202) 514-1005
Allan.Townsend@usdoj.gov
Shayna.Bloom@usdoj.gov

Attorneys for Plaintiff United States

CERTIFICATE OF SERVICE

I certify that I served this document on all counsel of record through the Court's electronic filing system on the date below.

Date: April 18, 2016

/s/ Allan K. Townsend



Civil Rights Division

DLK:MLB:AT/SB
DJ 170-76-405

Employment Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530
www.usdoj.gov/crt/emp

Via E-Mail and U.S. Mail

January 15, 2016

Jeb Joseph
Oklahoma Attorney General's Office
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Re: *United States & Tudor v. Southeastern Okla. State Univ. & Reg. Univ. Sys. of Okla.*,
5:15-CV-00324-C (W.D. Okla.)

Dear Jeb:

I am writing to request that Southeastern Oklahoma State University (SEOSU) and the Regional University System of Oklahoma (RUSO) search for emails in accordance with the instructions included with this letter. As you know, we previously provided you with instructions for searching the email accounts of Drs. Mischo and Prus. *See* Letter from United States dated Sept. 24, 2015. You provided us the results of those searches on October 29 and November 18, 2015. Based on the results of those searches, we have a better understanding of what search terms and parameters to use so that we can limit the number of irrelevant emails produced by the searches. However, if you find that some of the search terms or parameters in the enclosed instructions have yielded a large number of irrelevant emails, we are willing to discuss further refinements.

When you produce the emails requested in the attached instructions, please produce them using the method that Allan described in his email dated September 1, 2015. This method will ensure that we can review metadata, such as the "TO" and "FROM" fields in emails, while at the same time assigning a bates number to each email. If you have any questions about the method of production described in Allan's September 1, 2015, email, please let us know.

With respect to the emails that you produced from the searches of Dr. Mischo's and Dr. Prus's email accounts, please bates number and produce all of them except the emails that you found which contained information protected by the Family Educational Rights and Privacy Act (FERPA). Furthermore, if the enclosed instructions yield emails or other documents that contain FERPA protected information, you do not need to produce those FERPA protected emails or documents. Instead, please provide us with a count of the number of FERPA protected emails and documents that each search instruction yielded.

Please produce the emails requested by February 15, 2016. If you do not believe you will be able to meet this deadline, please let me know by February 5, 2016 so that we can discuss whether rolling productions would be preferable.

Thank you for your attention to this matter.

Sincerely,

Delora L. Kennebrew
Chief
Employment Litigation Section

By: 

Allan K. Townsend
Shayna Bloom
Trial Attorneys
Employment Litigation Section

Enclosure

CC: Jillian Weiss
Ezra Young
Brittany Novotny

Instructions for searching Dr. John Mischo's email account

Please use the following search terms and instructions to search Dr. Mischo's email account and produce the results. Emails saved on the server as well as emails saved on Dr. Mischo's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails that contain the terms "Civil Rights" or "tenure" in the subject field or body of the email message.
- 2) All Microsoft Outlook items other than email (*e.g.*, tasks and calendar entries) that contain the term "Civil Rights."
- 3) All Microsoft Outlook items (*e.g.*, emails, tasks, calendar entries) dated May 30, 2011, to present that contain *all* of the following terms (exclusive of commas): promot!, tenure!, and committee.
- 4) All emails in the following folders: "AAUP;" "Faculty Senate 2012-13;" "Faculty Senate 2013-14;" "Faculty Senate 2014-15;" "grievance cmmtee;" and "PPC 2014 2015 (Personnel Policy Committee)."

Instructions for searching Dr. Randy Prus's email account

Please use the following search terms and instructions to search Dr. Prus's email account and produce the results. Emails saved on the server as well as emails saved on Dr. Prus's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails that contain any of the following terms in the subject field or body of the email message:
 - "terminal year" ○ tenure
 - "Civil Rights"
- 2) All Microsoft Outlook items other than email (*e.g.*, tasks and calendar entries) that contain any of the following terms:
 - "terminal year" ○ tenure
 - "Civil Rights"
- 3) All Microsoft Outlook items (*e.g.*, emails, tasks, calendar entries) dated May 30, 2011 to the present that contain *all* of the following terms (exclusive of commas): promot!, tenure!, and committee.

Instructions for searching Dr. Larry Minks' email account

Please use the following search terms and instructions to search Dr. Minks' email account and produce the results. Emails saved on the server as well as emails saved on Dr. Minks' computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails that contain any of the following terms in the subject field or body of the email message:

<ul style="list-style-type: none"> ○ Tudor ○ “terminal year rule” ○ “terminal year” ○ discriminat! ○ retaliat! ○ reappl! ○ EEOC ○ DOJ ○ “Equal Employment Opportunity Commission” ○ “Department of Justice” 	<ul style="list-style-type: none"> ○ “Civil Rights” ○ lawsuit ○ “American Association of University Professors” ○ AAUP ○ tenure ○ “Senator Rice” ○ “Andrew Rice” ○ Rice ○ “Oklahoma State Senate” ○ Nusz ○ Townsend
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- 2) All emails that contain any of the following terms in the subject field:
 - tenure
 - promotion
- 3) All emails sent or received between August 1, 2009 and May 31, 2011 that contain any of the following terms in the subject field:

<ul style="list-style-type: none"> ○ appeal! ○ grievan! 	<ul style="list-style-type: none"> ○ complain! ○ investigat!
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- 4) All Microsoft Outlook items other than email (*e.g.*, tasks and calendar entries) that contain any of the following terms:

