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COMMITTEE ON THE JUDICIARY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: J.P. COONEY

Tuesday, June 24, 2025
Washington, D.C.

The interview in the above matter was held in room 2237, Rayburn House Office Building,
commencing at 10:03 a.m.

Present: .

Appearances:

For the COMMITTEE ON THE JUDICIARY:

GENERAL COUNSEL
, DEPUTY GENERAL COUNSEL
DIGITAL DIRECTOR
CHIEF COUNSEL FOR OVERSIGHT
COUNSEL
PROFESSIONAL STAFF MEMBER
PROFESSIONAL STAFF MEMBER
SPECIAL SENIOR COUNSEL
MINORITY CHIEF OVERSIGHT COUNSEL
MINORITY SPECIAL COUNSEL
FOR INVESTIGATIONS AND SENIOR ADVISOR
MINORITY PROFESSIONAL STAFF MEMBER
AND LEGISLATIVE AIDE

For J.P. COONEY

23 CATHERINE DUVAL, ESQ.

24 NICK DICARLO

25 Zuckerman Spaeder

3

1 We'll go on the record.

2 Good morning. This is a transcribed interview of Mr. J.P. Cooney, former deputy special
3 counsel on Jack Smith's team. Chairman Jordan has requested this interview as part of the
4 committee's oversight of Jack Smith's team, and the inexplicable seizure of a Member of Congress'
5 cell phone.

6 Would the witness please state your name for the record.

7 Mr. Cooney. My name is J.P. Cooney.

8 And we encourage witnesses who appear before the committee to freely consult
9 with counsel, if they so choose, and it's my understanding that you're appearing with personal
10 counsel today. Is that correct?

11 Mr. Cooney. That is correct.

12 Would counsel please state your name for the record.

13 Ms. Duval. My name is Catherine Duval. I'm with Zuckerman Spaeder. I'm here with my
14 colleague, Nick DiCarlo.

15 Thank you. On behalf of the committee, I want to thank you for appearing here
16 today to answer our questions. We also appreciate your willingness to appear voluntarily.

17 My name is , and I'm with Chairman Jordan's staff. I'll now have everyone else
18 from the committee who is here introduce themselves as well.

19 with the House Judiciary Committee, majority staff.

20 with Ranking Member Raskin's staff.

21 with Ranking Member Raskin's staff.

22 with Chairman Jordan's staff.

23 with Chairman Jordan.

24 with Chairman Jordan's staff.

25 Chairman Jordan's staff.

4

1 Chairman Jordan's staff.

2 Chairman Jordan's staff.

3 I'd like to now go over the ground rules and guidelines that we'll follow during
4 today's interview.

5 Our questioning will proceed in rounds. The majority will ask questions first for one hour and
6 the minority will have the opportunity to ask questions for an equal period of time if they so choose.

7 We'll alternate back and forth until there are no more questions and the interview is over.

8 Typically, we take a short break at the end of each hour. But if you would like to take a break
9 apart from that, just let us know. We're happy to accommodate that.

10 As you can see, there's an official court reporter taking down everything we say to make a
11 written record. So we ask that you give verbal responses to all questions. Do you understand that?

12 Mr. Cooney. Yes, I do.

13 We'll do our best to limit the number of people directing questions at you during
14 any given hour to just the people on the staff whose turn it is. Typically it's two people. Please try
15 and speak clearly so the court reporter can understand and the folks down at the end of the table
16 can hear you. It's important that we don't talk over one another or interrupt each other, and that
17 goes for everybody present at today's interview.

18 We want you to answer our questions in the most complete and truthful manner as possible,
19 so we will take our time. If you have any questions or you do not understand one of the questions,

20 just let us know. Our questions will cover a wide range of topics. So if you need clarification at any
21 point, please just say so.

22 If you honestly don't know the answer to a question or do not remember, it is best not to
23 guess. Please give us your best recollection. And it is okay to tell us if you learned information from
24 someone else, just indicate how you came to know that information.

5

1 If there are things you don't know or can't remember, just say so, and please inform us who,
2 to the best of your knowledge, might be able to provide a more complete answer to the question.
3 You should also understand that by law, you are required to answer questions from Congress
4 truthfully. Do you understand that?

5 Mr. Cooney. Yes, I do.

6 This also applies to questions posed by congressional staff in an interview. Do
7 you understand this?

8 Mr. Cooney. Yes, I do.

9 Witnesses that knowingly provide false testimony could be subject to criminal
10 prosecution, as I'm sure you are aware, for making false statements under 18 U.S.C. Section 1001.
11 Do you understand this?

12 Mr. Cooney. I do.

13 And is there any reason you're unable to provide truthful answers to our
14 questions today?

15 Mr. Cooney. No, there is not.

16 Finally, I'd like to make note that the content of what we discuss here today is
17 confidential. We ask that you not speak about what we discuss in this interview to any outside
18 individuals to preserve the integrity of our investigation.

19 For that same reason, the marked exhibits that we use today will remain with the court
20 reporter so they can go in the official transcript, and we'll collect any copies of the exhibits at the
end

21 of the interview.

22 That's the end of my preamble. anything?

23 We want to thank the witness for appearing here voluntarily today.

24 Mr. Cooney. Thank you.

25 Ms. Duval.

6

1 Ms. Duval. I'm here with my client, Mr. Cooney. I just want to enter for the record a letter
2 that we sent last night. It talks about the different parameters under which he can testify here today.
3 Happy to be here voluntarily.

4 We'll mark this as exhibit no. 1.

5 [Cooney Exhibit No. 1
6 was marked for identification.]

7 Ms. Duval, you asked for documents prior to the interview, and it's just not our
8 practice to do that. Before witnesses we come in, we compile as many documents as we might need
9 as possible. But very often, we'll have binders of 30, 40 exhibits that we have, you know, available,
10 and we end up using five. So it's just our practice not to share documents before the interview.

11 Ms. Duval. My guess is that you may have documents that Mr. Cooney hasn't seen for a year,
12 2 years, 3, I don't know. It was just to see whether we could refresh him before he got up here.
13 Fair enough.

14 The clock now reads 10:08 a.m. We'll start our first round of questioning.

15 EXAMINATION

16

17 Q Mr. Cooney, when did you join the Justice Department?

18 A I joined DOJ in 2007.

19 Q In 2007. And can you walk us through the various positions you held while at DOJ?

20 A Yes. I began in 2007 as an Assistant United States Attorney in the District of Columbia.

21 In or about 2012, I became a trial attorney in the public integrity section at the Department of
22 Justice.

23 A few years after that, I was -- I became a deputy chief in the public integrity section. I think
24 that was in 2015. In 2018, I returned to the U.S. Attorney's Office as the chief of the fraud, public
7

1 corruption, and civil rights section. It actually had various names throughout that period, but that
2 was the general portfolio.

3 And in 2023, I went on detail to the Special Counsel's Office.

4 Q And so, when you were the chief for fraud, public corruption and civil rights section, you
5 said you went back to the U.S. Attorney's Office, that was the one here in D.C. Is that correct?

6 A That is correct. That was here at the D.C. U.S. Attorney's Office in 2018.

7 Q And when you started as a trial attorney with the public integrity section, who was the
8 head of the public integrity section?

9 A The chief of the public integrity section was Jack Smith.

10 Q And how long did you overlap with Mr. Smith at the public integrity section?

11 A Mr. Smith left in, I believe, the start of 2015. So it was about 2-and-a-half or 3 years.

12 Q Okay. And when you departed from the Justice Department, that was -- in your role as
13 deputy special counsel, that was the last position you held at the Justice Department?

14 A No, it is not. I was terminated when I returned to the U.S. Attorney's Office as an
15 Assistant United States Attorney.

16 Q So when did you return to the D.C. U.S. Attorney's Office?

17 A I don't remember the exact date, but it was approximately a week or two before I was
18 terminated.

19 Q Was this in January of 2025?

20 A Yes, it was.

21 Q And you would have returned to the D.C. U.S. Attorney's Office in 2025?

22 A Yes.

23 Q And was that after the work had wrapped up for the special counsel?

24 A That was after the Special Counsel's Office was closed, yes.

8

1 Q Okay. So that would have been after Mr. Smith released the volume one of his report.

2 Is that correct?

3 A It was sometime after the release of the report, yes.

4 Q And so, between -- you became -- you went back to the D.C. U.S. Attorney's Office in
5 2018, and you remained the chief of the fraud, public corruption, and civil rights section until your
6 detail began to the Special Counsel's Office in 2023. Is that correct?

7 A That is correct.

8 Q And what month did you go to the Special Counsel's Office?

9 A I started at the Special Counsel's Office in November of 2022.

10 Q 2022?

11 A I think I said '23 before. I'm sorry.

12 Q That's okay.

13 A It was November of 2022.

14 Q Did you go right when Special Counsel Smith was appointed?

15 A Yes, I did.

16 Q I believe he was appointed on November 18th, 2022. Would that have been your first
17 day in the Office of the Special Counsel?

18 A I wouldn't put it that way. We did not have an office --

19 Q Okay.

20 A -- on the day that Mr. Smith was appointed. But I functionally joined the Special
21 Counsel's Office shortly after his appointment.

22 Q And when did your involvement in any investigations surrounding -- we'll start with
23 January 6th, 2021, the events that occurred on that day.

24 When did your involvement in investigations related to that begin?

9

1 A My involvement in investigations surrounding January 6th began on or about that
2 evening or the next day, shortly after the attack on the Capitol.

3 Q And what can you tell us about your responsibilities with regards to that specific
4 investigation?

5 A I don't think there was any specific investigation that the U.S. Attorney's Office was
6 involved with at that point. Instead, it was the overall response to the invasion and trespassing of
7 the Capitol.

8 Q And so you were investigating individuals who physically went into the Capitol; was that
9 your responsibility at that time?

10 A I was not personally investigating individuals who went into the Capitol, no.

11 Q Okay. What can you tell us about what your investigation focused on at that period of
12 time?

13 A It focused on addressing the Capitol invasion.

14 Q Okay. So -- but not individuals who entered the Capitol, just the specific events that
15 occurred that day?

16 A I understood the question to be what I personally worked on, and I personally did not
17 investigate any individuals who went into the Capitol. However, our office was focused on
18 investigating and apprehending persons involved in the Capitol invasion.

19 Q Okay. And at that point in time, were you supervising any individuals at the D.C. U.S.
20 Attorney's Office?

21 A I was a supervisor at the D.C. U.S. Attorney's Office, yes.

22 Q And how many individuals did you supervise?

23 A I can't recall exactly the number of people that were in the section that I supervised at
24 that time.

25 Q Okay. Was it more than five individuals?

10

1 A It was more than five, yes.

2 Q Okay. More than 15, or less than that?

3 A I can't -- I really can't say with any specificity five years later how many people were in
4 that section.

5 Q Okay. And what was the responsibility of your section, just in general? What were you
6 tasked with investigating at the D.C. U.S. Attorney's Office?

7 A Our section focused on fraud, public corruption, and civil rights.

8 Q And what was your caseload like?

9 A I would describe the caseload as demanding.

10 Q Okay. And so, how did that workload change after January 6, 2021?

11 A Upon the invasion of the Capitol, the U.S. Attorney's Office prioritized the investigation
12 and prosecution of individuals involved in the attack.

13 And so our section, like other sections in the office, focused and prioritized our resources in

14 the days thereafter on that.

15 Q Okay. And when did you start investigating President Trump, individuals within his
16 orbit, advisers, individuals involved with his campaign, when did the investigation shift to looking
17 at

18 that aspect?

19 A I wouldn't characterize any investigation we did as the way -- the way your question
20 characterizes it.

21 Q Okay. How would you characterize it then?

22 A Well, throughout the period after January 6th --

23 Q Uh-huh.

24 A -- our office focused on investigating all the facts and circumstances surrounding the
25 Capitol invasion.

26 Q And what specific aspects did you look at?

27

28 A At what point in time?

29 Q Let's start with the time frame immediately after January 6, 2021.

30 A The focus of our investigations at that time were the individuals who physically
31 trespassed and attacked the Capitol.

32 Q Okay. What about February 2021?

33 A That was still a focus of our investigation.

34 Q Okay. Were there additional focuses?

35 A We did develop evidence that individuals were involved in actually planning the attack
36 in advance and conspiring, committing seditious conspiracy to attack the Capitol and obstruct the
37 certification proceeding.

38 Q And when you say we developed evidence, were you leading a team at that point?

39 A I was a supervisor of the -- or the chief of the fraud, public corruption, and civil rights
40 section, yes.

41 Ms. Duval. And I'm just going to caution everybody about 6(e). Once you've got grand jury
42 information, you have an obligation under the rules not to talk about it.

43 BY :

44 Q Okay. So you were -- you said that we developed evidence.

45 So were those the individuals within your section that you were working with on that?

46 A Prosecutors that I was working with did develop that evidence in their investigation, yes.

47 Q So were you working with any other individuals on this investigation that were not part
48 of the section you led?

49 A I may have. I don't recall exactly who was working on what investigations at that point
50 after January 6th.

51

52 Q So you said this was around the time frame of February that there became additional
53 focuses, and you had developed evidence about individuals regarding the planning of the events that
54 occurred on January 6th.

55 You were also looking at the physical -- or the individuals who physically entered the Capitol.

56 There was that ongoing focus as well.

57 Were there other focuses besides those two?

58 A Well, we had developed that evidence of planning before February of 2021 --

59 Q Okay.

60 A -- and, in fact, returned our first conspiracy charges, I believe, before January 20th of
61 2021.

62 Q Okay. And so were there other focuses other than the two that I listed?

12 A And what two did you list? I'm sorry.

13 Q I listed the individuals that entered the Capitol and then individuals involved with
14 planning the events of January 6th.

15 A Well, throughout our investigation, we focused on all the events and circumstances
16 leading to the Capitol invasion and the obstruction of the certification proceeding.

17 Q Uh-huh.

18 A And so, anyone whose conduct was within the scope of that was part of it.

19 Q When did you start looking at advisers and public figures with specific ties to President
20 Trump?

21 A I don't recall -- I don't recall doing that.

22 Q You don't recall looking into individuals associated with President Trump, say, Roger
23 Stone, Ali Alexander, any of those individuals? Those never -- individuals never came up in your
24 investigation?

13

1 A Well, I -- I can't answer questions about specific investigative subjects for fear that I'll
2 betray revealing information that may have occurred before the grand jury.

3 What I can say is that in that -- throughout the period following the Capitol attack, I believed
4 that we should investigate and -- and focus on determining whether the events leading to the Capitol
5 attack and the obstruction of the certification proceeding and efforts to overturn the 2020 election
6 were the result of political efforts or were, instead, criminal efforts.

7 Q And when did that focus begin, or when did you start looking at political efforts versus
8 criminal efforts?

9 A I wouldn't use the word, "focus," to describe any part of our investigation.

10 Q Okay. When did that angle come up?

11 A I don't -- I wouldn't use the word "angle" to describe that either.

12 Q You tell me what word you'd like to use, Mr. Cooney.

13 A Throughout the period after January 6th?

14 Q Uh-huh.

15 A We believed it was important to investigate, just like any other offense, all the facts and
16 circumstances that resulted in attack -- an attack on the United States Capitol.

17 Q Okay. When did you specifically -- you used the term, "political efforts" versus "criminal
18 efforts."

19 When did you start looking at that specific description that you described of political efforts
20 versus criminal efforts?

21 A Can you tell me what you mean by looking?

22 Q When did you start investigating?

23 A Throughout the period after January 6th, we investigated all the facts and circumstances
24 surrounding the Capitol attack, and that would include that.

14

1 Q When did you start investigating -- did you ever start investigating President Trump and
2 his advisers or individuals in his orbit?

3 A In investigations, public corruption investigations, white collar investigations,
4 prosecutors are not investigating individuals. We investigate conduct, we investigate circumstances.
5 So the answer to the question is, in that time period of -- following January 6th, we were
6 investigating all the circumstances that resulted in the Capitol attack.

7 Q Okay. According to reporting in February 2021, you took a proposal to the FBI's public
8 corruption unit to investigate ties with people in President Trump's orbit.

9 What can you tell us about that proposal?

10 Ms. Duval. Is there a copy of the article that he can see?

11 . Yeah, we can make it an exhibit, if you'd like. So I'll mark this as exhibit no. 2.
12 This is a June 20th, 2023, article: FBI Resisted Opening Probe Into Trump's Role on January
13 6th for More Than a Year.
14 [Cooney Exhibit No. 2
15 was marked for identification.]
16 BY
17 Q And I'm looking at -- this is one of the articles that I flagged for your attorney
18 beforehand and was mentioned in the letter to the committee last night. I'm looking at page 5.
19 There's a bolded text that says, "A Plan to Focus on Trump's Orbit is Batted Down."
20 A And, I'm sorry, you said page 5?
21 Q Yes. Page 5. There's a bolded heading that says, "A Plan to Focus on Trump's Orbit is
22 Batted Down."
23 A I see what you're referring to.
24 Q So this will be the one, two, three, four -- the fifth paragraph underneath that heading.
25 It starts with, "In February 2021"; I can read it into the record.
15
1 "In February 2021, Cooney took his proposal to investigate the ties with people in Trump's
2 orbit directly to a group of senior agents in the FBI's public corruption division, a group he worked
3 with over the years and who were enmeshed in some of the most sensitive January 6th cases
4 underway."
5 What can you tell us about that proposal that you took, according to the reporting to senior
6 agents?
7 A I think that this article was written by Carol Leonnig and Aaron Davis. I did not speak
8 with them about this article. I didn't contribute to -- to any of the reporting here.
9 Q Okay. Was there -- did you take a proposal to senior agents in the FBI in February 2021?
10 A I -- I may very well have.
11 Q Okay. Do you remember if you took a proposal to them about investigating the ties with
12 people in Trump's orbit?
13 A I was involved in a lot of discussions with the FBI in the aftermath of January 6th, and I
14 may very well have had discussions about those topics with them.
15 Q Okay. And who did you liaise with at the FBI? Who was your point of contact there?
16 A I did not have any specific point of contact in 2021 right after the Capitol attack.
17 Q If you would have reached out to senior agents in the FBI's public corruption division,
18 who would that have been?
19 Ms. Duval. Don't speculate.
20 Mr. Cooney. Yeah. At that point in time, I do not remember who was leading the public
21 corruption unit at the FBI?
22 BY
23 Q Did you ever interact with Assistant Special Agent in Charge Tim Thibault?
24 A I have interacted with Special Agent Thibault, yes.
25 Q And did you interact with him in the aftermath of January 6, 2021?
16
1 A I don't recall having interactions with Special Agent Thibault in that time period, no.
2 Q Okay. It's our understanding that he -- he led a squad that focused on public corruption.
3 Does that match your recollection at all or no?
4 A In 2021, I don't believe that he was a squad supervisor, no.
5 Q Okay. Did you ever interact with Steven D'Antuono? He was the assistant director in
6 charge of the WFO.
7 A I did, yes.

8 Q Did you interact with him regarding the events that occurred on January 6, 2021?

9 A My recollection is that I did, yes.

10 Q Okay. And when did you start connecting with Mr. D'Antuono on January 6, 2021?

11 A That -- that, I do not have any specific recollection of.

12 Q Okay. And when you would talk with him, what would you discuss? What would you
13 take to him, if you can give us general at first?

14 A I don't recall ever taking anything to the assistant director in charge of the -- the field
15 office in D.C.

16 Q Okay. What were some of your discussions that you had with him regarding January 6,
17 2021?

18 A I don't recall any specific discussions with the assistant director in charge.

19 Q Do you remember how many conversations you had with Mr. D'Antuono?

20 A I can't possibly remember how -- how many or how few conversations I had with him.

21 Q If you were interacting with the FBI regarding January 6, 2021, would that have been
22 through Mr. D'Antuono?

23 A Not necessarily, no.

24 Q Okay. Who else would you have connected with?

17

1 A At that point in time, after the events of January 6, I don't recall having any specific
2 point of contact or any person that I typically communicated with at the FBI.

3 Q Okay. We'll go back to this article. A couple of paragraphs down it says, "Inside the
4 FBI's Washington Field Office, agents recognized Cooney's presentation for the major course change
5 that it presented. Investigators were already looking for evidence that might bubble up from rioter
6 cases to implicate Stone and others."

7 "Cooney's plan would have started agents looking from the top down as well, including
8 directly investigating a senior Trump ally. They alerted D'Antuono to their concerns according to
9 people familiar with the discussions."