<ul style="list-style-type: none"> ○ Tudor ○ Rachel ○ “terminal year rule” ○ “terminal year” ○ “fifth sixth or seventh” ○ “5th 6th or 7th” ○ discriminat! ○ retaliat! ○ reappl! ○ EEOC 	<ul style="list-style-type: none"> ○ DOJ ○ “Equal Employment Opportunity Commission” ○ “Department of Justice” ○ “Civil Rights” ○ lawsuit ○ “American Association of University Professors” ○ AAUP
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- 5) All emails that Dr. Minks sent to or received from Dr. Rachel Tudor.
- 6) All emails that Dr. Minks sent to or received from Dr. Lucretia Scoufos, Dr. Douglas McMillan, Dr. Claire Stubblefield, Dr. Charles Weiner, and/or Dr. Ross Walkup

- during the following date ranges that contain any of the terms below in the subject field or body of the message: November 29, 2009 – June 9, 2010 and August 1, 2010 – May 31, 2011.
- Charlie
 - Charles
 - Babb
- 7) All emails that Dr. Minks sent to or received from Dr. Douglas McMillan and/or Dr. Lucretia Scoufos that fall within the following date ranges: February 15, 2010 – April 30, 2010 and August 1, 2010 – October 5, 2010.
 - 8) All emails that Dr. Minks sent to or received from Dr. Charles Weiner between February 19, 2010 and April 29, 2010.
 - 9) All emails that Dr. Minks sent to or received from Dr. Jesse Snowden between August 1, 2010 and March 25, 2011.
 - 10) All emails that Dr. Minks sent to or received from Dr. Claire Stubblefield between August 30, 2010 and February 21, 2011.
 - 11) All emails that Dr. Minks sent to or received from Dr. Ross Walkup and/or Dr. Bryon Clark between December 10, 2010 and March 25, 2011.
 - 12) All emails that Dr. Minks sent to or received from Dr. John Mischo between August 31, 2009 and March 1, 2012.
 - 13) All emails that Dr. Minks sent to or received from Dr. Randy Prus between August 1, 2010 and March 1, 2012.
 - 14) All emails sent to or received from the American Association of University Professors (AAUP) between May 6, 2011 and the present. The email domain for the AAUP is aaup.org.
 - 15) If Dr. Minks has created folders to store emails, provide the names of those folders and, if it is not clear from the names of the folders, the types of emails that Dr. Minks stores in each folder.

Instructions for searching Dr. Douglas McMillan's email account

Please use the following search terms and instructions to search Dr. McMillan's email account and produce the results. Emails saved on the server as well as emails saved on Dr. McMillan's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails that contain any of the following terms in the subject field or body of the email message:

<ul style="list-style-type: none"> ○ Tudor ○ "terminal year rule" ○ "terminal year" ○ discriminat! ○ retaliat! ○ reappl! ○ EEOC ○ DOJ ○ "Equal Employment Opportunity Commission" 	<ul style="list-style-type: none"> ○ "Department of Justice" ○ "Civil Rights" ○ lawsuit ○ tenure ○ "Senator Rice" ○ "Andrew Rice" ○ Rice ○ "Oklahoma State Senate" ○ Nusz ○ Townsend
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- 2) All emails that contain any of the following terms in the subject field:
 - tenure
 - promotion
- 3) All emails sent or received between August 1, 2009 and May 31, 2011 that contain any of the following terms in the subject field:

<ul style="list-style-type: none"> ○ appeal! ○ grievan! 	<ul style="list-style-type: none"> ○ complain! ○ investigat!
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- 4) All Microsoft Outlook items other than email (*e.g.*, tasks and calendar entries) that contain any of the following terms:

<ul style="list-style-type: none"> ○ Tudor ○ Rachel ○ "terminal year rule" ○ "terminal year" ○ "fifth sixth or seventh" ○ "5th 6th or 7th" ○ discriminat! ○ retaliat! ○ reappl! 	<ul style="list-style-type: none"> ○ EEOC ○ DOJ ○ DOE ○ "Equal Employment Opportunity Commission" ○ "Department of Justice" ○ "Civil Rights" ○ lawsuit
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- 5) All emails that Dr. McMillan sent to or received from Dr. Rachel Tudor.
- 6) All emails that Dr. McMillan sent to or received from Dr. Larry Minks, Dr. Lucretia Scoufos, Dr. Claire Stubblefield, Dr. Charles Weiner, and/or Dr. Ross Walkup during the following date ranges that contain any of the terms below in the subject field or

body of the message: November 29, 2009 – June 9, 2010 and August 1, 2010 – May 31, 2011.

- Charlie
 - Charles
 - Babb
- 7) All emails that Dr. McMillan sent to or received from Dr. Larry Minks and/or Dr. Lucretia Scoufos that fall within the following date ranges: February 15, 2010 – April 30, 2010 and August 1, 2010 – October 5, 2010.
 - 8) All emails that Dr. McMillan sent to or received from Dr. Charles Weiner between February 26, 2010 and April 29, 2010.
 - 9) All emails that Dr. McMillan sent to or received from Dr. Jesse Snowden between August 1, 2010 and March 25, 2011.
 - 10) All emails that Dr. McMillan sent to or received from Dr. Claire Stubblefield between August 30, 2010 and February 21, 2011.
 - 11) All emails that Dr. McMillan sent to or received from Dr. Ross Walkup and/or Dr. Bryon Clark between December 3, 2010 and March 25, 2011.
 - 12) All emails that Dr. McMillan sent to or received from Dr. John Mischo between August 31, 2009 and June 9, 2010.
 - 13) All emails that Dr. McMillan sent to or received from Dr. Randy Prus between August 1, 2010 and May 31, 2011.
 - 14) All emails that Dr. McMillan sent to or received from Cathy Conway and/or Dr. C.W. Mangrum between May 31, 2007 and August 1, 2007.
 - 15) If Dr. McMillan has created folders to store emails, provide the names of those folders and, if it is not clear from the names of the folders, the types of emails that Dr. McMillan stores in each folder.

Instructions for searching Dr. Lucretia Scoufos's email account

Please use the following search terms and instructions to search Dr. Scoufos's email account and produce the results. Emails saved on the server as well as emails saved on Dr. Scoufos's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails that contain any of the following terms in the subject field or body of the email message:

<ul style="list-style-type: none"> ○ Tudor ○ "terminal year rule" ○ "terminal year" ○ discriminat! ○ retaliat! ○ reappl! ○ EEOC ○ DOJ ○ "Equal Employment Opportunity Commission" 	<ul style="list-style-type: none"> ○ "Department of Justice" ○ "Civil Rights" ○ lawsuit ○ tenure ○ "Senator Rice" ○ "Andrew Rice" ○ "Oklahoma State Senate" ○ Nusz ○ Townsend
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- 2) All emails that contain any of the following terms in the subject field:
 - tenure
 - promotion
- 3) All emails sent or received between August 1, 2009 and May 31, 2011 that contain any of the following terms in the subject field:

<ul style="list-style-type: none"> ○ appeal! ○ grievan! 	<ul style="list-style-type: none"> ○ complain! ○ investigat!
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- 4) All Microsoft Outlook items other than email (*e.g.*, tasks and calendar entries) that contain any of the following terms:

<ul style="list-style-type: none"> ○ Tudor ○ Rachel ○ "terminal year rule" ○ "terminal year" ○ "fifth sixth or seventh" ○ "5th 6th or 7th" ○ discriminat! ○ retaliat! ○ reappl! 	<ul style="list-style-type: none"> ○ EEOC ○ DOJ ○ DOE ○ "Equal Employment Opportunity Commission" ○ "Department of Justice" ○ "Civil Rights" ○ lawsuit
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- 5) All emails that Dr. Scoufos sent to or received from Dr. Rachel Tudor.
- 6) All emails that Dr. Scoufos sent *only* to or received *only* from Dr. Virginia Parrish.
- 7) All emails that Dr. Scoufos sent to or received from Dr. Larry Minks, Dr. Douglas McMillan, Dr. Claire Stubblefield, Dr. Charles Weiner, and/or Dr. Ross Walkup during the following date ranges that contain any of the terms below in the subject

- field or body of the message: November 29, 2009 – June 9, 2010 and August 1, 2010 – May 31, 2011.
- Charlie
 - Charles
 - Babb
- 8) All emails that Dr. Scoufos sent to or received from Dr. Larry Minks and/or Dr. Douglas McMillan that fall within the following date ranges: February 15, 2010 – April 30, 2010 and August 1, 2010 – October 5, 2010.
- 9) All emails that Dr. Scoufos sent to or received from Dr. Charles Weiner between February 26, 2010 and April 29, 2010.
- 10) All emails that Dr. Scoufos sent to or received from Dr. Jesse Snowden between August 1, 2010 and March 25, 2011.
- 11) All emails that Dr. Scoufos sent to or received from Dr. Claire Stubblefield between August 30, 2010 and February 21, 2011.
- 12) All emails that Dr. Scoufos sent to or received from Dr. Ross Walkup and/or Dr. Bryon Clark between December 3, 2010 and March 25, 2011.
- 13) All emails that Dr. Scoufos sent *only* to or received *only* from Dr. John Mischo between August 1, 2008 and May 31, 2010 that contain any of the following terms in the subject field or body of the message:
- Parrish
 - Cotter-Lynch
 - Barker
 - Virginia
 - Meg
 - Margaret
 - Jani
 - Janet
 - Rachel
 - tenure
- 14) All emails that Dr. Scoufos sent *only* to or received *only* from Dr. Randy Prus between November 29, 2009 and October 5, 2010.
- 15) All emails that Dr. Scoufos sent *only* to or received *only* from Dr. Randy Prus between October 5, 2010 and the present that contain any of the following terms in the subject field or body of the message:
- Barker
 - Janet
 - Jani
 - Rachel
 - tenure
- 16) All emails and other Microsoft Outlook items that Dr. Scoufos preserved in response to the memorandum that she received from Dr. Stubblefield that is bates numbered EEOC000825.
- 17) If Dr. Scoufos has created folders to store emails, provide the names of those folders and, if it is not clear from the names of the folders, the types of emails that Dr. Scoufos stores in each folder.

Instructions for searching Dr. Claire Stubblefield's email account

Please use the following search terms and instructions to search Dr. Scoufos's email account and produce the results. Emails saved on the server as well as emails saved on Dr. Scoufos's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails and other Microsoft Outlook items (*e.g.*, tasks and calendar entries) that contain any of the following terms in either the subject field or body of the item:

<ul style="list-style-type: none"> ○ Tudor ○ Cotter-Lynch ○ Parrish ○ Spencer ○ Weiner ○ Nusz 	<ul style="list-style-type: none"> ○ Townsend ○ tenure ○ promotion ○ portfolio ○ "prima facie"
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- 2) All emails that Dr. Stubblefield sent to or received from the following people:

<ul style="list-style-type: none"> ○ Dr. Rachel Tudor ○ Dr. Margaret Cotter-Lynch ○ Dr. Virginia Parrish 	<ul style="list-style-type: none"> ○ Dr. Mark Spencer ○ Dr. Lisa Coleman ○ Jane McMillan
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- 3) All emails that Dr. Stubblefield sent to or received from the people below between August 30, 2010 and January 19, 2011.