10 Did you ever have conversations with Mr. D'Antuono in or around February 2021 regarding
11 investigating either Mr. Stone or other individuals in President Trump's orbit? Close advisers we can
12 define that as.

13 Ms. Duval. Again, grand jury.

14 Mr. Cooney. Right.

15 I don't recall any specific conversations with the assistant director in charge about the topics
16 that are identified in this article.

17 BY

18 Q Okay. And the article states that Mr. D'Antuono -- I don't think he convened the
19 meeting. I think it was Mr. Axelrod, who, at the time, was at the Justice Department for the Biden
20 administration that was incoming -- and then Mr. Sherwin, who was the U.S. Attorney at the time,
21 and Deputy Director Paul Abbate, they convened a meeting in February 2021 to discuss your
22 proposal.

23 Do you have any knowledge of such a meeting occurring?

24 A Well, I can't accept the premise of your question of my proposal, because I'm not
25 exactly sure what that refers to.

18

1 Q It refers to the reporting in this article. You had allegedly, according to the reporting,
2 taken a proposal to investigate the ties with people in Trump's orbit directly to a senior group of
3 agents.

4 And then they took that to Mr. D'Antuono, they took their concerns, and then a meeting was
5 convened.

6 Did you ever have knowledge that a meeting was convened to discuss a purported proposal
7 that you took to the FBI?

8 A I -- I do not know what this article is referring to with respect to meetings that I was not
9 a part of.

10 BY

11 Q Is it your contention that the article is totally false?

12 A I've reviewed the article, and I think --

13 Q You read it when it came out, obviously, right?

14 A I don't actually recall when I first read it. Likely soon after it came out, yes.

15 Q Did you have your communications officials reach out to The Washington Post to
16 contest that it was a totally false article?

17 A No. I did not.

18 Q How come?

19 A And I would not take a step like that because, as a career official, it is not my role to
20 speak with or engage with the media.

21 Q Right, right. But you have -- you have press officials. You have communications people
22 in the office that handle that, right?

23 A In my experience, career prosecutors speak through our public pleadings, our
24 indictments, our court documents.

19

1 Q Right. But if there's a -- if there's a totally false article in The Washington Post, you'd
2 have your public affairs officials call the paper and say, This is totally wrong, you need to do a
3 correction.

4 A That is not a step that I would take, no.

5 Q Okay. So is it your contention that the article is totally false?

6 A I was not spoken with by either of the authors of this. I did not provide information of
7 it, and I think --

8 Q No, I got that. But if it's totally wrong, I mean, if it's totally false, is that -- is that your
9 position?

10 A I think much of this article is inaccurate.

11 Q Okay. But not totally false?

12 A I'm not going to utilize that kind of language. This is an inaccurate article.

13 Q Okay. So what would make it accurate?

14 A Would you like to point to something in particular you have a question about?

15 Q No. I just -- I mean, if you say the article is full of inaccuracies, what would make it
16 accurate?

17 A I'm not in a position to -- to go through the article and decide what would be accurate
18 and what would not be accurate with respect to things that I had no part in.

19 Q Okay. But if your position is, this article is, like, totally wrong, it's full of inaccuracies -- I
20 mean, if the article was about me, I'd be able to go through it and say, I didn't do this, I didn't talk to
21 D'Antuono, I didn't do XYZ, and so the reporter got it wrong, they didn't -- did they call you for
22 comment?

23 I know you probably didn't call them back, but did they -- did they reach out to you for
24 comment?

20

1 A I have some recollection that in the summer of 20- -- was it 2023 that this article came
2 out of?

3 . Uh-huh.

4 Mr. Cooney. In 2023 that Aaron Davis attempted to contact me, yes.

5 BY

6 Q Okay. And did you contact your public affairs office and let them know?

7 A My recollection is that after Mr. Davis reached out to me that I reported that to -- to our
8 public affairs, or to the special counsel and maybe both.

9 Q Okay. The special -- like Jack Smith?

10 A Yes, that would be Mr. Smith.

11 Q Okay. And the public affairs officials with Jack Smith's office or with the D.C. U.S.

12 Attorney's Office?

13 A With the Department of Justice. The Special Counsel's Office did not have a stand-alone
14 public affairs office.

15 Q Okay. And what was the nature of your communications with the public affairs office?

16 A My recollection is -- and I just can't recall if I did actually report this to the public affairs
17 office or not. But I have recollection of informing the Department that I had been contacted by
18 Aaron Davis, that I wanted to inform them of that contact, because I did not want there to be any
19 allegation that I disclosed information to a reporter.

20 And I also recall informing them that one thing about Mr. Davis' attempt to contact me that
21 was incorrect was some assumption that I hardly spoke with the media, because my recollection is
22 that I reminded the Department that, as a career prosecutor, it is not my role to and I do not speak
23 with the media.

24 Q Okay. Did Mr. Davis with the Washington Post, did he email you or call you on the
25 phone?

21

1 A My recollection is that Mr. Davis personally appeared on my doorstep and gave a letter
2 or something like that to my wife.

3 Q He came to your house?

4 A That's right.

5 Q Okay. And what was -- what was contained in the letter?

6 A My recollection is that he asked whether I would meet with him to discuss a story about
7 the special counsel's investigation.

8 Q Okay. And so you reported that to the public affairs office, Main Justice?

9 A That is my recollection, yes.

10 Q Okay. So he didn't call you and he didn't email you?

11 A I don't have recollection of a call or an email.

12 Q Okay. Did you have somebody get back to Mr. Davis and say, don't come to our
13 people's house?

14 A Not my role to do that.

15 Q Okay. Do you know if somebody did that?

16 A I do not know.

17 Q And had he tried to call you before that? Just seems not a kind of way to develop a
18 source, like showing up at their house. So it just seems odd that a reporter would -- who is trying to
19 convert you to a source would show up at your residence.

20 A I thought it was odd and disrespectful that a reporter showed up on my doorstep, yes.

21 Q Okay. Had he tried to call you before or had he left messages with you?

22 A I don't have any recollection.

23 Q Okay. So to your recollection, he never tried to call you, and he never tried to email
24 you?

25 A That -- I have no recollection of that.

22

1 Q Okay. But it's possible he did?

2 A It's certainly possible.

3 Q Okay. And how about Ms. Leonnig, did she try to reach out to you at any point?

4 A I don't have any recollection of a contact from Ms. Leonnig.

5 Q Okay.

6 BY

7 Q And you had mentioned some inaccuracies that you saw in this article, and I had

8 previously read into the record, "In February 2021, Cooney took his proposal to investigate the ties
9 with people in Trump's orbit directly to a group of senior agents in the FBI's public corruption
10 division."

11 Is that one of the inaccuracies?

12 A Can you show me the sentence you're reading?

13 Q Yep. So this would be the fifth paragraph under "A Plan to Focus on Trump's Orbit is
14 Batted Down." Starts with "In February 2021."

15 Have you found it on the page?

16 A I see. The paragraph starting "In February 2021"?

17 Q That's correct, sir. And I'll just read that first section again. "In February 2021, Cooney
18 took his proposal to investigate the ties with people in Trump's orbit directly to a group of senior
19 agents in the FBI's public corruption division."

20 Is that one of the inaccuracies that you found in the reporting?

21 A I don't think it's accurate to label any of the work that I did as my proposal.

22 Q Okay. So did you have conversations or communications with senior agents in the FBI's
23 public corruption division regarding investigating ties with people in Trump's orbit?

24 A I don't recall whether I met with, or what it means to characterize someone as a senior
25 agent.

23

1 Q Okay. So what -- so you've taken issue with my proposal, you don't know what senior
2 agents is.

3 Did you ever have communications with anyone in the FBI regarding investigating individuals
4 in President Trump's orbit?

5 A I had communications with FBI personnel about investigating all the facts and
6 circumstances of the Capitol invasion, including people who attacked the Capitol, people who
7 planned the attack of the Capitol, and people who were otherwise involved in supporting it, funding
8 it, or potentially committing crimes.

9 Q Okay. And so just to go back to this first part of this sentence here, is this wholly
10 inaccurate, or are there pieces that are inaccurate?

11 A I'm not going to characterize an article with language like that, wholly, partially.

12 What I'm telling you is that, based on my experience and the work that I did, this article is not
13 completely accurate.

14 Q Okay. So is it your testimony today that you, in fact, did have some sort of
15 communications with individuals associated with the FBI, FBI agents, FBI personnel, regarding
16 investigating ties with people in Trump's orbit?

17 A I just would not characterize meetings that I had at that time period as investigating any
18 specific individuals.

19 It was -- we had discussions about investigating all the facts and circumstances that led to the
20 Capitol attack, the obstruction of the certification proceeding, and efforts to overturn the 2020
21 election results.

22 Q Okay. And the article goes on to kind of describe different reactions that individuals
23 within the U.S. Attorney's Office for D.C. and the FBI had in regards to this proposal to start
24 investigating individuals within President Trump's orbit.

25 Was that ever communicated to you?

24

1 A Again, I disagree with the premise of your question about a proposal to investigate
2 individuals in President Trump's orbit.

3 Q Okay. So further down on this page, on page 5, the very last paragraph, it says,

4 "D'Antuono called Sherwin. The two agreed Cooney did not provide evidence that Stone had likely
5 committed a crime, the standard they considered appropriate for looking at a political figure."

6 Was this ever relayed to you?

7 A I was not -- I have no recollection of being told about a phone call between Steve

8 D'Antuono and Michael Sherwin.

9 Q Okay. When you read this article, was it the first time that you were learning that

10 Mr. D'Antuono and Mr. Sherwin did not think you had enough evidence to go to investigate Mr.
11 Stone?

12 A That is not a question that I can get into. I'm not going to discuss specific individuals
13 who may or may have not been -- whose conduct may or may not have been subjects of
14 investigations because that would risk disclosing information occurring before a grand jury.

15 Q So in February 2021 or shortly thereafter, were you ever -- did you ever receive
16 pushback or were you deterred from investigating certain individuals?

17 A Again, I would not -- I would not characterize the discussions or the investigation that I
18 was working on as an investigation of individuals. It was an investigation into conduct, an
19 investigation of the circumstances leading to the first domestic Capitol attack of the United States
20 Capitol.

21 Q And when you flip to page 6, the next page, the very first sentence on the top page says,
22 "D'Antuono took the matter to Abbate, Wray's newly named deputy director. Abbate agreed the
23 plan was premature."

24 Did you ever become aware of that feedback?

25

1 A I -- I don't know what plan this article is referring to, and I was not part of -- or I don't
2 have recollection of being a part of any meetings with Assistant Director Abbate or Director Wray or
3 even Assistant Director in Charge D'Antuono in that time period.

4 Q Okay. When you read this article, was it the first time you learned that Mr. Abbate
5 thought the plan was premature to go after individuals in President Trump's orbit?

6 A I -- I don't accept the premise that there was a plan to go after any individuals in
7 President Trump's orbit, or to go after any individuals at all.

8 Q Okay. And we can -- there's further explanation of what the proposal was that you took
9 allegedly to senior FBI agents -- and we can discuss that, if you'd like, as well. It says that -- on the
10 page before -- "According to three people who either viewed or were briefed on Cooney's plan, it
11 called for a task force to embark on a wide-ranging effort, including seeking phone records for
Stone,

12 as well as Alexander."

13 Do you remember ever suggesting a task force?

14 A I'm sorry. Can you --

15 Ms. Duval. Do you want to see this section?

16 Mr. Cooney. Yeah. Can you just tell me the page and the paragraph that you're reading
17 from?

18 BY

19 Q Yes, yes. We were on page 6, and I directed you to the page immediately preceding it,
20 page 5. We had read, "In February 2021," and that next sentence is directly below that paragraph.
21 Starts with, "According to three people."

22 A Okay. I've read that paragraph.

23 Q Okay. And so the specific portion that I've previously read, I'll read it again, "According
24 to three people who either viewed or were briefed on Cooney's plan, it called for a task force to
25 embark on a wide-ranging effort, including seeking phone records for Stone, as well as Alexander."
26

1 And my previous question was, do you recall suggesting the formation of a task force?

2 A I don't have specific recollection of proposing a task force.

3 Q Okay. Did the suggestion of a task force ever come up in any discussions you were
4 involved with?

5 A I recall that in the aftermath of the Capitol attack, there were discussions about having
6 investigative task forces, yes.

7 Q An investigative task force or multiple investigative task forces?

8 A My recollection is that the phrase, or the word, "task force," may have come up in many
9 different contexts.

10 Q Okay. And what can you tell us about those contexts?

11 A Thinking about the days after January 6th, there was intense focus and priority in
12 investigating all of the Capitol attack -- all aspects of the Capitol attack, and utilizing whatever
13 investigative resources and tactics could be mustered to do so.

14 Q Okay. And what conversations were you involved in where the suggestion of a task
15 force was mentioned?

16 A I don't recall any specific conversations about that.

17 Q Did you bring up a task force? Was it mentioned by someone else in a conversation?

18 A I -- I may very well have.

19 Q Okay. So I know we had previously spoken about inaccuracies in the reporting. The
20 sentence that I read of "According to three people who either viewed or were briefed on Cooney's
21 plan that called for a task force to embark on a wide-ranging effort, including seeking phone records
22 for Stone, as well as Alexander," was that an inaccuracy that stood out to you when you read the
23 reporting?

24 Ms. Duval. Are you talking about when he read the reporting years ago or --

25 Whenever he read the reporting. It could be years ago, it could be yesterday.

27

1 Mr. Cooney. I'm sorry. You're going to have to reask your question. I'm not exactly sure
2 what your question is.

3 BY

4 Q Of course. So you had previously spoken about how this article had several inaccuracies
5 that stood out to you. That was in your discussion with

6 And I had asked you -- I read the sentence of the -- sentence about the task force, and I asked,
7 did that stand out to you as an inaccuracy when you read the reporting?

8 A I don't recall saying any particular inaccuracy stood out to me. What I am telling you is
9 that, based on my experience, and what I was involved in, much of this appears to me to be
10 inaccurate.

11 Q Okay. And I asked you about a specific portion of the reporting. Is that inaccurate?

12 A What --

13 Ms. Duval. You're asking whether three people said that?

14 I can read the sentence again, if that's helpful for you.

15 BY

16 Q "According to three people who either viewed or briefed on Cooney's plan, it called for a
17 task force to embark on a wide-ranging effort, including seeking phone records for Stone, as well as
18 Alexander."

19 And my question to you was, is it inaccurate for the reporter to say that a plan that you had at
20 any point in time called for a task force?

21 A I don't recall whether any specific plan or proposal that anyone was discussing, whether
22 it called for a task force or investigative resources, but I certainly can acknowledge that words like
23 task force were definitely discussed in that time period.

24 But I don't have any recollection about whether that was a proposal that I made, or a
25 proposal that someone else made, or in exactly what context it came up.

28

1 Q And this time frame as set by the reporters in this article was February 2021.

2 Is that what the time frame is you're referring to as well, or is it a different time period?

3 A I'm referring to -- to this time frame in or about February and January of 2021, yes.

4 Q And what can you tell us about your involvement in investigations involving January 6,
5 2021, following February 2021?

6 A Following February 2021, I continued to be involved in investigations of all the
7 circumstances surrounding the attack on the Capitol and the obstruction of the certification,
8 including the investigations culminating in seditious conspiracy charges.

9 Q Was that your only involvement was cases involving seditious conspiracy?

10 A I can't say what -- I just don't recall the exact scope of everything that I worked on. After
11 the Capitol attack, it was a priority and a focus within the office to -- to investigate those
12 circumstances, to apprehend and prosecute the people who were involved.

13 And so, I worked on a number of different things during that time period.

14 Q Okay. And what were those number of different things that you worked on?

15 A Whatever came up with respect to investigating the facts and circumstances of the
16 Capitol attack.

17 Q Okay. And what specifically came up that you remember?

18 A I just don't have specific recollection of the day-to-day. What I'm telling you is that I
19 worked in an office in which this was a priority. It was something that many of us were involved in,
20 and I contributed to -- to the investigations to determine all the facts and circumstances and all the
21 people responsible for the Capitol attack.

22 Q Did any of your focus involve President Trump or any of his co-conspirators that were
23 named in the indictment, as well as the special counsel's report? Were you involved in any of that
24 work before you were detailed to the Special Counsel's Office in November 2022?

25 Ms. Duval. I think we're close to 6(e) again. Just a warning.

29

1 Mr. Cooney. So I just can't discuss individuals who may or may not have been -- whose
2 conduct may or may not have been within the scope of investigations that were going on because of
3 concern that I may reveal information or matters occurring before a grand jury.

4 But I was involved in investigating all the conduct leading up to and culminating in the Capitol
5 attack, the obstruction of the proceeding, and efforts to -- to overturn the valid results of the 2020
6 election.

7 BY

8 Q And that continued all throughout 2021?

9 A There was never a time that I recall that we were not investigating whatever conduct
10 was in front of us leading to the Capitol attack.

11 Q Did you take on any other cases, or did your work only involve January 6, 2021-related
12 cases?

13 A Oh, no. Throughout that period, we -- and myself in particular -- continued to work on
14 the -- the core preexisting caseload that existed before our Capitol was attacked.

15 Q So was the majority of your time in 2021 spent on the regular casework that you had, or

16 was it primarily spent on January 6th-related work?

17 A I can't say with specificity, but I would -- I would venture to say that probably more of
18 my work was spent on addressing the Capitol attack than other matters. But I don't have specific
19 recollection of -- of how that broke down.

20 Q And in November 2021, an individual by the name of Thomas Windom was detailed to
21 the U.S. Attorney's Office at D.C.

22 Did you ever have the opportunity to work with Mr. Windom?

23 A I did.

24 Q And what can you tell us about your interactions with Mr. Windom? How closely did
25 you work with him?

30

1 A At what point in time?

2 Q After his detail. So November 2021 when he started at the D.C. U.S. Attorney's Office.

3 A When Mr. Windom started at the U.S. Attorney's Office in November of 2021, I was not
4 working directly with him.

5 Q Was he working on a different team, or were you working on completely different
6 cases?

7 A When Mr. Windom joined the U.S. Attorney's Office, he was not in the fraud, public
8 corruption, and civil rights section of which I was the chief.

9 Q Okay. So on a day-to-day basis, how often did you interact with Mr. Windom?

10 A I -- I can't say how often I interacted with Mr. Windom.

11 Q Was it frequent interaction? Did you speak to him on a daily basis, or was it more, you
12 know, maybe once or twice a week?

13 A I -- I don't think I can characterize it one way or the other as one time a week, two times
14 a week, but -- but it was not frequent, and he was not under my supervision in the fraud, public
15 corruption, and civil rights section.

16 Q Was it your understanding that he supervised a separate team apart from you, or was
17 he working alone on his investigation?

18 A When Mr. Windom joined the office in November of 2021, I am not aware of exactly
19 what his responsibilities were or -- or who he worked with.

20 Q Was there ever a point in time where you became -- where you started to work more
21 closely with Mr. Windom?

22 A I began to work with Mr. Windom directly sometime in 2022 is my recollection.

23 Q In 2022?

24 A Yes.

31

1 Q Would that have been around the time that Mr. Smith was appointed in November
2 2022?

3 A No. I began working with Mr. Windom prior to the special counsel's appointment in
4 November of 2022.

5 Q Do you remember when about that was?

6 A My recollection is that it was sometime in the summer of 2022.

7 Q Summer of 2022. And in this same article that we've been being looking at, on page
8 10 -- may be helpful to look at the bolded headings -- it starts out with, "I'm Not Serving Subpoenas
9 on the Willard."

10 A Is it this page with the header --

11 Q That's correct.

12 A -- "I'm Not Serving Subpoenas on the Friggin' Willard"?

13 Q That's right.

14 A All right.

15 Q Were you involved in any discussions that Mr. Windom had with individuals with FBI and
16 the U.S. Attorney's Office to serve subpoenas on the Willard?

17 A I don't recall being part of any conversations.

18 Q How closely did you work with U.S. Attorney Graves in the fall of 2021? I'll start with the
19 fall of 2021.

20 A On -- on what?

21 Q We can start with high level, just all matters, and then specifically in relation to January
22 6th, if that's helpful.

23 A Mr. Graves was the U.S. Attorney. I was a chief of a section, and I reported through the
24 criminal chief to the U.S. Attorney.

32

1 Q Okay. And you said at this point in time you weren't having daily interactions with
2 Mr. Windom, is that correct, in the fall of 2021?

3 A In -- beginning in November of 2021 when Mr. Windom joined the office, no, I was not
4 having daily interaction with Mr. Windom.

5 Q Did you ever interact with Matthew Olson, who is an assistant attorney general to the
6 National Security Division? Did you ever interact with him related to January 6th matters?

7 A Yes, I have.

8 Q Okay. In what time frame did you interact with him?

9 A I don't recall specifically when I interacted with the assistant attorney general after his
10 appointment right around the same time I believe that Mr. Graves was confirmed.

11 Q Okay. And then, according to other reporting, you were approached by Mr. Graves to
12 join an investigative team in July 2022.

13 Do you have recollection of Mr. Graves reaching out to you about an investigative team in July
14 of 2022?

15 A Can you point me to the reporting?

16 Q Yeah, I can. We'll enter another article. This will be exhibit No. 3. This is an article
17 dated July 29th, 2022. "Justice Department Staffs Up Team Investigating Efforts to Overturn
Trump's

18 Loss by Adding a Top Public Corruption Prosecutor."

19 [Cooney Exhibit No. 3

20 was marked for identification.]

21 BY

22 Q You can read as much of the article as you want. I'll focus on page 2, but please take
23 your time.

24 Do you have a source for this?

25 It's a Business Insider article.

33

1 Okay.

2 Mr. Cooney. Okay.

3 BY

4 Q Have you had sufficient time?

5 A I've looked at it. I see that it is an article dated -- or seems to be an article dated July 29,
6 2022.

7 Q And I'll direct you to the second page. The second paragraph states, "In an officewide
8 email Thursday," which would have been July 28th, 2022 -- "U.S. Attorney Matt Graves said he had
9 asked a top public corruption prosecutor, J.P. Cooney, to help with some of the investigatory efforts
10 in the January 6 investigation, people familiar with the move told Insider. The email did not

11 elaborate on those investigative steps, but in a hastily called meeting earlier Thursday, Cooney told
12 colleagues that he would be working with a team that includes Thomas Windom, who has emerged
13 as a key prosecutor, as the Justice Department has increasingly scrutinized the role Trump allies
14 played in an effort to reverse the former President's electoral defeat according to a person familiar
15 with the internal discussions."

16 Does this reporting ring a bell at all about an officewide email announcing your role in this
17 investigatory efforts?

18 A I can't say that this article rings any specific bell, no.

19 Q Okay. Was there an officewide email that you were privy to regarding you joining the
20 investigatory efforts?

21 A My recollection is that some time in the summer of 2022, Mr. Graves or one of his
22 deputies sent an email informing personnel that -- that I would be working on this investigation, yes.

23 Q Okay. And it says that there was also a meeting that occurred that day where you told
24 colleagues you would be working on this team.

25 Do you remember such a meeting occurring?

34

1 A I don't have specific recollection of any meeting happening with -- or the meeting that is
2 described in this article, no.

3 Q Okay. And the article mentions that you'd be working with the team that includes
4 Thomas Windom, and you had previously mentioned that you started to work more closely with him
5 in the summer of 2022.

6 Is this kind of the time frame that you would have started, July -- late July 2022, starting
7 working more closely with Mr. Windom?

8 A This -- the summer of 2022 is the time frame in which I began to work more closely with
9 Mr. Windom, yes.

10 Q And what were you two working on at that point in time, July 2022?

11 A We were working on an investigation into all of the conduct leading to the Capitol
12 invasion and the obstruction of the certification proceeding, as well as efforts to overturn the 2020
13 presidential election.

14 Q At that point in time, did your work primarily shift to just focusing on cases and
15 investigations regarding January 6th, or did you continue your work as chief?

16 A I think in -- in the summer of 2022, when I became involved with -- with this work,
17 I -- my responsibilities as chief of the fraud and public corruption section -- or fraud, public
18 corruption, civil rights section were reduced. I just don't recall if -- if I continued in some of those
19 responsibilities or not at that time period.

20 Q So at this point in time, did you have new individuals assigned to your supervision, or
21 were you still working with the team from the -- the section?

22 A As part of my work when I began working with Mr. Windom in July of 2022, I did begin
23 to work with other prosecutors who were not in the fraud, public corruption, and civil rights section.

24 Q Okay. And who were those prosecutors?

35

1 A So for -- for decades, including before I began as a prosecutor, the Justice Department
2 has had a long tradition of not identifying by name the -- the career or line level prosecutors who
3 work on investigations, and I'm going to honor that -- that tradition and practice.

4 Q Okay. The authorization letter you received from the DAG's office -- you received two of
5 them -- both said that you were able to discuss these matters.

6 So how many prosecutors did you work with?

7 A I don't recall the exact number of prosecutors that I worked with at that time period in
8 2022.

9 Q So was Mr. Windom considered part of this team?

10 A I worked with Mr. Windom in the summer of 2022, yes.

11 Q Was he on your team, or was he leading a different team?

12 A I wouldn't describe any team as my team or Mr. Windom's team. We were working together on an investigation of the events leading to the attack on the Capitol.

14 Q So you were working together? There was no team lead, if you will?

15 A My recollection is that I was the -- at that time period, I was asked to be the supervisor of Mr. Windom, yes.

17 Q Okay. So it would have been you and then Mr. Windom. And then who else was working on these investigatory efforts?

19 A There were other prosecutors who were working with Mr. Windom and myself in that time period.

21 Q How many other prosecutors?

22 A I just don't recall the exact number of prosecutors in the summer of 2022.

36

1

2 [11:03 a.m.]

3 BY

4 Q Was it five? Ten? More than that?

5 A At what point?

6 Q Let's start with the summer of 2022. How many prosecutors were you assigned to supervise in these efforts?

8 A Well, starting the summer of 2022, when I was asked by Mr. Graves to get involved in supervising, I just don't recall the exact number of prosecutors. There were more prosecutors than just Mr. Windom. But, at that time, when I started, I just don't remember if it was two other prosecutors, three other prosecutors, four other prosecutors, or anything like that.

12 Q Okay. So it wasn't a large number. It wasn't like a dozen other prosecutors in the summer of 2022. Is that your recollection?

14 A My recollection when I began supervising in or around July of 2022 is that there were not a dozen prosecutors working with Mr. Windom.

16 Q Okay. And who do you remember working with?

17 A I remember working with a variety of supervisors and prosecutors and the U.S. attorney throughout.

19 Q Okay. I'm asking for the names of the other prosecutors you and Mr. Windom worked with?

21 Ms. Duval. I think that Mr. Cooney has said that he's going to be sticking with the policy of DOJ over the last decades of not going forward with naming line attorneys.

23 Even though the authorization letters allow him to discuss the names with the committee?

37

1 Ms. Duval. I think we can talk about what the authorization letter authorizes or doesn't authorize, but I'm sure that if you ask -- well, I'm not sure. Perhaps the Department of Justice will give you a list. I think that's probably the most efficient way for you to get a list of names.

4 BY

5 Q Okay. But you won't tell us who you worked with today?

6 A You know, I appreciate that you would have no way of knowing this, but I have worked with many career public servants, career prosecutors at the Department, and, throughout the course of the last many years that we've been working on investigations surrounding the Capitol attack, many of my colleagues have been the subject of threats, harassment, pizza deliveries to their home,

10 swattings. And, given that and given the events of political violence that have occurred recently and
11 in the last several months and given the Department's long tradition, I'm not going to discuss the
12 identities of career public servants and attorneys at the U.S. Attorney's Office and the Department of
13 Justice.

14 Q What were their roles, then?

15 A To investigate all the facts and circumstances surrounding the attack on the Capitol and
16 efforts to overturn the 2020 election.

17 Q What were their specific duties?

18 A To carry out that investigation.

19 Q And were there specific angles that each person was -- you know, which they were
20 assigned to look into, or was it just this broad and everyone was just looking into whatever came
up?

21 A Well, in investigations, white-collar investigations, public corruption investigations,
22 prosecutors and agents gather facts, and they follow those facts wherever they lead. And their
23 decisions about what to do next, about how to move forward, or about whether to stop are based on
24 their gathering those facts.

38

1 Q Okay. You know, it's our understanding that the Justice Department opened this very
2 wide-ranging investigation into the events that occurred on January 6th, leading up to it, the events
3 that occurred on that day, the aftermath. So we're trying to understand, were specific individuals
4 assigned to look in specific aspects of maybe the events leading up to, the events on the day, the
5 events after, or was it just a surge, kind of everyone just all hands on deck; everyone just looked at
6 everything?

7 A I would not characterize it in any of those ways.

8 Q How would you characterize it?

9 A I think there was a thorough organized investigation to determine all of the facts and
10 circumstances surrounding the Capitol attack and to attempt to hold responsible anyone whose
11 conduct was criminal in respect to those efforts to attack the Capitol, to obstruct the proceeding, or
12 to overturn the 2020 election results.

13 Q Okay. To use your word "organized," how was the investigation organized?

14 A I think it was organized around the principle that we will gather the facts, follow those
15 facts wherever they lead, and take investigative steps and decisions based on those facts and the
16 applicable law.

17 We'll go off the record.

18 [Recess.]

19 Ready to go back on the record?

20 Mr. Cooney. Yes.

21 It is 11:19. We can go Back on the record.

22 Mr. Cooney, thank you, again, for joining us this morning. I want to take a couple steps back
23 and talk about the Fraud, Public Corruption, and Civil Rights Section more broadly. I would like to
24 introduce as exhibit 4 the website printout, the summary of what the Fraud, Public Corruption, and
25 Civil Rights Section does.

39

1 [Cooney Exhibit No. 4

2 was marked for identification.]

3 EXAMINATION

4 BY

5 Q And I'll say this was printed off this morning. It is possible it has changed in the time
6 since you've been there. So take a minute to review it.

7 A All right. Thank you. I have had an opportunity to look at it.

8 Q You became the chief of the Fraud and Public Corruption Section in 2015, correct?

9 A No. Actually, in 2018.

10 Q 2018. I apologize. And you became the deputy chief in 2015; is that right?

11 A I became a deputy chief of the Public Integrity Section at Main Justice in the Criminal

12 Division in 2015, and in 2018 I returned to the U.S. Attorney's Office as chief of what was then called

13 the Fraud and Public Corruption Section.

14 Q Thank you for that clarification. In the prior hour, you were asked what the Fraud,

15 Public Corruption, and Civil Rights Section investigated, and I think you said that the section

16 investigates fraud, public corruption, and civil rights. Having reviewed this, are you able to provide

17 any more detail about the type of work this section was responsible for?

18 A I had an opportunity to look at this website, which just, looking at the personnel listed

19 and whatnot, this is from after my time as chief of this section, but I would say that this introduction

20 and the types of matters it describes accurately depicts the work of the Fraud, Public Corruption, and

21 Civil Rights Section.

22 Q So, for example, this website indicates that the section investigates fraud on the

23 government, such as tax fraud, healthcare fraud, embezzlement, procurement fraud, and defrauding

24 government programs like pandemic assistance, correct?

25 A That is correct.

40

1 Q And it indicates that this section also investigates fraud on public -- private citizens and

2 organizations, correct?

3 A That is correct.

4 Q And it indicates that this section also investigates public corruption, correct?

5 A Yes.

6 Q In laymen's terms, how would you describe public corruption?

7 A Public corruption is an abuse of power by officials in positions of authority in

8 government and persons who corrupt or efforts to corrupt the government, whether they be by

9 people, public officials in government, or people outside of government.

10 Q During your time with the Fraud, Public Corruption, and Civil Rights Section, did you

11 have the opportunity to be involved in any cases that went to trial for public -- under the public

12 corruption review?

13 A I'm sorry. Did you ask when I was in the Public Integrity Section or --

14 Q Talking about your time in the Fraud, Public Corruption, Civil Rights Section.

15 A During my time as the chief there, I was involved in cases that went to trial, yes.

16 Q Because you oversaw all the cases that went to trial. Is that fair to say?

17 A If a case was prosecuted by the Fraud, Public Corruption, and Civil Rights Section, one of

18 my responsibilities was to oversee it, yes.

19 Q And you also previously, in your time with the Public Integrity Section, you were also a

20 trial attorney and then -- in that section as well, correct?

21 A That is correct.

22 Q And, in that section, did you have the opportunity to try any cases?

23 A I did try public corruption cases when I was with the Public Integrity Section, yes.

24 Q Did you try cases of political figures?

25 A I guess it depends on what you mean by a political figure.

41

1 Q Did you try cases involving any Members of Congress?

2 A I did, yes.

3 Q Can you describe those cases for us?

4 A One trial that comes to mind that I was on the trial team for was the prosecution of the
5 former chair of the Senate Foreign Relations Committee and Democratic Senator from New Jersey,
6 Robert Menendez.

7 Q And when was that?

8 A The trial occurred in 2017.

9 Q So this was the first trial of Senator Menendez, correct?

10 A Was the first trial. Was the trial in the District of New Jersey, yes.

11 Q And you just said Senator Menendez was a Democratic Member of the Senate, correct?

12 A He was.

13 Q In your time with the Public Integrity Section, did you investigate both Republicans and
14 Democrats?

15 A Throughout my time at the Public Integrity Section, and throughout my career, I have
16 been involved in investigations of Republicans, of Democrats, and of many individuals of whose
17 political affiliation I just don't know.

18 Q In investigating those cases and in trying those cases, did political affiliation ever impact
19 any steps that you took? Did an individual's -- the individual who was the subject of an
investigation,

20 did their political affiliation ever impact any steps you took?

21 A Political affiliation or partisanship played no role in any of the investigative or
22 prosecutorial work that I have done.

23 Q Thank you. Throughout your time at the Department of Justice, could you put a number
24 on the approximate number of matters that you've worked on? And I'm talking matters, not just
25 trials -- matters broadly.

42

1 A I'm sorry, I really don't think that I can put a number on -- it's a large number of matters
2 throughout my career.

3 Q Is it fair to say it's in the hundreds?

4 A I think, over the course of an almost 18-year career with the Justice Department, it is
5 fair to say that I was involved in more than 100 matters.

6 Q Is it fair to say it was perhaps more than 1,000 matters?

7 A That I'm not prepared to say one way or the other.

8 Q Do you know sitting here today the number of cases you've tried before a jury?

9 A I believe, my best recollection is that I've tried more than 15 jury trials.

10 Q And, as you just said, in your role as a supervisor, you also saw other prosecutors who
11 brought cases before juries, correct?

12 A I have.

13 Q Is it fair to say that you have extensive experience in trial work at the Department of
14 Justice?

15 A I believe it is fair to say that I am an experienced trial attorney, yes.

16 Q Did you win any awards during your time at the Department of Justice?

17 A I did.

18 Q What awards were you given?

19 A I think, most recently, in 2020, I was recognized by the then U.S. attorney for excellence
20 in management.

21 Q And that was by -- who was the U.S. attorney in 2020?

22 A I don't recall if the U.S. attorney at the time, the acting U.S. attorney at the time was
23 Michael Sherwin or Timothy Shea, but it was in 2020, and my best recollection is that, in that

period,

24 one of them was in the chair.

25 Q And Michael Sherwin was an appointee of President Trump, correct?

43

1 A That was during the Trump administration, correct.

2 Q And Timothy Shea was also an appointee of President Trump, correct?

3 A That was also during the Trump administration.

4 Q Thank you. You said in the prior hour -- sorry. In the prior hour, you were asked a
5 number of times about particular individuals that you may or may not have investigated as part of
6 the work around January 6th. Do you recall those questions?

7 A I do.

8 Q And you pushed back against the characterization of investigating individuals. Do you
9 recall that?

10 A I do.

11 Q And you said I believe that you were -- that the investigation was into conduct and
12 circumstances. Do you recall saying that?

13 A Yes.

14 Q Can you explain what you meant by "conduct"?

15 A In investigations, prosecutors examine conduct by individuals, that means their actions,
16 their exchanges, their interactions and communications with other individuals. But their
17 conduct -- and it is -- criminal laws prohibit certain conduct, and so that is the focus of our
18 examination, to examine individuals' conduct.

19 Q And, in the case of -- let's talk about January 2021. Immediately after the events of
20 January 6th, did you become involved in investigating conduct?

21 A Yes.

22 Q As part of that work, can you describe any specific actions you might have taken?

23 A It's hard to recall going back about 5 years now what exact steps or things that I did or
24 that I was involved with. And I also really do -- I need to safeguard matters occurring before a
Grand

25 Jury. So discussing specific steps is not something that I can really do here today.

44

1 Q Understood. Did you become involved in this investigation in the days immediately
2 after January 6th, so January 7th, January 8th, January 9th?

3 A I was involved in addressing the facts and circumstances resulting in the invasion of the
4 Capitol in the days after January 6th, yes.

5 Q As part of that investigation, did you have the -- did you have the opportunity to visit the
6 Capitol?

7 A I did.

8 Q And can you explain why you visited the Capitol in those days immediately following
9 January 6th?

10 A I went to the Capitol on behalf of the U.S. Attorney's Office to inspect the site of the
11 invasion, to inspect the Capitol.

12 Q Where in the Capitol did you go?

13 A My recollection is that we toured, or walked throughout, inspected the entire Capitol
14 Grounds. And what I mean by that is the rotunda. The main Capitol itself. So not the offsite Rayburn
15 building like where we are today, but the location of the attack.

16 Q Did you also visit the Grounds of the Capitol?

17 A My recollection is that, yes, I did.

18 Q When you were visiting or touring, feels fair to say touring in that concept, but when

19 you were visiting the Grounds and the Capitol, can you describe what you saw?

20 A It was evident that the United States Capitol had been attacked and ransacked when I
21 inspected the Grounds and the internal offices and areas in the U.S. Capitol.

22 Q When you say it was evident, what do you mean by it was evident?

23 A There was still trash and debris spread throughout areas of the Capitol. I recall that, in
24 one area, I believe on the west end, I recall that there were a number of iron poles that looked like
25 they were either like flagpoles or had been ripped from bicycle racks, and things that, based on our
45

1 investigation, our examination of all the video, things that appeared to me were used to attack
2 United States Capitol Police Officers.

3 Q Was there, for example, you said there was trash and debris present, can you describe
4 the type of debris? Was there, for example, broken glass?

5 A I recall that there were still some broken windows, that there was broken glass and
6 papers on the ground, things like that.

7 Q Would you describe the scene as chaotic?

8 A I think it is fair to say that it appeared that it had been quite chaotic on January 6th,
9 which was evident from video I had seen. But, also in the day or two after the attack when I was on
10 the Grounds, it was evident from the circumstances of the broken glass, of the poles, of a ransacked
11 office, et cetera.

12 Q After having visited the site of the actual crime, you continued to work on this
13 investigation throughout January, February, and on into 2021, correct?

14 A Yes.

15 Q Is it fair to say that this was a priority for the U.S. Attorney's Office?

16 A Investigating the invasion of the Capitol was a priority for the U.S. Attorney's Office, and
17 for the Justice Department.

18 Q Can you describe the atmosphere, and what I mean by that is, was it busy at the U.S.
19 Attorney's Office? Was it long hours?

20 A It was grueling in every respect. The hours were long, the attention was highly focused,
21 and the work was demanding.

22 Q In the prior hour, you were asked about conversations that may or may not have taken
23 place in February 2021. Do you remember being asked those questions?

24 A I do.

46

1 Q Is it fair to say that there were a lot of conversations going on about the events at the
2 Capitol in January, February, and on into 2021?

3 A There were many meetings, many conversations going on about the attack on the
4 Capitol in the period of January and February 2021.

5 Q And is it fair to say that there would have been many people involved in those various
6 meetings?

7 A I think that is fair to say, yes.

8 Q Is it fair to say that, because of the pace, the intensity, the number of meetings, the
9 number of people involved, it's possible that individuals' recollections of what happened at any given
10 time may vary?

11 A I don't want to speculate about other people. But, in my experience as a prosecutor,
12 recollections can vary for a variety of reasons, and the days, weeks and months after January 6th
13 were grueling and very difficult.

14 Q And the conversations that you were asked about took place, supposedly took place in
15 February of 2021, correct?

16 A I was asked about conversations written about in an article that alleged -- allegedly

17 occurred in -- or may have occurred in February of 2021, yes.

18 Q And I want to turn to that article. It's Exhibit 2.

19 A All right. Is this the article by Carol Leonnig and Aaron Davis?

20 Q Correct. Can you say the date at the top of that article?

21 A I see a date that says updated June 20, 2023.

22 Q June 20th, 2023, is more than 2 years after February 2021, correct?

23 A Correct.

24 Q So this article was written at least 2 years, I understand it says "updated," but at least 25 years after the events?