<ul style="list-style-type: none"> ○ Dr. Lucretia Scoufos ○ Dr. Douglas McMillan ○ Dr. Randy Prus ○ Dr. John Mischo ○ Dr. Charles Weiner ○ Dr. James Knapp ○ Dr. Larry Prather ○ Dr. Jon Reid 	<ul style="list-style-type: none"> ○ Dr. Ross Walkup ○ Dr. Bryon Clark ○ Dr. Jesse Snowden ○ Jana Legako ○ Beth Kerr ○ Brad Morelli ○ Cathy Conway
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- 4) All emails that Dr. Stubblefield sent to or received from Dr. Larry Minks, Dr. Douglas McMillan, and/or Dr. Lucretia Scoufos during the time periods of (a) August 30, 2010 – February 21, 2011 and (b) July 21, 2011 – September 5, 2012 that contain any of the following terms in the subject field or body of the message:

<ul style="list-style-type: none"> ○ complain! ○ discriminat! ○ retaliat! ○ reappl! ○ investigat! ○ Charlie ○ Charles 	<ul style="list-style-type: none"> ○ Babb ○ EEOC ○ "Equal Employment Opportunity Commission" ○ DOJ ○ "Department of Justice"
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- 5) All emails saved in any folder where Dr. Stubblefield saves emails related to Dr. Tudor and/or Dr. Tudor's discrimination complaints.

- 6) All calendar entries during the time periods of (a) August 30, 2010 – February 21, 2011 and (b) July 21, 2011 – September 5, 2012.
- 7) If Dr. Stubblefield has created folders to store emails, provide the names of those folders and, if it is not clear from the names of the folders, the types of emails that Dr. Stubblefield stores in each folder.

Instructions for searching Cathy Conway's email account

Please use the following search terms and instructions to search Cathy Conway's email account and produce the results. Emails saved on the server as well as emails saved on Ms. Conway's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched.

- 1) All emails sent to or received from the people below during the following date ranges: May 15, 2007 – August 1, 2007; August 30, 2010 – February 21, 2011; and July 21, 2011 – September 5, 2012.
 - o Dr. Douglas McMillan
 - o Dr. John Mischo
 - o Dr. Jesse Snowden
 - o Dr. Randy Prus
 - o Dr. C.W. Mangrum
 - o Dr. Lucretia Scoufos
 - o Dr. Larry Minks
 - o Bridgette Hamill
- 2) All emails sent to or received from Dr. Rachel Tudor.
- 3) All emails sent to or received from Dr. Claire Stubblefield between August 30, 2010 and January 19, 2011.
- 4) All emails and other Microsoft Outlook items (*e.g.*, tasks and calendar entries) that contain the following terms in the subject field or body of the item:
 - o Tudor
 - o Nusz
 - o Townsend
- 5) All calendar entries from May 31, 2007 to August 1, 2007.
- 6) All emails that Ms. Conway sent or received between May 31, 2007 and August 1, 2007 that contain any of the terms below in the subject field or body of the message.
 - o Charlie
 - o Charles
 - o Babb
- 7) If Ms. Conway has created folders to store emails, provide the names of those folders and, if it is not clear from the names of the folders, the types of emails that Ms. Conway stores in each folder.

Instructions for searching Dr. Charles Weiner's email account

Please use the following search terms and instructions to search Dr. Charles Weiner's email account and produce the results. Emails saved on the server as well as emails saved on Dr. Weiner's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails that contain any of the following terms in the subject field or body of the email message:

<ul style="list-style-type: none"> ○ Tudor ○ discriminat! ○ retaliat! ○ reappl! ○ EEOC ○ DOJ 	<ul style="list-style-type: none"> ○ "Equal Employment Opportunity Commission" ○ "Department of Justice" ○ "Civil Rights" ○ lawsuit ○ Nusz ○ Townsend
--	---
- 2) All emails sent to or received from the people below between February 26, 2010 and April 29, 2010:

<ul style="list-style-type: none"> ○ Dr. Larry Minks ○ Dr. James Knapp ○ Dr. Larry Prather 	<ul style="list-style-type: none"> ○ Dr. Jesse Snowden ○ Dr. Jon Reid
---	---
- 3) All emails sent to or received from Dr. Rachel Tudor.
- 4) All Microsoft Outlook items other than emails (e.g., tasks and calendar entries) for the dates of February 26, 2010 to April 29, 2010.
- 5) All emails sent or received during the following date ranges that contain any of the terms below in the subject field or body of the message: February 26, 2010 –April 29, 2010 and August 30, 2010 – March 25, 2011.

<ul style="list-style-type: none"> ○ appeal! ○ tenure ○ promotion ○ grievan! ○ complain! ○ President ○ Larry ○ Minks ○ Charlie 	<ul style="list-style-type: none"> ○ Babb ○ Charles ○ Claire ○ Stubblefield ○ workday ○ tape ○ recording
---	---
- 8) All emails that Dr. Weiner sent to or received from Dr. Claire Stubblefield between August 30, 2010 and January 19, 2011.
- 9) If Dr. Weiner has created folders to store emails, provide the names of those folders and, if it is not clear from the names of the folders, the types of emails that Dr. Weiner stores in each folder.