47

1 A That appears to be the case.

2 Q You were asked in the prior hour about whether -- when you reviewed this article, if you 3 found it inaccurate, why you didn't contact the reporter or have the OPA at the Department of 4 Justice contact the reporter. Do you recall those questions?

5 A I do.

6 Q Are you familiar with the Department of Justice media contacts policy?

7 A I am, yes.

8 I'm going to introduce that as exhibit 5.

9 [Cooney Exhibit No. 5

10 was marked for identification.]

11 BY

12 Q What I've introduced is Justice Manual Section 1-7.000, confidentiality and media 13 contacts policy. Have you seen this before?

14 A Yes, I have seen the media contacts policy and these provisions in the Justice Manual.

15 Q Do you know if you received any training on the media contacts policy?

16 A I don't recall any specific training on the media contacts policy, but I do have 17 recollection that our obligations with respect to media contacts were the subject of trainings on a 18 number of different subjects.

19 Q Section 1-7.100 begins on the second page, this is printed, but the actual substance is on 20 the top of the third page as printed, and there are page numbers at the bottom.

21 A And I'm sorry. Could you just tell me what section you were talking about again?

22 Q Yes -- 1-7.100, general need for confidentiality.

23 A Got it. Thank you.

24 Q And I'm actually going to read the section at the top of page 3, which is where the 25 substance of this is. It says, "Much of DOJ's work involves nonpublic sensitive matters. Disseminating

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1 nonpublic sensitive information about DOJ matters could violate Federal laws, employee 2 nondisclosure agreements, and individual privacy rights, put a witness or law enforcement officer in 3 danger, jeopardize an investigation or a case, prejudice the rights of a defendant, or unfairly damage 4 the reputation of a person." Do you see where it says that?

5 A I do.

6 Q You were asked in the prior hour why you didn't push back against the inaccurate article 7 that was published by The Washington Post. You were also asked why the Office of Public Affairs 8 wouldn't have pushed back. Isn't it fair to say that, if the Office of Public Affairs had commented on 9 this article, that may have, in fact, had the impact of potentially disclosing nonpublic sensitive 10 matters, or information implicating an ongoing investigation?

11 A Because I'm not in OPA, I can't speak for exactly how they conduct their business or 12 what they do or don't do in situations like this.

13 Q Okay. We can go off the record. Thank you.

14 BY

15 Q We'll go back on the record. It's 11:41 a.m.

16 Mr. Cooney, at the end of our first hour, we were discussing kind of the timeframe of summer
17 2022, and one item that occurred in that timeframe was the seizure of Congressman Scott Perry's
18 cellphone. Were you involved in the discussions to seek a warrant to obtain his cellphone?

19 A Sorry, did you --

20 Ms. Duval. Grand Jury warning.

21 Mr. Cooney. Can I ask a question?

22 BY

23 Q Absolutely.

24 A Did you say the timeframe, did you say the summer of 2022?

25 Q That's correct.

49

1 A And I apologize; what was your question?

2 Q My question was, were you involved in discussions regarding obtaining a warrant to
3 seize Congressman Scott Perry's cellphone?

4 A I was involved in discussions about obtaining a search warrant, yes.

5 Q And who was involved in those discussions with you?

6 A I recall that my, that my supervisors, the U.S. attorney was involved in that.

7 Q That's Mr. Graves; is that correct?

8 A Correct.

9 Q Okay. Who else?

10 A I don't have specific recollection of other individuals involved. In terms of Mr. Graves
11 and individuals who I'm in a position to identify, I have recollection that there were other
prosecutors

12 involved in the discussions.

13 Q Okay. Mr. Windom told us that he was involved in discussions. Would that match your
14 recollection?

15 A My recollection is that -- and I don't know what Mr. Windom apparently told you.

16 Q Uh-huh.

17 A But my recollection is that, at that time, Mr. Windom was involved in the same
18 investigation that I was working on and that he was likely a part of those conversations, yes.

19 Q Okay.

20 BY

21 Q Did you have a plan to minimize the interruption of Mr. Perry's official duties by taking
22 his phone?

23 A I'm not sure what you mean by that.

24 Q Okay. Well, Mr. Perry's phone was seized, correct.

25 A Mr. Perry's phone was seized, yes.

50

1 Q Okay. Now, during the time period when he didn't have access to his phone, he was
2 unable to communicate with his key staff, other Members of Congress, and perform his official
3 duties. And my question was, did you have a mitigation plan to limit that interference with the
4 constitutionally elected Member of Congress?

5 A So my recollection with respect to the warrant is that we applied to a court and that one
6 of the measures in that was that, pursuant to the Speech or Debate Clause, that Representative Perry
7 would have an opportunity before anyone in the Government inspected the contents of his phone,
8 have an opportunity to inspect it himself and to assert privileges under the Speech or Debate Clause

9 to the court.

10 Q But, during the time period when he didn't have his phone, he wasn't able to
11 communicate with Members of Congress, key staff, or his constituents. Did you have a plan to
12 mitigate that? Sounds like you did not.

13 A With respect to the way in which the search warrant was executed, in cases where we
14 do take steps like this, I defer to the law-enforcement professionals who conduct the actual
15 execution of the search warrant.

16 Q But you would agree that it's a little different when you're taking the phone of a sitting
17 Member of the United States Congress, correct?

18 A I'm not sure I would agree that there is much difference other than that a Member of
19 Congress may have a speech or debate privilege that is not afforded to non-Members of Congress.

20 Q But, if a vote is called, and the mechanism for learning about the votes being called are
21 his telephone, then you're interfering with his ability to get back to Washington to vote.

22 A I would not agree with that.

23 Q Why is that?

24 A I don't believe that the law requires us to take specific steps with respect to a Member
25 of Congress that are not taken with respect to others, other than the Speech or Debate Clause.
51

1 Q And what is the Justice Department policy? Because I believe there is a difference in
2 Justice Department policy with Members of Congress.

3 A I believe that, under Justice Department policy, when a Member of Congress may be the
4 subject of a search warrant, that there are approval requirements under the Justice Manual through
5 the Public Integrity Section.

6 Q And what are those approval requirements, and how do they differ from an average
7 target of a criminal investigation?

8 A If you have a copy of the Justice Manual, I will be happy to take it out and take a look.

9 Q Well, I'm just asking you for your recollection. Like how did you approach this
10 differently from an ordinary person that's not elected by almost 800,000 people?

11 A My recollection is that we complied with the requirements in the Justice Manual.

12 Q Okay. So you didn't handle Congressman Perry in a different fashion due to his
13 constitutional duties?

14 A I wouldn't characterize it the way in which your question is presuming a fact.

15 Q Okay. Do you know how long Mr. Perry was without his cellphone?

16 A I actually do not, no.

17 BY

18 Q And, when you said you deferred to law enforcement on the execution of the warrant,
19 did you have any discussion with them about how to minimize the time that Mr. Perry was without
20 his cellphone, or did that just not come up at all?

21 A I don't have any recollection about discussing the way in which the search warrant
22 would be executed.

23 Q Did you have discussions with the other prosecutors regarding seeking consent prior to
24 going to a warrant?

25 A I don't recall having any conversations like that.

52

1 Q So it was just go to a warrant right away, no reach out to his attorney, see if we can get
2 the emails or communications we're looking for?

3 A Well, in many investigations it is not uncommon to seek a search warrant for a device
4 where it is believed that there may be evidence of a crime.

5 Q But there was no conversation -- I'm asking a very specific question. Were there

6 conversations about seeking consent prior to going to a search warrant for Mr. Perry's cellphone?

7 A I don't recall whether we had any conversations like that.

8 Q And were you looking for all of the content on his phone, or just specific
9 communications?

10 A We were looking for contents that may constitute evidence of a crime as approved

11 within the scope of the warrant by a Federal judge.

12 So you didn't have any conversations about that at all, that this is a sitting

13 Member of the United States Congress; this is a United States general, and you said, "No, we're just
14 going to go straight to -- straight and take his phone; we're not going to talk to his lawyer; we're not
15 going to talk to him"?

16 Mr. Cooney. I don't recall whether we had any conversations about that subject or not.

17 BY

18 Q You ended up litigating over the contents of the phone for how long? Over a year,
19 right?

20 A Well, as it turns out, Representative Perry asserted the Speech or Debate Clause

21 privilege over virtually every --

22 Q After you take the phone.

23 A Communication on his phone.

24 Q Right. After you take the phone. But, if you sort of engage with his attorney before and

25 say, "Hey, we're looking for communication from this sender or that sender, you could have
achieved

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1 a different result; you could have had the materials you were looking for without the one and a half
2 year wait, correct?

3 A I'm not going to speculate about what could or could not have happened.

4 Q But, if you did engage with his attorney and you did ask for consent for specific
5 communications that you were looking for, it's certainly possible the result would have been
6 different, right?

7 A Well, after we conducted the search warrant, Representative Perry was the first to look
8 at the contents, and he elected to assert his speech or debate privilege over I think most or all of the
9 contents, and that resulted in litigation.

10 Q But, you know, it's a little different once you go and you take the phone. You send FBI
11 officials to -- I mean, I think he was vacationing with his family. You know, once you take the
phone,

12 you seize the phone, it's a little bit different posture, correct?

13 A I don't know the circumstances surrounding the seizure of the phone from
14 Representative Perry.

15 Q Okay.

16 BY

17 Q Did you have any discussions about when the phone would be seized?

18 A I don't recall whether we had any conversations about that or not.

19 Q Was there any discussion of, "Maybe we should wait until he's back in the District, or
20 wait when he's in D.C. and not while he's traveling"?

21 A I don't recall whether we had conversations like that or not.

22 Or make an appointment with him? You know, if you're coming to seize the
23 phone, I mean, there certainly is no evidence that Congressman Perry would engage in any
24 destruction of documents. I don't think that's been alleged. So you could have made an
25 appointment with him to take his phone at a convenient time.

54

1 Mr. Cooney. It's my role in matters like this, and it's my practice to defer to the law
2 enforcement professionals at the FBI about how to execute a search warrant.

3 BY

4 Q Do you remember how many prosecutors were involved with the seizure of Mr. Perry's
5 cellphone?

6 A I believe that the FBI executed the search warrant on Representative Perry's phone, not
7 any prosecutors.

8 Q Okay. But, in the discussions regarding obtaining the search warrant, how many
9 prosecutors were involved.

10 A I don't recall.

11 Q Do you remember how much information was taken from Mr. Perry's phone? Was a full
12 image taken? Were just specific communications seized?

13 A I don't have any specific recollection about the volume of material that was seized from
14 his phone under the court-approved search warrant.

15 Like you didn't take pictures of his family, did you, that's on his phone?

16 Mr. Cooney. I'm not going to discuss specific information that was obtained from the phone
17 because that may betray both 6(e) information, but also information that's subject to court sealing
18 under a search warrant.

19 Was there any discussion beforehand about speech and debate? Was

20 there any discussion beforehand that, "Oh, we're going to be taking the phone of a sitting Member of
21 Congress, a retired general in our Armed Services"? Was there no discussion about that, or can you
22 recall any discussion about that?

23 Mr. Cooney. I recall that we discussed the Speech or Debate Clause.

24 Prior to?

25 Mr. Cooney. Yes.

55

1 Okay. And then tell me about those discussions.

2 Mr. Cooney. I don't recall any specific discussion. I recall that, when we went to the court to
3 apply for the warrants, we included a provision that permitted Representative Perry before any
4 member of the government accessed the contents of his phone, for him to inspect all of it and have
5 the opportunity to go to the court first to assert his speech or debate privilege.

6 And did you anticipate that he would do so?

7 Mr. Cooney. I don't recall if I anticipated one way or the other whether he would do that.

8 Really? You go take his phone while he's on vacation with his family; you

9 don't anticipate him objecting to that in some way?

10 Mr. Cooney. I just don't have recollection about speculating or anticipating exactly what
11 Representative Perry would do with his speech or debate privilege.

12 It's a pretty big deal. I mean, the fact that you didn't walk through that

13 analysis and say like, "Why don't we try it the simpler way, call him up and see, here is what we're
14 after," as just indicated, and see if he would be willing to give that to you. That didn't happen?

15 Mr. Cooney. We conducted this investigation and had discussions the way we do in all of our
16 criminal investigations and ordered our steps that way.

17 Okay.

18 In the special counsel's report, there's a discussion about Speech or Debate

19 Clause and Mr. Perry's phone, and there's a line on page 100 -- we can mark the report as an exhibit.

20 I'm sure we'll use it later on as well. This will be exhibit 6.

21 [Cooney Exhibit No. 6

22 was marked for identification.]

23 Do you need a copy of the report?

24 Ms. Duval. Sure.

25 BY

56

1 Q Do you need a copy of the report?

2 A I have a copy of the report here.

3 Q Okay. Perfect.

4 A So I will start with this, and if I need to move to this other one, I will.

5 Q So this will be exhibit 6. I'm specifically looking at page 100. I'll give you a chance to flip

6 there. Okay. The third line from the top of the page, it says, "In addition, the office consulted with

7 PIN, the Public Integrity Section, regarding investigative steps that involved gathering evidence

8 connected to congressional staff."

9 My question is, was the congressional staff referenced here related to Congressman Perry?

10 A I think that was a reference to that, yes.

11 Q Okay. Because you weren't seeking information from other congressional staff?

12 A I'm not going to talk about other specific investigative steps that we may or may not

13 have taken during the investigation because it may betray information or matters occurring before

14 the grand jury or invade the privacy and other interests of individuals with whom investigative steps

15 were taken with respect to.

16 But do you know the answer to that question? Like I understand you're not going

17 to tell us, but do you know the answer to that question, whether other staff other than Congressman

18 Perry's?

19 Mr. Cooney. I know the answer.

20 Okay.

21 BY

22 Q And your specific recollection is the note here on page 100 is in regards to Congressman

23 Perry's staff, but you're not ruling out that other congressional staff information could have been

24 sought?

25 A I'm not ruling in or out anything.

57

1 Q Okay. During the course of your investigation in 2021 and 2022, throughout the special

2 counsel's investigation, did you ever receive information from Bank of America.

3 A I cannot discuss a question about a specific investigative subject or step like that

4 because it may reveal information occurring before the grand jury.

5 Q We received information from a whistleblower, and then subsequently from Bank of

6 America itself, that the FBI sent an email to Bank of America on January 15th, 2021, asking for

7 records of individuals who used their credit card in the DMV area on the 5th, 6th and 7th, and then

8 they subsequently sent that information to the FBI. Did you ever receive that information?

9 A I don't know what you're referring to.

10 Q Okay. You never received a long list of individuals who used their credit card in the DMV

11 area from Bank of America? I believe there was like 250 listings of individuals and entities on the
list

12 that was sent. You never received that list.

13 A I don't have any recollection one way or the other.

14 Q Okay. What can you tell us about the investigation that occurred between you joining

15 the investigative team in July of 2022 to the naming of the special counsel.

16 A I'm sorry. Was the question, what can I tell you about the investigation?

17 Q Yeah. What investigative activity occurred in that timeframe?

18 A We continued to investigate all of the conduct and facts and circumstances surrounding

19 the attack on the Capitol, the obstruction of the proceeding, and the efforts to overturn the 2020

20 Presidential election.

21 Q And, during this timeframe, were you continuing to work closely with Mr. Windom.

22 A I worked with Mr. Windom in this timeframe, yes.

23 Q You would describe it as closely.

24 A I would not necessarily describe it one way or the other.

58

1 Q Did you interact with him on a daily basis between the summer of 2022 and the naming
2 of special counsel.

3 A From the time that I became involved in working with Mr. Windom in or about

4 July 2022, I had regular contact with him. Whether it was daily or not, I don't have a specific
5 recollection, but I did have routine contact with him.

6 Q And, at one point, you said you were named the supervisor. So, once you were named a
7 supervisor, did the contact become more frequent.

8 A My involvement with Mr. Windom and my contact with him became more frequent
9 after I was asked to supervise in July of 2022, yes.

10 Q And, after you were asked to supervise in July of 2022, did your team grow?

11 A I wouldn't characterize the individuals who were working on it as my team.

12 Q Okay. But you were supervising individuals; is that correct?

13 A I was supervising individuals who were working on the investigation.

14 Q Okay. So you were supervising individuals. Did the number of individuals you were
15 supervising change at all following July of 2022.

16 A It did.

17 Q How so?

18 A More prosecutors joined the investigation or investigations that I was supervising.

19 Q Okay. And when were more prosecutors added?

20 A Sometime after Mr. Graves asked me to get involved in July of 2022.

21 Q Was it before the special counsel was named or after the special counsel was named?

22 A More prosecutors joined the investigation prior to the appointment of the special
23 counsel.

24 Q And what timeframe was that?

25 A That would have been between July of 2022 and November 18 of 2022.

59

1 Q Is there a specific month you remember of when they grew?

2 A I do not.

3 Q You do not? How many prosecutors were added?

4 A I don't recall.

5 Q And I remember you saying that it was, you know, it wasn't 15; it was maybe five or a
6 little bit less than that. Is that correct, initially?

7 A I recall the question you asked me was when I started as a supervisor, and when I
8 started in July of 2023, I don't recall --

9 Q July of 2022.

10 A Excuse me. July of 2022. Thank you. I don't recall the exact number of individuals that
11 were assigned.

12 Q Okay. What was the largest number of prosecutors that you were assigned to
13 supervise?

14 A I don't recall.

15 Q Fifteen.

16 A I can't put a number on it.

17 Q Twenty.

18 A I cannot put a number on --

19 Q You can't tell us whether or not it was more than 5, less than 25.

20 A That is not what I said.

21 Q Okay. So can you help quantify it for us?

22 A I'm just not going to speak about things that I don't recall. What I've told you is that,
23 beginning in July of 2022, I became involved in an investigation, and between that time and the time
24 that the special counsel was appointed, the number of prosecutors who worked on it increased.

25 Q Okay. You don't recall the ballpark number of the individuals you were supervising?
60

1 A I just don't have a ballpark off the top of my head, no.

2 Q Okay. Prior to announcing Special Counsel Smith's appointment, it's been reported that
3 Attorney General Garland summoned prosecutors working on the investigation to Main Justice to
4 discuss the impending appointment. Were you involved in that meeting?

5 A I went to the Attorney General's Office on November 18th, 2022.

6 Q Okay. And why did you go to the Attorney General's Office on November 18th, 2022?

7 A I went there because I was asked to go there.

8 Q And who asked you to go?

9 A My recollection is that Mr. Graves asked me to be there.

10 Q Okay. And what was the point of you going to the Attorney General's Office?

11 A My recollection is that, on that day, the Attorney General informed us that --

12 Q When you say "us," who was us?

13 A Mr. Graves, myself, and other people who were in attendance that --

14 Q Who else was in attendance? Sorry to interrupt. Who else was in attendance?

15 A I don't recall all the people who were in attendance at the meeting.

16 Q Who can you tell us attended based upon your recollection?

17 A I recall that the Deputy Attorney General was there. I recall that members of the
18 Deputy Attorney General and/or Attorney General's staff were there, and I recall that individuals
who

19 were working on the investigation that I was involved with were also present.

20 Q Was Mr. Windom there?

21 A My recollection is that Mr. Windom was there, yes.

22 Q Do you recall anyone else who you were working with that attended besides Mr.
23 Windom?

24 A I don't have specific recollection, but there were other prosecutors who were involved
25 in the investigation who were there.

61

1 Q Okay. And I believe, before I interrupted you, you were going to kind of discuss what
2 was -- what took place at the meeting. So I'll let you explain what occurred after you went to the
3 Attorney General's Office.

4 A The Attorney General informed us that he was appointing a special counsel.

5 Q Okay. It's been reported that he asked prosecutors to stay on. Do you recall that
6 occurring?

7 A I recall that the Attorney General encouraged prosecutors who were working on the
8 matters that he was appointing the special counsel to oversee, to continue their work.

9 Q And how shortly after the appointment of Mr. Smith did you formally join the Special
10 Counsel's Office?

11 A I was asked to be the special counsel -- excuse me. The deputy special counsel
12 sometime after Mr. Smith was appointed.

13 Q Do you know if it was in the weeks after or more than several months after?

14 A My recollection is that it was in 2022 before Christmastime.

15 When was the meeting at the Attorney General's?

16 Mr. Cooney. I believe that it was on November 18.

17 That day? The day he announced it?

18 Mr. Cooney. Yes.

19 Okay. So the day he announced it, so, at that meeting, he told you Jack

20 Smith was going to be the special counsel?

21 Mr. Cooney. At that meeting, he informed us that he was appointing Jack Smith special
22 counsel, yes.

23 Okay.

24 BY

25 Q And who asked you to become the deputy special counsel?

62

1 A Mr. Smith.

2 Q And did you have any communications with anyone at the Justice Department about
3 accepting this role before you accepted the role.

4 A I don't recall having any communications with anyone about it.

5 Q And did you have any discussion about what the job would entail?

6 A I'm sure that Mr. Smith and I probably did, yes.

7 Q And, when you joined the Special Counsel's Office as the deputy special counsel, what
8 did you believe your roles and responsibilities were going to be?

9 A My role as the deputy special counsel was to assist Mr. Smith in his supervision of the
10 office.

11 Q Okay.

12 Were there any other deputies?

13 Mr. Cooney. I was the only deputy special counsel.

14 So you were the then number two official in that office?

15 Mr. Cooney. I think that is correct, yes.

16 Okay.

17 BY

18 Q How many people did you supervise?

19 A Well, I assisted Mr. Smith in his supervision of the office.

20 Q And how many people were in the office in total?

21 A I don't recall the exact number of people that were in the Special Counsel's Office when
22 it began.

23 Q Was it 40? Fifty.

24 A I don't want to engage in speculation just based on my recollection about the number of
25 people. My recollection is that, for the most part, the individuals who were working between July
63

1 and November when I became involved on the January 6th investigation, that they joined the Special
2 Counsel's Office. And, likewise, my understanding is that the individuals who were working on the
3 Classified Documents Investigation also joined the Special Counsel's Office.

4 Q Did you become involved in the documents case, then, as well, or did you just stick with
5 the January 6th investigation?

6 A I became involved in helping Mr. Smith perform his supervisory responsibilities over
7 both investigations.

8 Q Okay. During your time at the Special Counsel's Office, did you ever interact with the
9 White House?

10 A I did have some interactions with a staff member in the White House Counsel's Office.

11 Q And what was the content of those conversations?

12 A They were administrative and logistical in nature to arrange for interviews of White
13 House officials.

14 Q Did you have any other conversations than the ones that we've just discussed about the
15 logistics and administrative about interviews?

16 A No, I do not. Not that I recall.

17 Q So that was the sum and substance of your interactions with the White House?

18 A My recollection is that it was limited to those logistical and administrative conversations
19 about arranging witness interviews while I was the deputy special counsel.

20 Q Did you ever interact with the January 6th Select Committee --

21 Before you go to that, did you interact with the White House prior to being
22 put on the special counsel's team?

23 Mr. Cooney. Prior to become the deputy special counsel, during that period, in July 2022 to
24 November 2022, I recall having some contact with the same member of the White House Counsel's
25 Office.

64

1 And for what purpose?

2 Mr. Cooney. My recollection is that that also involved witness-related issues, and that it may
3 have involved executive privilege.

4 Okay. And then, prior to July of 2022, you've been working on this, I think

5 you said earlier in today's interview, that you started right around January 6th, the day after, what
6 interactions did you have with the White House, the Biden White House after inauguration day of
7 January 20, 2021 -- January 20, 2021, through July of 2022?

8 Mr. Cooney. I don't have any recollection of having any contacts with the White House
9 Counsel's Office in that period.

10 Okay. And you said that these interactions that you did have were about
11 people you wanted to talk to. Who were the people you wanted to talk to?

12 Mr. Cooney. That I cannot discuss.

13 Okay. Same reason?

14 Mr. Cooney. I fear that revealing that information may reveal matters occurring before the
15 grand jury.

16 BY

17 Q During the timeframe of when you were working on January 6th matters, so

18 January 6th, 2021, up until January of 2025, did you ever have contact with the January 6th Select
19 Committee here in the House?

20 A And I apologize -- I lost you at the beginning of the timeframe.

21 Q January 6th, 2021, through January 2025.

22 A Yes.

23 Q Did you ever have contact -- who did you --

24 A I recall that I did.

25 Q Okay. Who did you reach out to at the January 6th Committee.

65

1 A I don't recall whether I reached out to members of the -- to staff on the select
2 committee or if I was contacted or my office was contacted.

3 Q And why was there outreach?

4 A My recollection is that, after Mr. Smith was appointed, I had communications with staff
5 on the select committee about obtaining information that is described in the special counsel's report.
6 I believe it is in footnote 251.

7 Q Did you obtain transcripts?

8 A My recollection is that we -- that we did obtain some transcripts, yes.

9 Q And what was the purpose of obtaining the transcripts?

10 A Well, I think in any investigation, to the extent that we can bring into our holdings
11 information that may be pertinent to the conduct and the subject matter under investigation, we do
12 that, and I think that's what we did in this investigation.

13 Q Why not conduct the interviews yourself?

14 A I think, if you look at footnote 251 of the special counsel's report.

15 Q Uh-huh.

16 A It explains how materials obtained from the select committee were used, and it
17 says -- the report is any facts on which the office relied to make a prosecution decision were
18 developed or verified through independent interviews and other investigative steps.

19 Q And my question was, why didn't you just conduct the interviews yourself? Why did you
20 need the transcripts?

21 A I would not accept the premise of your question that the Special Counsel's Office and
22 the Department of Justice did not conduct interviews. As we reported in footnote 251, any facts on
23 which the office relied to make a prosecution decision were developed or verified through
24 independent reviews and other investigative steps.

66

1 [12:14 p.m.]

2 So you did reconduct the interviews then. Is that your testimony.

3 Mr. Cooney. I'm not going to discuss specific investigative steps or specific interviews that the
4 Special Counsel's Office or the Department of Justice did or did not do.

5 But here in our report, we explain how we utilized information and that we independently
6 verified any facts on which we based a prosecutorial decision.

7 There were certain materials received from the committee.

8 Were those materials limited to transcripts, or were there other materials?

9 Mr. Cooney. I don't recall the full scope of materials, but there may have been materials
10 other than transcripts.

11 Any idea what those were?

12 Mr. Cooney. As I sit here now, I do not have any specific recollection of what other materials
13 we may have obtained.

14 Well, what could they be?

15 Mr. Cooney. Well, I'm not going to speculate about -- about what they could be.

16 So you only know of transcripts -- you're only willing to say you know

17 transcripts were -- were given to you by the -- or you got transcripts from the Select Committee?

18 Mr. Cooney. My recollection, as I sit here, is that we received transcripts, and we may very
19 well have received other records from the Select Committee, but I just don't recall exactly what we
20 received.

21

22 Q How many conversations did you have with individuals associated with the January 6th
23 Committee?

24 A I don't recall the exact number of -- of conversations that I had with staff members.

25 Q How frequently were you in contact?

67

1 A I would not call my contact with the Select Committee frequent.

2 Q Okay. So it wasn't every day, once a week?

3 A I did not have routine contact -- or communications with staff members for the Select
4 Committee.

5 Was it one staff member or more than one staff member?

6 Mr. Cooney. I believe that I spoke with more than one staff member, but I can't recall exactly
7 who that was.

8 All phone conversations, email conversations, or did you meet in person?

9 Mr. Cooney. I -- I recall that I had phone conversations with staff members. I believe that I
10 may have emailed with staff members to the Select Committee.

11 I don't recall, but don't want to rule out, an in-person meeting.

12 In-person meeting, did that take place at the Justice Department, here on

13 Capitol Hill, do you -- do you know where that meeting may have taken place?

14 Mr. Cooney. I just don't have recollection of meeting with staff members to the Select
15 Committee.

16

17 Q Did you ever have contact with Members of the Select Committee?

18 A I did not --

19 Q So you never talked to --

20 A -- that I recall.

21 Q -- talked to Ms. Cheney or Mr. Thompson?

22 A I -- I don't have any recollection of having communications with any Members of the
23 committee.

24 Q Do you know if Jack Smith ever communicated with Members?

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1 A I'm not aware of Mr. Smith having any communications with Members of the Select
2 Committee.

3 Was there only individual from the Select Committee who had

4 conversations with committee staff, or was there other -- whether Mr. Windom, Mr. Smith, others
5 also --

6 Special Counsel's Office.

7 Special Counsel's Office, excuse me.

8 Mr. Cooney. My recollection is that one other person from the Special Counsel's Office had

9 communications with the Select Committee with -- with me, but there was one other member of the
10 Special Counsel's Office involved in those phone conversations.

11 BY

12 Q And who was that? Was it Jay Bratt or Mr. Windom?

13 A So it was not Mr. Windom, it was not Mr. Bratt. But other than that, for the reasons I
14 told you about, I just -- I -- I really care deeply for the well-being and the security of the career

15 prosecutors that I worked with, and so I'm just -- I'm going to honor the Department's long tradition
16 of not identifying career line-level prosecutors who have worked on these matters.

17 Q Safe to say it was someone you supervised. Is that correct?

18 A No. I would not put it that way.

19 Q Okay. So in your role as deputy special counsel, you didn't supervise the individual you
20 were on the phone with?

21 A My role as the deputy special counsel was to assist Mr. Smith's supervisory
22 responsibilities over the office.

23 Q Okay. So you wouldn't say you supervised anyone in the Special Counsel's Office?

24 A In the Special Counsel's Office, Mr. Smith was the supervisor.

69

1 Q Okay. Was the individual on the phone call with you supervised by Mr. Smith and then
2 that supervision was assisted by you?

3 A Yes.

4 Q Okay. Did you ever have any contact with the Fulton County District Attorney's Office

5 that's led by Ms. Fani Willis?

6 A I don't believe that I did, no.

7 Q Did you ever -- were you aware of anyone else in the Special Counsel's Office having
8 communications with Ms. Willis' office?

9 A I'm not aware of anyone in the Special Counsel's Office having contact with the Fulton
10 County DA, Ms. Willis, et cetera.

11 Q What was your involvement in the documents case?

12 A My involvement was to assist Mr. Smith in supervising that investigation.

13 Q And when did you start having involvement with the documents case? Was it just when
14 Mr. Smith was appointed, or had you had involvement with the documents case prior to that?

15 A My involvement with the classified documents case began when I became deputy
16 special counsel.

17 Q So you -- you didn't have any involvement in the raid on Mar-a-Lago?

18 A I was not involved in the classified documents investigation at the time that the
19 court-approved search warrant was executed at Mar-a-Lago.

20 Q Were you involved in the documents case when it was represented to the court that the
21 documents were in the same order as they were seized, and then the government had to go back
22 and say it actually -- they actually were not in the same order? Were you involved in the case at that
23 point in time?

24 A At one point while I was in the Special Counsel's Office, the -- the office was engaged in
25 litigation about the way in which documents were -- were stored.

70

1 Q Okay. And the -- the government had to say at one point, then acknowledge that this is
2 inconsistent with what the government counsel had previously represented to the court. Do you
3 remember that occurring?

4 A If you want to point to one of our public pleadings on the evidentiary issues in the case,
5 I'm happy to answer questions about it. But everything that we reported to the court is contained in
6 those public pleadings.

7 Q You don't have any independent recollection beyond the filings of the documents
8 getting misordered?

9 A Everything that -- the way in which we handled evidence and our reports to the court on
10 that are all contained within our public documents, within the filings that we made in the Southern
11 District of Florida.

12 Q When did you learn that the documents had been misordered?

13 A I would not characterize anything -- I would just not characterize it the way you had put
14 it in your question.

15 Q So the documents were in the same order as they were when they were seized from
16 Mar-a-Lago?

17 A I did not say that.

18 Q Okay.

19 A But what I am telling you is that everything that I have to say on that subject is in the
20 public pleadings that we filed in the Southern District of Florida.

21 Q Okay. So you agree that the documents were not in the same order as they were when
22 they were seized from Mar-a-Lago. Is that correct?

23 A Everything that I have to say on that subject is contained in the public pleadings that we
24 filed in the Southern District of Florida.

25 Q What involvement did you have in writing the special counsel's final report?

71

1 A I was involved.

2 Q How so?

3 A I -- as I did throughout my time, I assisted Mr. Smith in his supervisory role over the
4 work of the office.

5 Q Okay. Did you physically draft any portion of the report?

6 A I -- I don't recall exactly how I contributed to the report.

7 Q Did you review it before it was published?

8 A I certainly did, yes.

9 Q Okay. And did you provide edits? Did you have discussions with line prosecutors
10 regarding what was put into the report?

11 A I may very well have.

12 Q You don't have an independent recollection of that occurring?

13 A I recall that we worked on the report, and I recall reviewing and -- and likely providing
14 feedback on the report throughout the process.

15 Q When did you start working -- or when did work on the report start occurring?

16 A I don't recall exactly when we began working on the report.

17 Q When was the report finished?

18 A It was finished when we submitted it to the Attorney General.

19 Q Okay. On page 2 of the report -- you have that in front of you. So on page 2 of the
20 report, not the -- not the letter.

21 A Oh, volume -- so volume one, the election case?

22 Q That's correct.

23 A All right.

72

1 Q Page 2, specifically looking at footnote 1. Footnote 1 says, "This section of the report
2 summarizes the evidence uncovered by the offices of investigation and, therefore, includes conduct
3 for which the Supreme Court later held Mr. Trump to be immune from prosecution."

4 Why include conduct that could not be prosecuted?

5 A Well, I think the -- the purpose of this section was to provide, as it's titled, the results of
6 the investigation.

7 Q Okay. But could you bring a prosecution on the conduct that the Supreme Court ruled
8 was immune?

9 A If conduct is immune, then a -- then it would not be subject to prosecution, which is why
10 in our analysis of the criminal laws and how they applied, we limited that analysis to what we
11 believed was the admissible nonimmune evidence.

12 Q But why include it in this first part?

13 A In this first part we included the results of our investigation.

14 Q And whose decision was it to include immune conduct?

15 A Mr. Smith was the supervisor of -- of the report, and it is his report.

16 Q Did you have any discussions with Mr. Smith about including immune conduct in the
17 report?

18 A I -- I don't recall whether we did or we did not have discussions about it. We may very
19 well have.

20 Q Were there any discussions that you were privy to, maybe Mr. Smith wasn't in
21 attendance in those conversations, but any discussions you had regarding the inclusion of immune
22 conduct?

23 A I do not recall any conversations on that subject one way or the other.

73

1 Q During the course of the investigation beginning January 6, 2021, through the end of the
2 special counsel's investigation, did you ever review materials or information provided by FBI

3 confidential human sources?

4 A I'm sorry. In what time period again?

5 Q January 6, 2021, up through January 2025.

6 A I did.

7 Q And were any of those CHSes present at the Capitol on January 6, 2021?

8 A My recollection is that yes, yes.

9 Q Were any of those confidential human sources the four that entered the Capitol?

10 A I'm sorry. I'm not sure what that's a reference to.

11 Q So the Inspector General, Michael Horowitz, released a report, I believe it was in

12 December of 2024, regarding the use of confidential human sources on January 6th. There were 26,
I

13 believe, in the D.C. area at the time, and four entered the Capitol, and they weren't prosecuted. Do
14 you know if any of the information you reviewed came from CHs's who were physically inside of
the

15 Capitol on January 6th?

16 A I'm aware that the Inspector General issued a report on this subject. I -- I understood

17 that I was asked here today to discuss my -- my role in the Special Counsel's Office.

18 I don't think the Inspector General's report on confidential human sources is within that
19 scope.

20 Q I'm asking you about the use of confidential human source information within your
21 investigation. So that's the tie here.

22 So do you know if you used any information from the individuals that entered the
23 Capitol -- the CHSes that entered the Capitol?

24 A Used in what way?

25 Q Did you rely on that information? Did you even see that information?

74

1 A I'm sorry, what do you mean by that?

2 Q Did it ever come across your desk?

3 A I believe that during the course of my work on the investigation of the attack on the
4 Capitol that I did review files related to confidential human sources.

5 Q And to your recollection, did any of those confidential human sources, the files that you
6 received, did any of those indicate that the CHS had entered the Capitol on January 6th?

7 A My recollection is that -- that I did review a file or files of an individual or individuals
8 who entered the Capitol on January 6th who were a confidential source.

9 Q Okay. And during the course of your work between January 6, 2021, and January 2025,
10 were you ever involved in any decisionmaking regarding either prosecuting or declining to
prosecute

11 CHSes who engaged in criminal conduct on that day?

12 A I may have been involved in discussions involving one confidential human source at
13 some point before I joined the Special Counsel's Office.

14 Q So that would have been in your role at the D.C. U.S. Attorney's Office?

15 A Yes.

16 Q And what was -- what was your role specifically with that case?

17 A Well, I think that's where -- my understanding is that you've asked me to discuss my
18 work in the Special Counsel's Office. I think my work on confidential human sources is -- is beyond
19 the scope of what we're here to talk about.

20 Q If you look at the authorization letter that was sent to you by the Department of Justice,
21 it does say that the committee has identified specific topics of inquiry about which they have
22 requested information on. Number one is the initial investigation into President Trump related to

23 the events of January 6th and your participation, scope of the investigation at different stages,
24 interactions with prosecutors related to this investigation. So that would fit within tranche 1.
25 So just asking, what was your role in the case of one CHS that the prosecution was declined?
75

1 A This confidential human source, my recollection, did not have anything to do with
2 President Trump.

3 Q Okay. What was your role in the investigation where it was -- declined to prosecute the
4 CHS?

5 Ms. Duval. Should we take a break to go off the record for a second and clarify?

6 Mr. Cooney. Sure.

7 . We can go off the record. We'll stop the clock.

8 [Discussion off the record.]

9 . We'll go back on the record.

10 Mr. Cooney. So I think in response to those questions -- and let me say I -- these are difficult
11 subjects because I take seriously obligations under 6(e), privacy obligations, et cetera. And I also
take

12 seriously safety and security when it comes to confidential human sources. So it is -- I just -- it is an
13 area in which I'm not particularly comfortable.

14 But my recollection with respect to the confidential human source that I'm referring to -- and I
15 just don't recall if there was -- if I reviewed for more than one or not. But I recall early after January
16 6th, sometime in the winter or in the spring, that this came to my attention, and my role was
working

17 to determine the facts surrounding that individual's presence in the Capitol and in ultimately
18 recommending that that person should be prosecuted like all the other individuals who invaded the
19 United States Capitol.

20

21 Q Okay. So you recommended prosecution?

22 A That is my recollection, yes.

23 Q Okay.

24 Was the person prosecuted?

25 Mr. Cooney. I don't recall. That may be in the Inspector General's report, but I do not recall.

76

1 Do you know if that individual had received money from the Justice Department?

2 Mr. Cooney. I don't have recollection about whether the CHS had received payments from
3 the FBI.

4 Was he asked to be there that day, or she? Was the source asked to be
5 there that day at the request of the FBI?

6 Mr. Cooney. My recollection is that this CHS was not tasked with being at the Capitol on
7 January 6, but that the CHS had made its handler or handlers -- I can't remember which -- aware that
8 it was at the Capitol.

9 Okay.

10 BY

11 Q And specifically thinking about your time at the Special Counsel's Office -- so November
12 2022 forward -- did you review any confidential human source information during your time at the
13 Special Counsel's Office?

14 A I believe that I did review some CHS information while I was in the Special Counsel's
15 Office.

16 Q And it was related to your work at the Special Counsel's Office?

17 A It would have been related to my work in the Special Counsel's Office investigating the

18 attack on the Capitol, yes.

19 Q And were you aware of any reports of misconduct to OPR pertaining to individuals
20 working on Jack Smith's investigation?

21 A I'm sorry. Could you just ask that one more -- one more time?

22 Q Were you aware of any reports of misconduct to OPR, the Office of Professional
23 Responsibility, within DOJ pertaining to individuals working on Jack Smith's team?

24 A I was aware of reporting an allegation of misconduct to the Office of Professional
25 Responsibility.

77

1 Q Reporting, meaning like press reports, or that you were aware that someone had
2 self-reported conduct?

3 A I recall assisting in a report of an allegation to OPR.

4 Q And how did you assist?

5 A I believe that my role in this is described or actually memorialized in an email that we
6 attached to a public pleading in the Southern District of Florida.

7 Q Okay. And did this regard the allegation brought by Stanley Woodward against Jay
8 Bratt?

9 A Yes. That it did -- yes, it did. But my recollection is that the allegation, when we
10 reported it to the Office of Professional Responsibility, had not actually been made by Stanley
11 Woodward.

12 Q And the allegation came out of a meeting that occurred with Mr. Bratt on August 24,
13 2022, where Mr. Bratt allegedly brought up the prospect of a judgeship that Mr. Woodward was
14 seeking or had been recommended for.