Instructions for searching Dr. Ross Walkup's email account

Please use the following search terms and instructions to search Dr. Ross Walkup's email account and produce the results. Emails saved on the server as well as emails saved on Dr. Walkup's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails that contain any of the following terms in the subject field or body of the email message:

<ul style="list-style-type: none"> ○ Tudor ○ discriminat! ○ retaliat! ○ reappl! ○ EEOC ○ DOJ 	<ul style="list-style-type: none"> ○ "Equal Employment Opportunity Commission" ○ "Department of Justice" ○ "Civil Rights" ○ lawsuit ○ Nusz ○ Townsend
--	---
- 2) All emails sent to or received from Dr. Rachel Tudor.
- 3) All emails sent or received between August 1, 2009 and the present that contain any of the following terms in the subject field:
 - tenure
 - promotion
- 4) All emails sent to or received from the people below between October 11, 2010 and January 3, 2011.

<ul style="list-style-type: none"> ○ Dr. Jesse Snowden ○ Dr. Lucretia Scoufos ○ Dr. John Mischo ○ Dr. Douglas McMillan ○ Dr. Larry Minks ○ Dr. Claire Stubblefield 	<ul style="list-style-type: none"> ○ Dr. Jack Robinson ○ Dr. Ernest Sturch ○ Dr. Charla Hall ○ Dr. Larry Prather ○ Dr. James Knapp
--	---
- 5) All emails sent or received between October 11, 2010 and January 3, 2011 that contain any of the following terms in the subject field or body of the email:

<ul style="list-style-type: none"> ○ appeal! ○ appellate ○ tenure ○ promotion ○ grievan! ○ complain! ○ "short term absence" ○ "presidential duties" ○ Jack ○ Robinson ○ Ernest ○ Sturch 	<ul style="list-style-type: none"> ○ President ○ Larry ○ Minks ○ Doug! ○ McMillan ○ Lucretia ○ Scoufos ○ Charlie ○ Charles ○ Babb ○ Claire ○ Stubblefield
---	---

- 6) All calendar entries between October 11, 2010 and January 3, 2011.
- 7) If Dr. Walkup has created folders to store emails, provide the names of those folders and, if it is not clear from the names of the folders, the types of emails that Dr. Walkup stores in each folder.

Instructions for searching Dr. Bryon Clark's email account

Please use the following search terms and instructions to search Dr. Bryon Clark's email account and produce the results. Emails saved on the server as well as emails saved on Dr. Clark's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails that contain any of the following terms in the subject field or body of the email message:

<ul style="list-style-type: none"> ○ Tudor ○ discriminat! ○ retaliat! ○ reappl! ○ EEOC ○ DOJ 	<ul style="list-style-type: none"> ○ "Equal Employment Opportunity Commission" ○ "Department of Justice" ○ "Civil Rights" ○ lawsuit ○ Nusz ○ Townsend
--	---
- 2) All emails sent to or received from Dr. Rachel Tudor.
- 3) All emails that contain any of the following terms in the subject field from October 11, 2010 to the present:

<ul style="list-style-type: none"> ○ tenure ○ promotion ○ appeal ○ "Academic Policies" 	<ul style="list-style-type: none"> ○ APPM ○ Senate ○ grievan! ○ "Personnel Policies Committee"
--	--
- 4) All emails sent to or received from the people below between January 3, 2011 and March 25, 2011.

<ul style="list-style-type: none"> ○ Dr. Lucretia Scoufos ○ Dr. Douglas McMillan ○ Dr. Larry Minks ○ Dr. Ross Walkup ○ Dr. Claire Stubblefield ○ Dr. Charla Hall ○ Dr. Larry Prather ○ Dr. James Knapp 	<ul style="list-style-type: none"> ○ Dr. William Fridley ○ Dr. Christopher Moretti ○ Dr. Halet Poovey ○ Dr. Kenneth Chinn ○ Dr. Dennis Brewster ○ Dr. Diane Dixon
--	---
- 5) All emails sent or received between January 3, 2011 and March 25, 2011 that contain any of the following terms in the subject field or body of the email:

<ul style="list-style-type: none"> ○ appeal! ○ appellate ○ tenure ○ promotion ○ grievan! ○ complain! ○ "short term absence" ○ "presidential duties" 	<ul style="list-style-type: none"> ○ Jack ○ Robinson ○ Ernest ○ Sturch ○ President ○ Larry ○ Minks ○ Doug!
---	--

- McMillan
 - Lucretia
 - Scoufos
 - Charlie
- Charles
 - Babb
 - Claire
 - Stubblefield
- 6) All calendar entries between January 3, 2011 and March 25, 2011.
- 7) If Dr. Clark has created folders to store emails, provide the names of those folders and, if it is not clear from the names of the folders, the types of emails that Dr. Clark stores in each folder.

Instructions for searching Dr. Jesse Snowden's email account

Please use the following search terms and instructions to search Dr. Jesse Snowden's email account and produce the results. Emails saved on the server as well as emails saved on Dr. Snowden's computer, such as .pst files, should be searched. All email folders, including but not limited to deleted emails and sent emails, should be searched. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails that contain any of the following terms in the subject field or body of the email message:
 - Tudor
 - discriminat!
 - retaliat!
 - EEOC
 - DOJ
 - Spencer
 - "Equal Employment Opportunity Commission"
 - "Department of Justice"
 - "Civil Rights"
 - lawsuit
 - Nusz
 - Townsend
- 2) All emails sent to or received from the people below between August 30, 2010 and May 30, 2011.
 - Dr. Douglas McMillan
 - Dr. Larry Minks
 - Dr. Lucretia Scoufos
 - Dr. Claire Stubblefield
 - Dr. Ross Walkup
 - Dr. Bryon Clark
 - Dr. Charles Weiner
 - Dr. Charla Hall
 - Dr. James Knapp
 - Dr. Larry Prather
- 3) All emails sent to or received from Dr. Rachel Tudor.
- 4) All emails sent to or received from the people below between May 15, 2007 and June 30, 2007.
 - Dr. Douglas McMillan
 - Cathy Conway
 - Dr. C.W. Mangrum
 - Dr. Larry Minks
 - Dr. John Mischo
 - Bridgette Hamill
- 5) If Dr. Snowden has created folders to store emails, provide the names of those folders and, if it is not clear from the names of the folders, the types of emails that Dr. Snowden stores in each folder.