15 Were you present at this meeting?

16 A I was not present at the meeting that took place between Mr. Bratt and Mr. Woodward.

17 Q Did you have any discussions with Mr. Bratt about these allegations?

18 A I believe that I did, yes.

19 Q Okay. And what were the content of those discussions?

20 A I believe that after becoming aware of the allegation that we discussed the
21 circumstances of the meeting that he had with Mr. Woodward.

22 Q Did you have any followup with OPR?

23 A My recollection is that I provided our public pleadings -- excuse me. They were not
24 public at the time. They were pleadings that were later unsealed in the Southern District of Florida
78

1 that were presented in the District of Columbia and in the Southern District of Florida, and my
2 recollection is that I provided those to the Office of Professional Responsibility.

3 Q And were you ever interviewed by OPR or asked for information other than the
4 pleadings?

5 A I don't recall being interviewed by OPR.

6 Q And our understanding is that from a briefing we received from Mr. Ragsdale, who led
7 the office, that the investigation was held in abeyance until Smith's work was completed.
8 Does that match your recollection?

9 A That matches my recollection as we reported it in the pleadings that we filed in D.C. and
10 the Southern District of Florida.

11 Q And it's also our understanding from Mr. Ragsdale that he had received some sort of
12 notification from the Special Counsel's Office after the work was complete.

13 Were you the one that provided that notification?

14 A I may have.

15 Q Okay. Were you involved in discussions of needing to notify OPR that your work was

16 complete?

17 A I -- I probably was, yes.

18 Q Okay. And if it wasn't you who notified OPR, who would it have been?

19 A That, I can't say. But I believe that I did notify OPR through Mr. Ragsdale that -- that the
20 case in the Southern District of Florida was complete.

21 Q And what was Mr. Ragsdale's response to you?

22 A I don't recall any specific response.

23 Q Did you receive any followup after you notified OPR?

24 A It's my recollection that in the period, you know, after about the time that we moved to
25 dismiss the charges against President Trump that I had communication with Mr. Ragsdale informing
79

1 him that -- that those matters were done and providing him copies of pleadings that we filed in the
2 case at his request.

3 Q Okay.

4 BY

5 Q Did Mr. Bratt have any role with Mr. Woodward's judgeship -- for judgeship?

6 A Do you mean his -- his nomination to the Superior Court?

7 Q Right, in D.C.?

8 A I don't believe that Mr. Bratt had any role in the nominating process.

9 Q Did you inquire with Mr. Bratt why he made this type of statement? Was it a joke? Was
10 it, you know, intentional intimidation?

11 A My recollection is that I discussed it with Mr. Bratt, yes.

12 Q What was his response?

13 A His responses to -- to the allegation are those that we reported in the pleadings that we
14 filed in the District of Columbia and the Southern District of Florida.

15 Q Okay. And what were they?

16 A The specifics are in the pleadings. But in sum and substance, that the accusation was
17 false.

18 Q And so what happened then? I mean, did Stanley Woodward make this up?

19 A I can't speak for -- for Stanley Woodward, but what I can say is that the allegation that
20 Stanley Woodward made that Mr. Bratt attempted to extort him is not --

21 Q Extortion is a little different than intimidating.

22 A That is not the Jay Bratt that I know.

23 Q But let's separate extortion from intimidation. What did Jay Bratt say to Stanley

24 Woodward?

25 A Intimidating an attorney or a witness is not something that I know Jay Bratt to engage in.
80

1 Q Okay. What did Jay Bratt say to Stanley Woodward then?

2 A I think if you look in our pleadings that we filed in D.C. and in the Southern District of
3 Florida, they -- they report the account of the conversation.

4 Q Okay. But, you know, I'm now sort of asking for your unvarnished view here. I mean,
5 you're here, we're having a Q and A, we're having a dialogue.

6 What did Mr. Bratt tell you? Not what you, you know, put in the pleadings, but what did
7 Mr. Bratt tell you?

8 A My unvarnished view is what we report in our pleadings, and in sum and substance, that
9 the allegation of any misconduct or intimidation is false.

10 Q Okay. But what -- what happened then?

11 A Again, point you to the pleadings that we filed. We provided a detailed account of the
12 meeting and the circumstances.

13 Q Okay. So you're not willing to tell us what -- what happened other than what's in the
14 pleadings, which we can read?

15 A I'm more than willing to have you look at the pleadings and ask me any questions you'd
16 like about them.

17 How many -- again, how many phone calls did you have with the January
18 6th Committee?

19 Mr. Cooney. I don't recall how many phone calls I had with the January 6th Committee.
20 Several?

21 Mr. Cooney. I would not characterize it as -- as several. I wouldn't characterize several or a
22 few. I just don't -- don't recall the number that I had.

23 More than one, though?

24 Mr. Cooney. More than, one, yes.

25 Did you ever have any interactions with David Weiss?
81

1 Mr. Cooney. I do not recall having any interactions with David Weiss.

2 Anyone from the -- David Weiss' special counsel team?

3 Mr. Cooney. I recall one or two contacts with, I believe it was like the chief of staff or
4 something like that in his Special Counsel's Office.

5 In regards to?

6 Mr. Cooney. I recall being contacted for advice on the logistics and administration of --
7 They contacted you?

8 Mr. Cooney. They contacted me to set up a Special Counsel's Office.

9 Any others?

10 Mr. Cooney. Not with members of David Weiss' special counsel team that I recall.

11 You never contacted them?

12 Mr. Cooney. I do not have any recollection of contacting David Weiss' office.

13 Okay.

14 We're at the end of our hour. We'll go off the record.

15 [Recess.]

82

1 [1:29 p.m.]

2 It's 1:29. We can go back on the record.

3

4 Q In the prior hour, there was some discussion about your engagement with the January
5 6th Committee. Do you recall that line of questioning?

6 A I do.

7 Q The comment was made that, if prosecutors receive transcripts from the January 6th
8 Committee, why wouldn't -- why would you need to receive transcripts; why wouldn't you just
9 conduct the investigation yourself. Do you recall that question?

10 A I do.

11 Q And you pointed us to a footnote in the special counsel report?

12 A I did.

13 Q And that footnote said that any investigative -- any investigative decisions that were
14 taken by the January 6th prosecutors, the Department of Justice prosecutors, were premised on
15 independently developed information, correct?

16 A I believe, in sum and substance, that's what that footnote says.

17 Q So transcripts have value beyond just this is what a witness said in the moment, correct?

18 A They do.

19 Q What value might transcripts have for prosecutors in this situation?

20 A In -- in any investigation, when witnesses or potential witnesses to criminal conduct or
21 to circumstances surrounding events under investigation give statements, it can be helpful to
22 understand what that witness said at one moment in time and then compare it to what the witness
23 says in another moment in time.

24 Q How might it be helpful?

83

1 A It could be helpful in verifying the consistency of a witness's statements, it could be
2 helpful in evaluating whether a witness is telling the truth or has a motive to say -- to give an account
3 one way on one day and an account in a different way on another day to a different set of
4 investigators or people.

5 Q So to the extent that prosecutors for -- the January 6th DOJ prosecutors were seeking
6 transcripts, it may have been for any of those reasons, correct?

7 A I think it could be for any of those -- any of those reasons and any number of
8 investigative reasons.

9 Q Throughout your communications with the January 6th Committee, did anyone on the
10 committee ever direct or instruct prosecutors to take any particular investigative step?

11 A I was not involved in any circumstance where any person -- any member or staff
12 member associated with the Select Committee gave any investigative direction or mandate to the
13 Justice Department.

14 Q And in all of your engagement with the January 6th Committee, were you ever in a
15 situation where any Department of Justice prosecutor gave any investigative instruction to any
16 member of the January 6th Committee or their staff?

17 A I was not involved in giving or witnessing anyone give direction to the Select Committee.

18 Q And that would have been inappropriate if it had happened, correct?

19 A We do not coordinate our Justice Department criminal investigations with legislative
20 oversight investigations of the judiciary -- excuse me -- of the legislative branch.

21 Q Thank you. I want to move on to the discussion of Mr. Perry's cell phone.

22 In the prior hour, you were asked about what steps might have been taken at the Department
23 prior to the seizure of this phone. Do you recall broadly that line of questioning?

24 A I do.

84

1 Q I want to introduce the Justice Manual section on investigations of Members of
2 Congress. This will be exhibit no. 7.

3 [Cooney Exhibit No. 7
4 was marked for identification.]

5

6 Q And I'll note this is from the Justice Manual today. I understand it was updated, I
7 believe, in 2023, but I believe the substance of the section has remained the same. And we're going
8 to be looking at 9-85.110.

9 A Okay.

10 Q Are you familiar with this section?

11 A I am familiar with this section of the Justice Manual.

12 Q The 9-85.110 investigations involving Members of Congress states in the first paragraph
13 that consultation with the public integrity section, or PIN, is required in all investigations involving
a

14 Member of Congress or congressional staff member.

15 See where it says that?

16 A I do see that.

17 Q Is that consistent with your understanding of the requirement for consultation in

18 advance of any investigations of Members of Congress or their staff?

19 A It is, yes.

20 Q In the case of the -- the warrant for Mr. Perry's cell phone, was PIN consulted prior to
21 that warrant being sought?

22 A My recollection is that the U.S. Attorney's Office consulted with public integrity and
23 otherwise fulfilled its obligations under the Justice Manual.

24 Q What is the standard that must be shown in order to obtain a search warrant?

85

1 A To obtain a search warrant, prosecutors must establish to a Federal judge that there is
2 probable cause to believe that evidence of a crime exists on the thing or in the place to be searched.

3 Q In the case of Mr. Perry's cell phone, did prosecutors establish to the satisfaction of a
4 judge that there was probable cause that evidence of a crime would be found on Mr. Perry's cell
5 phone?

6 A Yes.

7 Q And would that be reflected in the warrant for Mr. Perry's cell phone?

8 A The probable cause would be reflected in the affidavit in support of the warrant and in
9 the fact that a Federal judge approved it.

10 Q I'd like to introduce that warrant as exhibit 8.

11 [Cooney Exhibit No. 8

12 was marked for identification.]

13

14 Q You're familiar with this warrant?

15 A Let me just take one second to look at it. This does appear to be the warrant and the
16 affidavit in support thereof for Representative Perry's cell phone, at least those portions that were
17 unsealed. And I'm familiar with it, but I have not reviewed this in quite some time.

18 Q Looking at the first page, is it evident on the face of this warrant what the crimes at
19 issue were?

20 A In what is referred to on the first page here as the face sheet of the warrant, about
21 two-thirds of the way down, it states the code provisions for which there is probable cause to believe
22 that the device will contain evidence of a crime.

23 And so here it is 18 U.S.C. Section 1512(c) and (k) and Section 1001 and 371, and that those
24 provisions are described. It's attempted obstruction of an official proceeding and conspiracy to
25 obstruct an official proceeding, false statements, and conspiracy to defraud the United States.

86

1 Q So prosecutors had probable cause to believe that evidence of four separate crimes was
2 likely to be on Mr. Perry's cell phone, correct?

3 A That is correct, yes.

4 Q The courts apply particular safeguards to materials seized from Members of Congress,
5 correct?

6 A There are certain safeguards imposed, yes.

7 Q What are those safeguards?

8 A Well, Members of Congress have a constitutional privilege under the speech or debate
9 clause. And in this instance, the measure that was employed was an attachment to the warrant that
10 required that Representative Perry be given the opportunity to review the contents before the
11 government did, meaning before prosecutors or agents did, so that he could assert any claims of
12 privilege.

13 Q And, ultimately, a court ruled on his privilege claims, correct?

14 A That is, to my recollection, correct. Representative Perry asserted claims of privilege
15 under the speech or debate clause. My recollection is that he also asserted other privileges and the

16 court made rulings on those.

17 Q I want to introduce as exhibit 9 a memorandum opinion signed by Judge James
18 Boasberg from the U.S. District Court for the District of Columbia on December 19th, 2023.
19 [Cooney Exhibit No. 9
20 was marked for identification.]

21

22 Q And take as long as you want to review. I can tell you I'm going to primarily ask about
23 the first paragraph on the first page.

24 A Okay.

25 Q This is the -- the court's ruling on Mr. Perry's privilege claims, correct?

87

1 A Yes. This is one of the rulings that the court made on his privilege assertions, yes.

2 Q And I believe this is the final one. Is that consistent with your recollection?

3 A That is consistent with my recollection, yes.

4 Q The first paragraph on the first page, the introductory paragraph, the very last sentence
5 of that paragraph reads, "Having now analyzed each of the 2,055 documents still at issue, the court
6 will order Perry to disclose 1,659 of them, but not the 396 others."

7 Do you see where it says that?

8 A I do.

9 Q What does that mean?

10 A That at the completion of the litigation after Representative Perry made his assertions
11 under the speech or debate clause and the court analyzed each of the documents to evaluate that
12 assertion, it found that all but the 396 -- so 1,659 -- were not subject to protection under the clause
13 and must be disclosed to the government.

14 Q Thank you. There were some questions in the earlier hour about the process by which
15 Mr. Perry's cell phone was seized, and there were some questions about how long the cell phone
16 might have been held. I want to introduce into the record as exhibit 10 a memorandum opinion from
17 the District of Columbia. This is signed by Chief Judge Beryl Howell, and this is dated November
18 4th,
19 2022.

19 [Cooney Exhibit No. 10
20 was marked for identification.]

21 Mr. Cooney. Okay.

22

23 Q On page 2 under the background section, the very first paragraph reads, "A search and
24 seizure warrant to seize Representative Perry's personal cell phone was issued by a magistrate judge
88

1 in the Middle District of Pennsylvania and executed on August 9th, 2022, when the Federal Bureau of
2 Investigation forensically extracted an image of the phone's contents."

3 Do you see where it says that?

4 A I do.

5 Q What's your -- do you have an understanding of what forensically extracted an image of
6 the phone's contents means?

7 A In the FBI, there are typically agents who are familiar with how to image a phone. But
8 my understanding of it is forensically extracting an image functionally means to make a copy of it.

9 Q So in other words, the FBI could take a phone, make a copy of it, and hand the phone
10 back to the original owner, correct?

11 A In -- in cases where search warrants on cell phones are conducted, one way in which it
12 can be done is to simply copy the contents of the phone and then return the phone to its owner, yes.

13 Q And, in fact, in this opinion, the very first sentence of the second paragraph reads, "After
14 promptly returning the cell phone to Representative Perry, the government sought a separate search
15 warrant in this court," and it goes on.

16 Do you see where it says that?

17 A I do see that on the first sentence of the first paragraph of page 2, yes.

18 Q So the court's assessment is that the phone is promptly returned to Representative

19 Perry, correct?

20 A That appears to be the court's assessment, and that is my recollection.

21 Q Thank you. In the prior hour, there were a number of questions raised about allegations

22 that some of the documents and boxes seized from Mar-a-Lago were moved around or manipulated.

23 Do you remember that line of questioning?

24 A I do remember that questioning.

89

1 Q I want to introduce as exhibit 11 a court filing, the government's response to defend

2 Waltine Nauta's motion to extend time. This is in the classified documents investigation. It was filed

3 by the government on May 3rd, 2024.

4 [Cooney Exhibit No. 11

5 was marked for identification.]

6

7 Q Take as long as you want to review. I'm going to ask you about the factual background

8 on pages 6 through, I believe, 9 -- 6 through 8. Excuse me.

9 A Sorry. I just want to refresh my recollection for just a moment.

10 Q Take as long as you want.

11 A And you said page 6?

12 Q Beginning on page 6, 6 through 8. It's the factual background section.

13 A All right.

14 Q Do you recall this filing?

15 A I -- I do not have a specific recollection of all the contents of the filing. But I -- I have

16 recollection of the ongoing litigation in the case and -- and making a filing like this, yes.

17 Q So according to this filing, the FBI was processing -- when the FBI was processing the

18 documents that it seized from Mar-a-Lago, it ran out of classified cover sheets.

19 Do you recall that?

20 A I do have recollection of that. The details would be in this and other pleadings, but I do

21 have recollection that that -- that learning -- because I was not on the team at the time that the

22 search was conducted, but learning that one of the things that occurred during the search warrant

23 was that agents executing it ran out of classified cover sheets.

24 Q What are classified cover sheets?

90

1 A Classified cover sheets are sheets that are placed on top of classified documents to

2 demarcate, to indicate that they are classified and typically their classification level.

3 Q And why were -- excuse me.

4 Why were classified cover sheets being placed on top of documents as part of the search?

5 A I was not there for the search, so I don't want to speak for the agents.

6 Typically, in investigations where classified information is -- is recovered, a step that is taken is

7 to demarcate them as classified, so to utilize a cover sheet or something like that to make clear that

8 they are classified.

9 Q And in this case, when agents ran out of classified cover sheets, what did they

10 do instead -- what was the next step that they took?

11 Ms. Duval. I have no knowledge of what's in volume 2, but I do know that --

12 Understood.

13 Ms. Duval. -- lots about Florida is still under seal, including the facts related to volume 2. So

14 I'm just --

15 Understood. Can I ask about language actually in the filing in front of us?

16 Ms. Duval. You can -- you can ask anything you want. I'm just putting out a caution.

17

18 Q According to this filing on page 6, the paragraph in the middle, the second-to-last

19 sentence reads, "The investigative team used classified cover sheets for that purpose" -- meaning

20 what you just said -- "to denote the documents as classified until the FBI ran out because there were

21 so many classified documents, at which point the team began using blank sheets with handwritten

22 notes indicating the classification level of the documents seized."

23 Do you see where it says that?

24 A I do see where it says that, yes.

91

1 Q Does that refresh your recollection of the circumstances that -- that took place in this

2 instance?

3 A That is my recollection of what we determined and what we reported to the court, yes.

4 Q When -- according to this filing, when the documents were brought to the Washington

5 Field Office -- they were brought from Florida to the Washington Field Office, correct?

6 A My recollection is being informed of that and, of course, reporting this pleading. The

7 only thing that I just want to make clear is that at the time that the search warrant was executed at

8 Mar-a-Lago, I was not involved in the classified documents investigation.

9 Q Understood. I'm just trying to make the record clear because I think there were

10 references in the prior hour to manipulation of documents, and I want to make the record clear as to

11 what the Special Counsel's Office has said actually took place.

12 So according to this pleading, when the documents were brought to the Washington Field

13 Office, those handwritten cover sheets were replaced with formal classified document cover sheets.

14 Is that correct?

15 A My recollection is that that is what we determined and reported to the court.

16 Q And it appears that when those sheets were replaced, some of the official sheets were

17 not placed in the boxes in the exact location of where the documents were, but they were all placed

18 in the correct box, correct?

19 A My recollection, in sum and substance, is functionally that. I think all the details of how

20 the documents were handled and how their evidentiary integrity was ensured is reported in the

21 public pleadings that we filed to the court.

22 Q And in this public pleading on page 7, the government explains that every box brought

23 to the Washington Field Office contained precisely the same material as it did when it was seized?

24 At the bottom -- in other words, there's a clear record of which boxes contained classified

25 documents when seized. And it says, for example, the FBI was present when an outside vendor

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1 scanned the documents, the -- and the boxes were kept separate during that process, separate from

2 each other.

3 When the FBI created the inventories of the box contents, each inventory team worked on a

4 single box at a time separated from the other teams. And during defense counsel's review, any

5 boxes opened at the same time and any personnel reviewing those boxes were kept separate from

6 one another.

7 Do you see where it says that?

8 A I do. Thank you for drawing my attention to it. I'm trying to refresh my recollection.

9 But my recollection is that we determined that, and we reported it to the court.

10 Q Thank you. In the prior hour, you were asked about the OPR referral of Mr. Bratt. I
11 want to return to that line of questioning.

12 The allegations concerning Mr. Bratt were first raised in a motion filed in D.C. District Court by
13 President Trump's counsel, which sought the disclosure of grand jury material, correct?

14 A My recollection is that that is the case, yes.

15 Q And the materials were then subsequently filed in the Florida District Court at the
16 direction of the court, which then ordered them unsealed, correct?

17 A That is my recollection of -- yes, that is my recollection of them -- of how they were first
18 filed in the Southern District of Florida, correct.

19 Q I'm going to introduce as exhibit 12 the government's opposition to the amended
20 motion for disclosure of the grand jury materials. The heading on the top -- this was actually filed in
21 the Florida case even though the opposition itself was filed in the District Court in the District of
22 Columbia, so it's a little bit confusing.

23 And the discussion of the Woodward allegations begins on page 22 of this document, which is
24 page 69 of the ECF document. There are a lot of numbers at the top.

25 [Cooney Exhibit No. 12
93

1 was marked for identification.]

2 Mr. Cooney. If I can just say, the reason I'm able to discuss these pleadings -- because I think
3 they might -- they reflect here, for example, at the top that it is under seal and ex parte.

4 These pleadings, as has been reported in public documents with the court's approval, were
5 originally filed as part of the grand jury matter and were later unsealed for the Southern District of
6 Florida.

7

8 Q They were unsealed by Judge Cannon, correct?

9 A I don't recall whether it was Judge Cannon or whether Chief Judge Boasberg may have
10 authorized both the filing in the Southern District of Florida and the -- and the unsealing of the
11 underlying grand jury matters, but a judge approved it.

12 Otherwise, this would be -- this would be subject to 6(e)'s requirements, but -- but since a
13 judge has approved its publication, it falls in a different category.

14 Q You were asked in the prior hour about what actually happened, what did Mr. Bratt
15 actually say in the -- when he spoke with Mr. Woodward.

16 Do you remember being asked that?

17 A I do.

18 Q The position of the special counsel is addressed on page 23 -- at the top of page 23.

19 A And I'm looking at 23 at the bottom.

20 Q Sorry, 23, at the bottom.

21 A Thank you. Okay. I've read page 23.

22 Q Having reviewed that first paragraph, can you explain what the special counsel stated
23 was the purpose of the August 24th, 2022, meeting?

24 A As is reported in the pleading, the -- we reported to the court in response to this
25 litigation that the purpose of the meeting that occurred on August 24 was to discuss Waltine Nauta,
94

1 and that prosecutors in the meeting informed Mr. Woodward, who is Mr. Nauta's attorney, that
2 Mr. Nauta had criminal exposure and that he was a subject of a grand jury investigation.

3 And they informed Mr. Woodward that they were interested in obtaining Mr. Nauta's
4 potential cooperation and resolving his situation.

5 Q And does this paragraph indicate whether or not Mr. Woodward objected to anything
6 that happened at the meeting shortly after the meeting? In other words, did he make any

7 objections -- contemporaneous objections to what happened at the meeting?

8 A My recollection, as -- as set forth in this pleading, is that Mr. Woodward did not raise
9 any objection to anything that was said or done at the August 24 meeting contemporaneously and
10 did not raise them for the first time until much later.

11 Q Is it accurate, to the best of your recollection, that, in fact, Mr. Woodward did not raise
12 any objection until almost nine months later?

13 A With the -- the caveat that I was not working on this investigation on August 24, 2022,
14 and was not at the meeting, my understanding, based on our examination of this and as we reported
15 to the court, is that Mr. Woodward did not raise any objection of this until sometime in 2023, much,
16 much thereafter.

17 Q And why is that relevant?

18 A I think in any investigation and in any matter, credibility can be evaluated based on
19 whether and when a person makes an allegation.

20 In this matter, as we set forth in our pleading, this allegation against Mr. Bratt was not
21 surfaced until after President Trump had been informed that he was a subject of a criminal
22 investigation and faced potential indictment in the Southern District of Florida.

23 Q So is it fair to say that the failure to raise any concerns or to bring this allegation
24 forth -- forward sooner suggests that the motivation for bringing the allegation forward may not
have

25 been that it was -- that there was actually concern about what Mr. Bratt said but, rather, it was in
95

1 response to it being made public that Mr. Trump and Mr. Nauta were the subject of the
2 investigation?

3 A It was certainly a strong indication to me, and I believe, based on the pleading that we
4 filed in the District of Columbia and in the Southern District of Florida, that the timing indicated or
5 undermined the credibility of the allegation in the first place, yes.

96

1 [1:59 p.m.]

2

3

4 Q And if you'll turn to page, it's 25 on the document, and 72 of the ECF, the first
5 paragraph, and into the second paragraph, describes the actual conversation between Mr.
6 Woodward and Mr. Bratt regarding the judicial nomination question. I'm going to ask you to take a
7 minute to review, and then ask if that refreshes your recollection about what Mr. Bratt said actually
8 happened.

9 A Okay.

10 Q Having reviewed this, do you now recall what Mr. Bratt said actually happened during
11 the conversation about the judicial nomination?

12 A I don't have a specific recollection of any conversations. But as I said earlier, and now,
13 what we reported in our public pleadings is consistent with the information that we developed, and
14 with my discussions with Mr. Bratt after this allegation was first surfaced.

15 Q And what did Mr. Bratt in your conversations with Mr. Bratt, what did he tell you had
16 actually happened?

17 A Anything that Mr. Bratt told me about what happened is reported in our public pleading,
18 and in sum and substance that any accusation that he intimidated or extorted anyone is false.

19 Q And this pleading actually says that Bratt believed that Mr. Woodward was on the
20 Nominations Committee for the Superior Court of the District of Columbia, correct?

21 A That is correct.

22 Q And the pleading says that Mr. Bratt mentioned this to Mr. Woodward as a matter of

23 professional courtesy, and only to indicate to Woodward that he understood that Woodward must
24 have a good reputation. That's a quote from the bottom of the first paragraph on this page, correct?
25 A That is correct.

97

1 Q And nothing more was intended, correct? That's what the pleading says.

2 A I do not believe that anything more was intended than exactly what is reported in this
3 pleading.

4 Q On the following page, page 26, the second full paragraph begins, The timing of this
5 claim betrays its purpose. Do you see where it says that?

6 A I do.

7 Q The pleading reads, The timing of this claim betrays its purpose. Woodward did not balk
8 at anything that was said in the meeting, either in the meeting itself or for many months thereafter,
9 during which time he has dealt with prosecutors from the Special Counsel's Office. Woodward
10 likewise never until the disclosure motion suggested that he understood the prosecutors in the
11 August 2022 -- August 2022 meeting to have made any threats or quid pro quo insinuations, that is
12 because no such thing took place. Do you see where it says that?

13 A I do.

14 Q And that's the position of the Special Counsel's Office, correct?

15 A That is the position of the Special Counsel's Office, yes.

16 Q Based on your -- I'll withdraw that. How well did you know Mr. Bratt?

17 A I got to know Mr. Bratt fairly well by working with him.

18 Q And had you worked with him prior to the Special Counsel investigation?

19 A I had been in the U.S. Attorney's Office with Mr. Bratt prior to -- earlier in my career.

20 Q And what was your -- did you have an opinion of Mr. Bratt's professional competency?

21 A I did.

22 Q What was that opinion?

23 A My opinion is that Mr. Bratt was a professional prosecutor who was a dedicated public
24 servant with extraordinarily strong character and unbridled integrity.

98

1 Q And page 24 of the opposition states, quote, The notion -- this is about halfway down
2 under number two, The notion that a 30-year veteran Federal prosecutor would engage in such a
3 ham-handed tactic, referring to the conversation, the alleged conversation with Woodward, in this
4 sensitive investigation in a meeting alongside three other prosecutors, and in the context of his first
5 interaction with a defense attorney is nonsensical. Do you see where it says that?

6 A I'm sorry. I actually don't see where it says that. I don't doubt that it does, but I
7 don't -- thank you. Let me just -- thank you. Yes, I see that.

8 Q The statement that the idea that Mr. Bratt might have done this is nonsensical, is that
9 consistent with your understanding of Mr. Bratt's character, that it would be completely out of
10 character for him to have engaged in the conduct alleged?

11 A Yes, it is inconsistent with my knowledge of Mr. Bratt's character, integrity, and
12 professionalism.

13 Q Thank you. With respect to the questions from the prior hour about the confidential
14 human sources, there is -- there have been allegations made that confidential human sources -- that
15 the FBI placed confidential human sources at the Capitol in order to inspire the riots, or the cause to
16 riots to happen, sometimes called the false flag theory. Are you familiar with that?

17 A I am familiar with that claim.

18 Q To the best of your knowledge, did the FBI place confidential human sources at the
19 Capitol in order to incite the riots on January 6th?

20 A I am aware of no evidence or information that the FBI engaged in the so-called false

21 flag. In fact, my understanding is that the United States Attorney's Office for the District of Columbia

22 thoroughly examined the issue and has filed court pleadings on it that address it.

23 Q And those court pleadings indicate that the false flag theory is baseless, correct?

24 A That is my recollection, yes.

25 Thank you. We can go off the record.

99

1 [Discussion off the record.]

2 BY

3 Q Go back on the record. It's 2:12. Turning to the --

4 A I'm sorry. I don't mean to interrupt you. But before you ask a question, I just wanted to

5 raise one thing that I was thinking about over the lunch break. So I recall in, I think it was in the

6 morning session, you asked me a question about whether in the days immediately following

7 January 6th, I had had any communications with Special Agent, or I think at the time he was

Assistant

8 Special Agent in Charge, Timothy Thibault, and I did not recall having any communications with him.

9 As I thought about this on the lunch break and tried to recollect what was going on back at

10 that time period, my recollection is that I likely did have communications with Special Agent Thibault

11 in the days and the weeks immediately following January 6th.

12 BY

13 Q Okay. It's our understanding that when it came to the, you know, election investigation

14 it was his squad, CR15, one of the squads that he supervised at the FBI that was involved on the FBI

15 side. Does that match your recollection at all? Did you have any interactions with a squad named

16 CR15?

17 A My recollection is that -- first, just to square what Special Agent Thibault's role was, my

18 recollection is that he was an ASAC, an assistant special agent in charge, so he was not a squad

19 supervisor, but he oversaw a series of squads.

20 Q Correct.

21 A And one of them was CR15.

22 Q And did you interact with the squad CR15, individuals on the squad?

23 A My recollection is that I did have interactions with members of CR15.

24 Q And when did those interactions start?

100

1 A Well, I've had -- I've worked with CR15 well before January 6th. But sometime after

2 January 6th I think is the purpose of your question.

3 Q That's correct.

4 A I don't recall if it was the day after, 2 days after, a week after, but certainly in the time

5 period immediately after January 6th as part of our efforts to investigate the attack on the Capitol, I

6 had communications with -- I likely had communications with members of CR15.

7 Q And did those communications continue throughout your tenure on Special Counsel

8 Jack Smith's team, or was it just prior to his appointment?

9 A Oh, my recollection is that agents who were on CR15 worked on the investigation after

10 Mr. Smith was appointed as the Special Counsel. So I would not characterize my communications as

11 being throughout the entire period of January 6th until Mr. Smith's appointment, but I had

12 communications about January 6th-related investigations before Mr. Smith was appointed, and after

13 Mr. Smith was appointed.

14 Q The individuals that you said you had -- that were part of CR15 that you had

15 communications within the course of Special Counsel's investigation, were those individuals detailed

16 to the Special Counsel's Office, or did they still work on CR15?

17 A My recollection is that there were no special agents detailed to the Special Counsel's
18 Office.

19 Q Okay.

20 BY

21 Q Going back to the Stanley Woodward matter, I reviewed the pleading that you invited
22 me to review, and I just -- I don't think there's any dispute that at the meeting in question, Jay Bratt
23 brandished a folder of information relating to Stanley Woodward. There's no dispute to that, right? I
24 don't see anything in the pleadings where the Justice Department denies that, right?

101

1 A I don't know that I would use, based on my understanding of reviewing the pleadings,
2 the word, "brandished." I think the pleading speaks for itself.

3 Q Okay. So if the pleading does speak for itself, there was a folder, right?

4 A Again, I think the pleading speaks for itself.

5 Ms. Duval. Is there a particular part of the pleading that you are referring to?

6 Well, I'm referring to the pleading. You know, there's nothing in the pleading
7 that disputes Woodward's account that a folder was brandished. Brandished is my term. But that
8 there was a folder of information that Jay Bratt had prepared about Stanley Woodward.

9 Ms. Duval. Do we have that, what you're reading from?

10 Mr. Cooney. Yeah, actually, can we -- that's a good point.

11 I mean, this is the pleading that, you know, he invited me to go find and so I did.

12 Ms. Duval. Sure. But he doesn't have it in front of him.

13 Okay.

14 This will be 13.

15 [Cooney Exhibit No. 13

16 was marked for identification.]

17 Mr. Cooney. Thank you.

18 Thank you.

19 BY

20 Q So I'm referring to the Justice Department's pleading report in response to the court's
21 sealed order on August 7, 2023. Page seven, the Department recounts Mr. Woodward's account of
22 the August 24th meeting and --

23 Ms. Duval. I think that's Woodward's account. Right. If you're talking about the single
24 spaced.

25 Right. I said this is the Department's recitation of Woodward's account.

102

1 Ms. Duval. Okay.

2

3 Q And I just -- I think we can all agree that a folder was, I used the term, "brandished," I
4 don't know a better word, but a folder was in appearance at this meeting that contained information
5 about Mr. Woodward, right? Can we all agree that that occurred?

6 A I really do not mean to --

7 Q Or don't you know. I mean, if you don't know --

8 A I wasn't at the August 24 meeting. What I know is what we filed, and this --

9 Q But you don't remember? I mean, you can just keep referring me to the pleading, but if
10 you don't remember, just tell me that you don't know, that other Department prosecutors wrote the
11 pleading and you don't remember.

12 A If you have a specific question about the pleading, I'm happy to take a look at it and see
13 if I can recall what the issue is and I can answer any questions about it.

14 Q Right.

15 A But my knowledge and recollection is limited to what is written in the Department's
16 pleading.

17 Q Okay. Right. And that's all I'm asking you to, you know, discuss. And so I didn't see
18 anything in the pleading where the Department disputes Mr. Woodward's account where he was
19 referred to as a so-called, you know, not a so-called Trump attorney.

20 A The pleading speaks for itself.

21 Q Okay. So there's -- okay. So there was a folder, there was an allegation that Mr. Bratt
22 indicated that, you know, he didn't think Mr. Woodward was not a so-called Trump attorney. How
23 about Mr. Woodward alleges that Mr. Bratt said something to the effect of, I quote, I wouldn't want
24 you to do anything to mess that up. Has the Department ever disputed that that was said?

25 A These two single-spaced paragraphs are a quote from what Mr. Woodward claims.

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1 Q Right.

2 A And the pleading addresses those claims, and that is --

3 Q And so, I just didn't -- we can, you know, the Department and you and I can have a
4 disagreement about whether it's a threat, whether it's extortion, you know, but whether it's a threat
5 or extortion, I mean, that's characterizing what happened. And so my question simply is, does the
6 Department assert that the words, "I wouldn't want you to do anything to mess that up," does the
7 Department assert that that just didn't happen?

8 A The Department's assertion about the facts of what occurred and what did not occur --

9 Q Right.

10 A -- are fully set forth in this pleading.

11 Q So I just didn't see it in here. I mean, is there anything in the pleading where the
12 Department just denies that that happens, that Mr. Woodward is somehow fabricating this?

13 A I point you to the pleadings about the factual assertions.

14 Q Okay.

15 A And the Special Counsel Office's and Department of Justice's position --

16 Q I understand that. I'm just saying that I didn't see anything --

17 A That Mr. Bratt did not intimidate, threaten Mr. Woodward, or otherwise engage in
18 improper conduct.

19 Q But, I mean, that's your characterization of it. If Mr. Woodward felt that he was
20 intimidated, if Mr. Woodward felt that he was threatened, I mean, that's a different -- that's
21 something different, correct?

22 A My view and the Department of Justice's position about the credibility, accuracy and
23 truthfulness of Mr. Woodward's accusation against Mr. Bratt is fully set forth in this pleading.

24 Q Okay. But you didn't say it was -- you know, that he was lying or fabricating anything.

25 You just said that, oh, he waited 9 months to bring it up and...

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1 Ms. Duval. It may be helpful to point out that what was marked as exhibit 11 -- no.

2 The previous exhibit.

3 Ms. Duval. The previous exhibit, 12, is an attachment to the one that you've been talking
4 about, so it was all filed together.

5 No, I understand that.

6 Ms. Duval. And we would have to read it together so that, you know, there is the recounting
7 of Mr. Woodward's account.

8 Right.

9 Ms. Duval. But you would have to take into account all of the other discussion.

10 I understand. And I read this, I read it before, and then I, you know, reread it at

11 Mr. Cooney's invitation, and I just didn't see anything where the Department disputed, A, there was
a

12 folder, and, B, that Mr. Bratt, you know, said words to the effect of, I wouldn't want you to do
13 anything to mess that up.

14 Ms. Duval. Well, we didn't read the 196 pages over lunch, so, I mean, if you're saying that
15 that isn't in the 196 pages --

16 BY

17 Q Right. I'm just wondering if the Department ever took the position that Woodward is
18 like making this up, this is like totally false, or whether the disagreement was over the
19 characterization of it, about whether it was a threat?

20 A I would point you to page 12 of -- page 10 on the bottom. Actually, page 10 of the
21 pleading that was filed on August 11th of 2023.

22 Q Is that the previous exhibit?

23 A It is the report in response to the court's sealed order on August 7th, 2023.

24 Q Okay. Page 10 is the signature -- okay.

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1 A "Any allegation that Bratt or any prosecutor engaged in misconduct during the

2 August 2022 meeting with Woodward is wholly without merit."

3 Q No. I understand the Department's position. I mean, this is like a -- this is your

4 argumentative pleading. I mean, I understand the Department takes the position that it wasn't

5 misconduct, that it wasn't a threat, and I'm just asking whether there was a question of material fact

6 about whether a folder was brandished, and whether words to the effect of, I wouldn't want you to

7 do anything to mess that up, has ever been denied. Maybe you don't know. I don't mean to -- I don't

8 mean to ask you questions that you just don't know the answer to.

9 A So I would turn your attention to docket number 115 entered in the Southern Florida --

10 Q Right. This is the previous exhibit, right?

11 A Southern District Court docket. This is the opposition to amended motion for disclosure

12 of Grand Jury materials, which I believe is an exhibit to --

13 Q It's the previous exhibit. What page are we on?

14 Ms. Duval. But it's also an exhibit to what you were --

15 No. I understand that. You just mentioned that.

16 Mr. Cooney. On page 26.

17

18 Q Okay. That's where I am.

19 A Woodward's letter (at 2) claims that, quote, "To the best of Mr. Woodward's

20 recollection, end quote, Bratt concluded the conversation on the topic of the Superior Court

21 nomination or commission with words to the effect of, I wouldn't want you to do anything to mess

22 that up, end quote. The Government flatly denies that any such words were used in the meeting.

23 Q Okay.

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1 A The allegation that Bratt conveyed such a thing in this meeting is entirely incredible, and

2 Woodward's qualification that this particular rendition is, quote, to the best of my recollection, end

3 quote.

4 Q Okay.

5 A Parenthetically a qualifier that is notably absent from the disclosure motion, end quote,

6 belies its unreliability.

7 Q Okay. The Department takes great -- attaches great significance that Mr. Woodward

8 waited 9 months to raise this; is that correct?

9 A The Department of Justice's view about the timing of the allegation and its -- how to
10 weigh that and the credibility of it is set forth in our pleading.

11 Q All right. Now, I mean, I think if a defense attorney feels like they have been threatened
12 by the Justice Department, they're going to be very unsure of how to deal with that. I mean, some
13 defense attorneys would just ignore it and hope it, you know, just goes away, hope their defendant
14 doesn't get indicted. But once the defendant gets indicted, that sort of changes the situation. And
15 so, you know, if an attorney feels like they were threatened by a Justice Department Attorney, can't
16 you agree that, you know, maybe they wouldn't raise the issue until 9 months later if, in fact, you
17 know, an indictment hadn't occurred, or I guess in this case, it was not an indictment, but it was Mr.
18 Nauta had been identified as a target.

19 A I would point you to page 27 of the pleading in the District of Columbia that is an
20 attachment to the Southern District of Florida pleading, beginning in the fourth line, as Woodward's
21 letter makes clear, he is well aware of the Justice Department's Office of Professional
Responsibility,

22 and of the opportunity to submit a complaint to them, yet faced with this supposed threat by a
23 prosecutor he did no such thing.

24 To the contrary, the issue was never raised until the former President and Woodward learned
25 that the investigation was coming to a head, and the former President filed the disclosure motion in
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1 an effort to derail it. Indeed, Woodward's letter (at 2) confirms the motive. He suggests that the
2 matter now be referred to OPR for its assessment, and that the court should take action so that,
3 quote, any indictment arising from this investigation not lie until such assessment is reached, end
4 quote. The goal is clear.

5 Q Okay. And all I'm saying is that Woodward felt threatened, and obviously he did, he
6 raised this with the court, it's entirely reasonable that he wouldn't want to raise this until he gets
7 more clarity on what the Justice Department is going to do with his client; isn't that fair?