Instructions for searching Dr. C.W. Mangrum's email account

It is our understanding that Dr. Mangrum passed away several years ago. As such, we think that his email account was likely deleted. Please let us know if there are still emails in Dr. Mangrum's email account. If there are, we will provide you with search terms and parameters to search it.

Instructions for searching the Regional University System of Oklahoma's email system

It is our understanding that the Regional University System of Oklahoma (RUSO) uses a Google based email system that permits searching across all RUSO email accounts at once. Please use the following search terms and instructions to search RUSO's email system and produce the results. All email folders, including but not limited to deleted emails and sent emails, should be searched. Because this is a Google based system, we have included Boolean search terms below. The exclamation points below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. "And," "or," and parentheses denote Boolean searches. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- 1) All emails and calendar entries that contain the term "Tudor" any place in the item (subject, body, location, etc.).
- 2) All emails and calendar entries that contain the search terms below from the date range of January 1, 2010 to the present:

<ul style="list-style-type: none"> o petition and tenure o blog and petition o blog and tenure o tenure and discriminat! o Minks and (petition or blog or discriminat! or Rice) o Larry and (petition or blog or discriminat! or Rice) o McMillan and (petition or blog or discriminat! or Rice) o Douglas and (petition or blog or discriminat! or Rice) o Doug and (petition or blog or discriminat! or Rice) o Burrage and (petition or blog or discriminat! or Rice) o Sean and (petition or blog or discriminat! or Rice) 	<ul style="list-style-type: none"> o "Department of Justice" o DOJ o "Equal Employment Opportunity Commission" and tenure o EEOC and tenure o "Department of Education" and discriminat! o "Oklahoma Attorney General" o "Oklahoma State Senate" o "Andrew Rice" o "Democratic Leader" o Senat! and Rice o Senat! and discriminat! o Rice and discriminat! o "American Association of University Professors" o AAUP
---	---
- 3) All emails sent to or received from Dr. Larry Minks and/or Dr. Douglas McMillan during the following date ranges: April 1, 2011 – October 22, 2011 and April 1, 2014 – May 1, 2014.
- 4) All emails sent to or received from Dr. Rachel Tudor. Dr. Tudor's email address from Southeastern was rtudor@se.edu and her personal email address is racheltudor3731@gmail.com.
- 5) All emails sent to or received from the American Association of University Professors (AAUP) between May 6, 2011 and the present. The email domain for the AAUP is aaup.org.

Additional search instructions

With the exception of the email accounts of Dr. Mischo and Dr. Prus, please search the email accounts identified in this letter for all items (e.g., email, calendar entries, tasks) that contain any of the terms below. Emails saved on the server as well as emails saved on the users' computers, such as .pst files, should be searched for the terms below. All email folders, including but not limited to deleted emails and sent emails, should be searched. Our intent is to identify any emails that contain these terms and are otherwise responsive to our discovery requests in this case. The exclamation points in the instructions below are intended to be wildcards. Quoted strings are meant to be exact matches of those phrases. Please adjust the syntax/operators within your email search system(s) accordingly to achieve the desired search results. If the search syntax is unclear, please let us know.

- boob!
- breast!
- chromosome!
- cock!
- “cross dress!”
- cross-dress!
- crossdress!
- “drag queen”
- fag!
- freak
- gay!
- “gender change”
- “gender dysphoria”
- “gender expression”
- “gender identity”
- “gender identity disorder”
- “gender reassignment”
- genital!
- GID
- GLBT
- gonad!
- homosexual!
- LGBT
- lifestyle
- “man in a dress”
- naked
- penis
- “prima facie”
- “private parts”
- queer!
- restroom
- “sex change”
- “sex organ”
- “sex part”
- “sex reassignment”
- shemale!
- she-male!
- surgery
- trann!
- transgender!
- transsexual!
- transvest!
- unisex
- willy



Civil Rights Division

DLK:MLB:AT/SB
DJ 170-76-405

Employment Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530
www.usdoj.gov/crt/emp

Via E-Mail and U.S. Mail

February 17, 2016

Jeb Joseph
Oklahoma Attorney General's Office
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Re: *United States & Tudor v. Southeastern Okla. State Univ. & Reg. Univ. Sys. of Okla.*,
5:15-CV-00324-C (W.D. Okla.)

Jeb,

I am writing with respect to our conversation about the United States' requests for emails. During our February 10, 2016, conference call, we discussed your idea of potentially producing large volumes of email to the United States so that we can use our email search tools to search through them. You thought this would be more efficient than you and/or the Defendants searching through email accounts in the manner that the United States requested in our January 15, 2016, letter. Under your proposal, the Defendants would reserve their rights to claim privilege over the emails that you send to the United States. After the United States completed its review of the emails, we would let you know what emails we believe are discoverable and the Defendants would then have an opportunity to review those emails that we believe are discoverable and inform us whether you believe any of them are privileged. After any disputes over privilege were resolved, we would have a set of non-privileged emails that could be used in connection with the case. This process would be governed by an order from the Court under FRE 502(d).

During the February 10 call, we discussed the technical feasibility of executing your idea. To determine whether it would be feasible, we would like to get a better sense of how many emails you would produce to us. To that end, please let us know how many emails the email accounts below have within the dates identified below. Please provide email counts by year. So, for example, please tell us how many emails are in Dr. Tudor's email account for each year beginning in 2007 and going through 2011. This will help us to determine whether this volume is manageable or if we need to narrow the scope.

- Bryon Clark: 1/1/2010 – present
- Cathy Conway: 5/1/2007 – present
- Douglas McMillan: 5/1/2007 – present
- Larry Minks: 5/1/2007 – present
- John Mischo: 5/1/2007 – present
- Randy Prus: 5/1/2007 – present
- Lucretia Scoufos: 7/1/2009 – present
- Jesse Snowden: 5/1/2007 – 12/31/2007 and 7/1/2010 – 6/30/2011

- Claire Stubblefield: 7/1/2009 – present
- Rachel Tudor: 5/1/2007 – 6/30/2011
- Ross Walkup: 7/1/2009 – present
- Charles Weiner: 5/1/2007 – present
- RUSO email accounts: 5/1/2007 – 8/1/2007; 2/1/2010 – 6/1/2013; 12/3/2013 – 5/9/2014; and 2/18/2015 – present.

If you have any questions, please feel free to call me. So that we can quickly determine whether this process will work, please provide me with the requested email counts by February 29, 2016. If this deadline is not workable, please let me know.

Thank you for your attention to this matter.

Sincerely,

Delora L. Kennebrew
Chief
Employment Litigation Section

By: 

Allan K. Townsend
Shayna Bloom
Trial Attorneys
Employment Litigation Section

CC: Jillian Weiss
Ezra Young
Brittany Novotny

Townsend, Allan (CRT)

From: Townsend, Allan (CRT)
Sent: Monday, March 21, 2016 4:33 PM
To: 'Jeb Joseph'
Cc: 'Dixie Coffey'; Bloom, Shayna (CRT); 'Jillian T. Weiss, Esq.'; 'Ezra Young'; 'bnovotny@nationlit.com'
Subject: RE: email searching
Attachments: 2-17-16 letter re email searching.pdf

Jeb,

I am just writing to follow-up with you on this. Could you please let me know whether you intend to provide us with the email counts that we requested in the attached letter; and, if so, when you intend to provide them?

Thank you,
Allan

From: Townsend, Allan (CRT)
Sent: Thursday, February 25, 2016 9:33 AM
To: Jeb Joseph
Cc: Dixie Coffey; Bloom, Shayna (CRT); Jillian T. Weiss, Esq.; Ezra Young; bnovotny@nationlit.com
Subject: RE: email searching

Jeb,

Could you please let me know if you are on track to provide us with the email counts that we requested in the attached letter by Monday?

Thanks,
Allan

From: Townsend, Allan (CRT)
Sent: Wednesday, February 17, 2016 4:59 PM
To: Jeb Joseph
Cc: Dixie Coffey; jweiss@jtweisslaw.com; eyoung@jtweisslaw.com; bnovotny@nationlit.com; Bloom, Shayna (CRT)
Subject: email searching

Jeb,

Please see the attached letter regarding our discussion about email searching.

Thanks,

Allan K. Townsend
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section--PHB
601 D Street, NW
Washington, DC 20579
(202) 305-3302

*If you are not the intended recipient of this message,
please notify the sender immediately by e-mail or telephone
and delete the original message.*





Civil Rights Division

DLK:MLB:AT/SB
DJ 170-59N-31

*Employment Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530
www.usdoj.gov/crt/emp*

Via E-Mail and U.S. Mail

April 8, 2016

Dixie Coffey
Jeb Joseph
Oklahoma Attorney General's Office
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Re: *United States & Tudor v. Southeastern Okla. State Univ. & Reg. Univ. Sys. of Okla.*,
5:15-CV-00324-C (W.D. Okla.)

Dixie and Jeb,

We are writing to memorialize some of the discussion from our April 7, 2016, teleconference regarding discovery and to also provide a proposal on how to resolve our dispute over the discovery of electronically stored information ("ESI").

ESI Searching

During our April 7 teleconference, we discussed the United States' letters dated January 15, 2016, and February 17, 2016. The January 15 letter requested that the Defendants perform some ESI searches, most of which were email searches, and produce the results. The February 17 letter related to an idea that Jeb raised and that he discussed with the United States during a February 10, 2016, teleconference. The February 17 letter described Jeb's idea as follows:

During our February 10, 2016, conference call, we discussed [Jeb's] idea of potentially producing large volumes of email to the United States so that we can use our email search tools to search through them. [Jeb] thought this would be more efficient than [he] and/or the Defendants searching through email accounts in the manner that the United States requested in our January 15, 2016, letter. Under [Jeb's] proposal, the Defendants would reserve their rights to claim privilege over the emails that [the Defendants] send to the United States. After the United States completed its review of the emails, we would let you know what emails we believe are discoverable and the Defendants would then have an opportunity to review those emails that we believe are discoverable and inform us whether [they] believe any of them are privileged. After any disputes over privilege were resolved, we would have a set of non-privileged emails that could be used in connection with the case. This process would be governed by an order from the Court under FRE 502(d).

During our April 7 teleconference, you indicated that you want the United States to provide the Defendants with email search terms so that the Defendants could run those searches before they produced emails to the United States pursuant to a FRE 502(d) order. This is not

consistent with our understanding of the idea that Jeb discussed with us during the February 10 teleconference. Based on that February 10 teleconference, we understood that if we implemented Jeb's idea, the Defendants would produce large volumes of email from certain email accounts for certain dates without conducting any searches beforehand. Given the Defendants' current position, the United States requests that the Defendants produce the ESI requested in our January 15 letter on or before April 15, 2016. We are willing to agree to an order pursuant to FRE 502(d) that would cover the ESI requested in our January 15 letter if you believe that such an order is necessary to meet this deadline. A draft FRE 502(d) order is enclosed. Please let us know by April 13, 2016, if you would like us to draft a joint motion for the Court to enter this draft FRE 502(d) order.

Claim of Privilege

In a letter dated February 19, 2016, Jeb indicated that the Defendants had withheld some documents on the ground that they were privileged. Jeb stated during our April 7 teleconference that the Defendants were no longer claiming that those documents were privileged and the Defendants had, in fact, already produced them in discovery.¹

United States' Document Requests

Jeb's February 19, 2016, letter also addressed issues related to the United States' First Request for Production of Documents Propounded Upon Defendants ("United States' Document Requests"). During the April 7 teleconference, you stated that the Defendants have now produced all documents responsive to United States' Document Requests 7, 17, 19, 25, 26, and 27.

During the April 7 teleconference, we specifically discussed the portfolio that Dr. Janet Barker submitted in connection with her application for promotion and tenure at Southeastern Oklahoma State University ("Southeastern"). The United States raised our request for this particular portfolio in an email dated February 12, 2016. In an email dated March 30, 2016, Jeb stated that he believed Dr. Barker's portfolio was returned to her after the conclusion of her tenure process. In a March 31, 2016, email, the United States requested that you ask Dr. Barker for a copy of her portfolio if Southeastern's administration no longer possessed a copy. During the April 7 teleconference, you confirmed that Southeastern's administration did not have a copy of Dr. Barker's portfolio. You also said that you did not want to ask Dr. Barker for a copy of her portfolio due to concerns that any portfolio Dr. Barker provided to you might not be authentic. You suggested that the United States could subpoena Dr. Barker for her portfolio.

¹ Jeb also indicated during our April 7 teleconference that he had sent an email indicating that the Defendants were no longer claiming privilege over these documents and that the documents had already been produced. Please resend that email because the United States did not receive it.

Deposition Scheduling

In an email that the United States sent to the Defendants on April 1, 2016, we attached notices for the following depositions on the following dates:²

May 3 – John Mischo

May 4 – Ross Walkup

May 5 – Bryon Clark

May 6 – Jesse Snowden

May 17 – Charles Babb

May 18 – Claire Stubblefield

May 19 – Lawrence Minks

You said during the April 7 teleconference that we could go forward with depositions on May 3, 4, and 5. You said that you would get back to us regarding the remaining deposition scheduling issues identified in our April 1 email by close of business on April 11, 2016.

Please let me know as soon as possible if anything in this letter is inaccurate.

Thank you for your attention to this matter.

Sincerely,

Delora L. Kennebrew
Chief
Employment Litigation Section

By: 

Allan K. Townsend
Shayna Bloom
Trial Attorneys
Employment Litigation Section

Enclosure

CC: Jillian Weiss
Ezra Young
Brittany Novotny

² The United States also attached subpoenas for some of these depositions to the April 1, 2016, email. We sent the deposition notices and subpoenas attached to the April 1 email to the Defendants via Federal Express overnight delivery on that same day.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

RACHEL TUDOR,

Plaintiff-Intervenor,

v.

SOUTHEASTERN OKLAHOMA
STATE UNIVERSITY, and

THE REGIONAL UNIVERSITY
SYSTEM OF OKLAHOMA,

Defendants.

Case No. 5:15-CV-00324-C

**[PROPOSED] ORDER GOVERNING PRIVILEGE WITH RESPECT TO
DEFENDANTS' ANTICIPATED PRODUCTION OF ELECTRONICALLY
STORED INFORMATION**

1. Plaintiff United States of America (“United States”), Plaintiff Rachel Tudor (“Tudor”) and Defendants Regional University System of Oklahoma and Southeastern Oklahoma State University (“Defendants”) (collectively, “Parties”) agree to facilitate responses to the United States’ document requests by enabling Defendants to produce the electronically stored information (“ESI”) that the United States requested in a letter dated January 15, 2016 (Exhibit 1 to this Order) without reviewing the information in any way prior to production. The purpose of this order is to assure that no privilege waiver occurs based on the Parties’ agreement.

2. Under this order, after Defendants' production of the ESI described in Paragraph 1, the United States will review the ESI and inform Defendants which documents the United States wishes to retain for use in this litigation.

3. No later than 14 days from the date on which the United States informs Defendants of which documents it wishes to retain, Defendants shall identify in writing to the United States any of the selected documents over which it asserts a claim of privilege. If Defendants assert a claim of privilege over any of the ESI, the claim of privilege may be challenged by the United States in a motion to compel within 14 days of Defendants' assertion of privilege.

4. The production of privileged or work-product protected ESI or information pursuant to the agreement described in Paragraph 1, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery produced. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

5. With respect to ESI produced specifically pursuant to the Parties' agreement, once a determination is made as to which documents may be retained by the United States, the United States will destroy all originals and copies of ESI that is not determined to be retainable by the United States.

6. After the selection, review, and destruction processes described in Paragraphs 2, 3 and 5 above is completed, the provisions of ECF Nos. 36 and 41 apply to any assertion that a document produced pursuant to the Parties' agreement is privileged.

It is so ORDERED this ___ day of _____, 2016.

ROBIN J. CAUTHRON
United States District Judge