8 A I would just reiterate exactly what our pleading says on this subject.

9 Q Okay. Fair enough.

10 BY

11 Q So during our last hour we discussed how you had communications with Special Counsel
12 Weiss' office regarding how to stand up in office, and their chief of staff had reached out to you. I'm
13 curious as to whether you had any communications with anyone from the U.S. Attorney's Office for
14 the District of Delaware prior to Weiss being named Special Counsel.

15 A Right. And in your question, you said -- this question here you said David Weiss' office.

16 Q That's correct.

17 A I think you mean the preamble to the question, David Weiss' Special Counsel's Office,
18 but now you're asking about the U.S. Attorney's Office.

19 Q That's correct. Two different offices.

20 A Two different offices. Thank you. I did have contact with members of the U.S.
21 Attorney's Office that was under David Weiss' direction in Delaware.

22 Q Okay. And when was that outreach?

23 A My recollection is that it occurred sometime in the first half of 2022.

24 Q And this would have been in your role at the D.C. U.S. Attorney's Office; is that correct?
108

1 A At the time that members of his office reached out to the U.S. Attorney's Office I was
2 the chief of the fraud, public corruption and civil rights section.

3 Q And they were reaching out to you regarding charges against Hunter Biden; is that
4 correct?

5 A They were reaching out to discuss the possibility of charges that they were
6 contemplating.

7 Q And they wanted to bring those charges in the District of Columbia, does that match
8 your recollection?

9 A My recollection is that they wanted to discuss the possibility of bringing charges in D.C.,
10 yes.

11 Q And who reached out to you? Was -- I should ask first. Was the outreach them to you
12 or did you reach out to them?

13 A My recollection is that the U.S. Attorney's Office in Delaware reached out to our office.

14 Q Okay. And who from their office reached out to you?

15 A I do not recall. I do not recall the names of the individual.

16 Q Okay. I can give you some --

17 A Or individuals.

18 Q -- names if that's helpful. Lesley Wolf?

19 A Well, here, though, I'm not in a position to discuss career-level prosecutors for the
20 reasons that I discussed about before. I do not know and have not supervised or have relationships
21 with any of the prosecutors who I met with on this subject, but I have the same respect for their
22 security and their wellbeing in matters like this, and I'm not going to discuss --

23 Q Was it AUSAs from Weiss' office?

24 A There was an AUSA, or AUSAs from David Weiss' office that reached out, or that I had
25 conversations with, yes.

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1 Q And just to clarify, is it you don't remember who it was that reached out to you, or you
2 just don't want to give us the names?

3 A So I don't remember names.

4 Q Okay.

5 A But I'm not going to speculate about who they were and were not in response to
6 questions like the last.

7 Ms. Duval. And I think there may be a little bit of a disconnect in that he's answering about
8 communications related to the potential prosecution, and you're asking who reached out to the
9 witness, and I'm not sure that the reach-out was originally to you, was it?

10 Mr. Cooney. No, I don't recall getting a reach-out myself. My recollection is being informed
11 that I would either get a phone call or that I should make a phone call to Delaware in response to a
12 reach-out that someone in their office made.

13 BY

14 Q Okay.

15 A To someone in my office.

16 Q And so at some point you discuss, or you have a communication with someone from the
17 Delaware office; is that correct?

18 A That's correct.

19 Q Okay. Did anyone from the DOJ tax division join this communication?

20 A My recollection is that there was an attorney or attorneys from the Tax Division who
21 were also part of a conversation or conversations.

22 Q Were those attorneys Jack Morgan or Mark Daly?

23 A Again, I don't recall who any of the attorneys were, but I'm also -- and I'm not going to
24 speculate about the identities of who people are in circumstances like this, or ever.

25 Q Okay. And what was the content of this outreach?

110

1 A My recollection is that the U.S. Attorney's Office for Delaware wanted to explore the

2 possibility of seeking charges in the District of Columbia.

3 Q And what was the ask?

4 A I don't recall specifically, but I have recollection that they -- they were exploring the
5 possibility of partnering with the D.C. U.S. Attorney's Office on charges that they were exploring.

6 Q And why did they need to partner with the D.C. office?

7 A Well, I think you would have to ask the U.S. Attorney in Delaware that question.

8 Q I'm just wondering what your understanding of why were they asking you to partner,
9 your office to partner?

10 A Again, I think you would have to ask the U.S. Attorney in Delaware why they reached out
11 to our U.S. Attorney's Office.

12 Q So you don't have an independent recollection of why they were asking your office to
13 partner?

14 A I just don't have knowledge of exactly why they asked us.

15 Q Okay. What else was communicated to you on this -- was it a call or an in-person
16 meeting?

17 A My recollection is that there was both a phone call, or phone calls, and a meeting, or
18 meetings.

19 Q And what happened first, the phone calls or the meetings?

20 A I just don't recall. I don't recall, but we had to end up -- I recall that there was an
21 in-person meeting and we had to get there somehow, so some communication.

22 Q Who from your side was involved in these communications? We can start with the
23 phone calls, and then we can go to the meeting.

24 A My recollection is that one of my colleague prosecutors was involved in these
25 conversations.

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1 Q Okay. And at the meeting, who attended?

2 A My recollection is that that colleague, along with members of the U.S. Attorney's Office,
3 members of the Tax Division, and I apologize, I can't remember if it was one person from the U.S.
4 Attorney's Office and one person from the Tax Division or multiple from both, but my recollection is
5 that a representative or representatives from both of those divisions, and potentially an investigator,
6 but I don't have specific recollection.

7 Q And what was discussed at the in-person meeting?

8 Ms. Duval. Steering clear, of course, of 6103.

9 Mr. Cooney. My recollection is that they discussed with us their exploration of potential
10 charges that could be venued in the District of Columbia.

11 BY

12 Q And was the prospect of partnering with the Delaware office ever brought up at that
13 meeting?

14 A My recollection is that it was, yes.

15 Q Okay. And did that request come from Delaware?

16 A My recollection is that it was discussed. What I don't have specific recollection of is
17 whether it was a firm ask on their part, or something that they specifically wanted to do. But I do
18 recall that it came up as a possibility, yes.

19 Q In advance of the meeting, did you receive any documents from Delaware or the Tax
20 Division to review regarding the Hunter Biden case?

21 A I don't recall getting any documents in advance of the meeting.

22 Q Did you get any documents after the meeting occurred?

23 A I may have. I may have seen some documents that they provided after the meeting.

24 Q Do you know if you ever saw like a 99-page prosecution memo?

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1 A I just don't have specific recollection of whether we reviewed or I reviewed a
2 prosecution memo or not.

3 Q Okay. So the phone calls occur, then you have an in-person meeting, and then you
4 receive documents that you review. What happened next?

5 A Again, I don't know that I said that the phone calls occurred and then the meeting
6 occurred. What I certainly acknowledge is we met in person to discuss this.

7 Q Okay.

8 A And we didn't all just appear there. There had to have been a way in which we
9 coordinated the logistics of that. But we had the meeting.

10 Q And then you reviewed documents, correct?

11 A I may have reviewed documents. I just do not have specific recollection.

12 Q And what was the next step?

13 A My recollection is that we had another communication with them. I just don't recall
14 whether it was in person, or whether it was over the phone.

15 Q Did you ever discuss with U.S. Attorney Graves whether or not to partner with
16 Delaware?

17 A I did.

18 Q And how many communications with Mr. Graves did you have?

19 A Oh, I don't recall the number of communications.

20 Q Was it a handful?

21 A It may have been one. It may have been three. It may have been more than that. I just
22 do not remember.

23 Q Okay. And what was the content of those discussions that you had with Mr. Graves
24 regarding the request from Delaware?

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1 A Again, I just hesitate to characterize a specific request from Delaware. I do recall that
2 a -- something we discussed with Delaware, and then I discussed with Mr. Graves, was the question
3 whether to partner with Delaware on the possibility of bringing charges in the District of Columbia.

4 Q Okay. So what was -- what did you and Mr. Graves discuss regarding partnering with
5 Delaware?

6 A We discussed that possibility.

7 Q And what was the decision?

8 A Mr. Graves' decision was that we would not partner with the District of -- excuse me.
9 Yes, with the District of Delaware on their investigation and potential prosecution.

10 Q And why was that decision made?

11 A I can't speak for Mr. Graves on why that is the case.

12 Q Okay. Did you provide any rationale to Mr. Graves for maybe why not to partner?

13 A I did provide him with a recommendation.

14 Q And what was that recommendation?

15 A My recommendation was that we not partner with Delaware on that case for a number
16 of reasons.

17 Q And those reasons were?

18 A Well, the first thing that struck me was that when we met with them, my recollection is
19 that it was Delaware, it was the Tax Division, that there was more than one prosecutor in the room,
20 and I did not see what value a third office would have, or that there would even be room at a table
21 for the District of Columbia at that point.

22 Q Okay. Any other reasons?

23 A Another reason was that it was evident from my meetings with Delaware that their

24 investigation was far along, that they had done a lot of work on it, and that there had been a lot of
114

1 time, and I did not see a purpose or value to our office at that stage of such a lengthy investigation
2 getting involved.

3 Q Okay. Were those the only two reasons?

4 A Not necessarily, no.

5 Q Okay. What were the other reasons?

6 A At that point, we were approximately a year or 14 months after January 6th, our office
7 was investing substantial resources in responding still to the Capitol attack and the obstruction of the
8 proceeding, and we had enough work on our hands than to get involved in an investigation that was
9 so far along with a group of prosecutors, career prosecutors that appeared to me had done a
10 professional job in their investigation.

11 Q Were those all of the reasons?

12 A There may have been more.

13 Q But you don't recall any more off the top of your head right now?

14 A I don't recall, I don't recall any specific reasons to not join the investigation. I did -- I
15 made an assessment of where I thought the case stood, and I shared that with Mr. Graves.

16 Q Did the issue of a bad jury pool in D.C. ever come up?

17 A I don't recall an issue of a bad jury pool ever coming up in our discussions with -- I don't
18 recall that coming up with Mr. Graves, or with Delaware.

19 Q What about the willfulness element of the case, did that ever come up?

20 A I don't have specific recollection of -- I don't have a specific recollection of the facts
21 about that, but I imagine that willfulness and the standard was a subject of discussion, yes.

22 Q What about if outside attorneys came in to D.C. to prosecute a case, they may get bad
23 case law?

24 A I don't recall that specifically coming up, but that would -- yeah, I just don't recall that
25 coming up.

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1 Q Okay. And you had mentioned about a third office becoming involved, there wasn't a
2 seat at the table. Was it your understanding, because at that point in time you had worked for the
3 U.S. Attorney's Office for quite a period of time, I mean, you had gone to the public integrity section,
4 but you had been at the U.S. Attorney's Office for a period of time, so was it your understanding with
5 how the U.S. Attorney's Office worked, could an outside U.S. Attorney come in and prosecute a case
6 in another U.S. Attorney's district?

7 A So there are many ways under Federal law in which cases can be initiated. But actually,
8 it's a common practice in the District of Columbia that components of the Justice Department, like
9 the Tax Division, prosecute cases independent of the U.S. Attorney's Office, and they have the
10 authority to do so.

11 Q So do you have any understanding of why the DOJ Tax Division didn't do that in this case
12 since it's a common occurrence?

13 A You would have to ask the Tax Division.

14 Q Okay. Were those all of the conversations you had with anyone involved in U.S.

15 Attorney Weiss' investigation at that time?

16 A No.

17 Q Okay. What other conversations did you have?

18 A After we informed them that we were not in a position to partner with them.

19 Q Uh-huh.

20 A We agreed to and did take steps to ensure that if they and the Tax Division elected to
21 bring charges in the District of Columbia, that they could do so.

22 Q Okay. And when was that?

23 A That was when these conversations were complete.

24 Q So would that have been around March of 2022?

25 A I don't have specific recollection of the date.

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1 Q But I think you said earlier early 2022, is that correct, kind of when it's in your mind or...

2 A That is in my mind, but I don't have a specific recollection as to when these

3 conversations occurred.

4 Q Okay. And what steps did you take?

5 A We took administrative and logistic steps. We offered them office space, and offered

6 whatever resources we could provide to them within our district other than, you know, actually

7 partnering with them on the case.

8 Q Did U.S. Attorney Weiss ever take you up on the offer, or have attorneys use the office

9 space that you made available to them?

10 A They did not.

11 Q They did not. Okay. Any other communications with U.S. Attorney Weiss' team?

12 A I don't recall any communications other than that.

13 Q Any other communications with anyone from DOJ Tax on the Hunter Biden case?

14 A I don't recall having communications with anyone in the Tax Division other than those

15 meetings on this matter.

16 Q And previously, you had discussed with the chairman about conversations that you had

17 with Special Counsel Weiss' team, and I believe you said their chief of staff reached out to you about

18 how to stand up a Special Counsel's Office. Were there any other conversations that you had with

19 Special Counsel Weiss' team?

20 A I don't recall any other conversations with Special Counsel Weiss' team.

21 Q Okay. I'm going to change topics a bit to the criminal case against Roger Stone. When

22 did you become involved in the Roger Stone case?

23 A I first became involved in the Stone case, if recollection serves, at or around the time

24 that he was indicted in the District of Columbia by Special Counsel Mueller.

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1 Q Okay. And what involvement did you have in the effectuation of the arrest warrant for

2 Mr. Stone on January 25th, 2019?

3 A My understanding of what I was asked to come here to answer questions about is Roger

4 Stone's sentencing, and his arrest I don't think has anything to do with his sentencing.

5 Q Okay. So you don't want to answer any questions about Roger Stone's arrest or --

6 Ms. Duval. He's not authorized to.

7 Okay.

8 Ms. Duval. He's not authorized to. It says Roger Stone's sentencing. I mean, the Justice

9 Department is pursuing disciplinary cases against former Justice Department attorneys who talk

10 about things they don't like. We're not going to go outside Roger Stone's sentencing.

11 BY

12 Q Okay. So you won't talk about the pre-dawn raid to arrest Mr. Stone, or who tipped off

13 CNN that the arrest was occurring?

14 A The Department of Justice has only authorized me to discuss Roger Stone's sentencing,

15 so I'm going to stick with what the Department of Justice authorized me out of deference to my

16 former client, and due to my professional obligations.

17 Q And how did you reach the conclusion to recommend 7 to 9 years for a sentence for Mr.

18 Stone?

19 How old is Mr. Stone, by the way? Do you know?

20 Mr. Cooney. I don't know.

21 Do we know at this point? He's like 80 or something, right?

22 I think he's like 79 at this point in time.

23 Okay.

24 BY

25 Q So how did you reach the conclusion to recommend 7 to 9 years?

118

1 A I concurred in a recommendation of a sentence compliant with the advisory sentencing
2 guidelines.

3 Q And how did you -- how did they get to the 7 to 9 years?

4 A Who is they?

5 Q The prosecutors. Were you the one that decided 7 to 9 years, or were there other
6 individuals who came up with that calculation?

7 A The U.S. Attorney for the District of Columbia, Timothy Shea, explicitly authorized that
8 sentencing recommendation.

9 Q Okay. And I'm asking, how was that conclusion reached to recommend 7 to 9 years?

10 A The recommendation was based on a calculation of the applicable sentencing guidelines
11 in reference to Section 3553, the code section on sentencing.

12 Q And who conducted that calculation?

13 A I don't recall. My recollection is that the career prosecutors working on the case
14 provided me with the calculation. I don't recall who in the first instance made the calculation.

15 Q And what was your role at this time? Were you supervising those career prosecutors?

16 A I was the chief of the fraud, public corruption and civil rights section, and the Stone case
17 was being prosecuted out of that section.

18 Q Okay. So what was your role, just reviewing what the career prosecutors did in the case,
19 did you have an approval process that you had to go through?

20 A I did have an approval process that I needed to go through, which I did, and the U.S.

21 Attorney for the District of Columbia, Timothy Shea, approved the sentencing recommendation
22 consistent with our calculation of the sentencing guidelines.

23 Q Did anyone on your team, or the career prosecutors who were doing the calculation, did
24 any of them voice concerns that the adjustments or escalations were excessive, given that Mr. Stone
25 was a first-time nonviolent offender?

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1 A I don't recall any member of the team raising that concern. I recall them assessing
2 which adjustments applied and making their recommendation.

3 Q So was everyone in agreement on the 7- to 9-year recommendation?

4 A Who is everyone?

5 Q The career prosecutors.

6 A The career prosecutors who worked on the case, to include myself and four line
7 prosecutors, all concurred in the recommendation.

8 Q Okay. And no one ever voiced concerns?

9 A Not within that team, no.

10 Q Are you aware that there was an IG report regarding the circumstances surrounding the
11 sentencing of Mr. Stone?

12 A I am.

13 Q Okay. We can enter that as an exhibit. I'm going to point to specific pages.

14 [Cooney Exhibit No. 14

15 was marked for identification.]

16 BY

17 Q Have you seen this report before today? I'm assuming you have.

18 A I have.

19 Q Okay. Were you interviewed by the IG in part -- as a part of their investigation?

20 A I was interviewed by the Inspector General, yes.

21 Q Okay.

22 A Or, sorry, not by the Inspector General. By staff to the Inspector General.

23 Q Yes. On page 16 of the report, I just want to talk about Attorney -- U.S. Attorney Shea's
24 reaction to the sentencing memorandum. So the paragraph here says -- this is the second full
25 paragraph on that page that starts with, Shea told us. Do you see where I'm at?

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1 A Shea told the OIG?

2 Q Yes. "Shea told us that his initial reaction to the sentencing recommendation was that it
3 was very high and that he needed to dig a little deeper into the case. Shea said that he prosecuted
4 several perjury cases when he was an AUSA and had never seen those cases produce a sentence that
5 high, and that he was aware of many violent crimes that did not result in sentences anywhere near
6 the sentence the team was recommending for Stone.

7 No decisions regarding the sentencing memorandum were made during this initial briefing,
8 and according to prosecutor one, Shea concluded it by stating that he," Shea, "would take a closer
9 look at the sentencing memorandum and that they would probably talk about it again.

10 Shea and the principal AUSA discussed the Stone sentencing memorandum again, either later
11 that Tuesday or the following day. According to the principal AUSA, Shea described the sentencing
12 range as surprisingly high, and also stated that he didn't like the rhetoric in the factual summary
13 portion of the sentencing memorandum."

14 At this point in time, contemporaneous to the meetings with Shea that the prosecutors were
15 having, did you ever receive this feedback that he had provided?

16 A I don't have recollection of meetings that U.S. Attorney Shea had with the line
17 prosecution team.

18 Q Okay. Did those meetings where it -- excuse me. Did Shea meet with you, then?

19 A I recall meeting with the U.S. Attorney and other prosecutors related to this, but not
20 the -- not the line of prosecutors who were involved.

21 Q Okay. So there were different prosecutors than the line prosecutors that were working
22 on the calculation of the sentencing, is that your recollection?

23 A No, that is not my recollection. My recollection is that the career line prosecutors
24 working on the case assessed the facts of the case, applied the applicable sentencing guideline
25 adjustments, wrote it in a memo, and that that memo was provided to the U.S. Attorney for review.
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1 Q Okay. Did you ever learn that Shea described the sentencing range as surprisingly high
2 and that he didn't like the rhetoric in the factual summary portion of the sentencing memo?

3 A I don't recall exactly what was said, but my recollection is that the U.S. Attorney
4 conveyed that he was surprised at the length under the applicable guidelines, yes.

5 Q And did the team of line prosecutors that you supervised on this case, did they take any
6 action based upon that feedback?

7 A At this particular time that you're talking about, I don't recall whether there was any
8 action to take at that time.

9 Q Okay. So there was no -- there was going to be no adjustment to the sentencing
10 recommendation, or adjustment to the factual summary?

11 A The process for reviewing the Stone sentencing recommendation and the sentencing
12 memorandum was not the product of one meeting, one conversation or one day. It happened over a
13 period of days, and so, I need to ask you to be more specific about what period of time you're

talking

14 about.

15 Q This would have been in the time frame immediately -- so the sentencing memorandum,
16 just to help refresh your recollection, was filed on February 10th, 2020. That's the first one. The next
17 one was filed the next day, February 11th, but -- so February 10th. So there's a series of
18 conversations and phone calls that were occurring in the, you know, February 8th, that was a
19 weekend, and in that immediate time frame is when these conversations were occurring, according
20 to the IG, and I was just wondering if you took any action, or directed your team to take any action
21 based upon feedback from the attorney, or the U.S. Attorney regarding the surprisingly high
22 sentencing range?

23 A I did speak with the team about making revisions to the sentencing memorandum based
24 on feedback from the U.S. Attorney.

25 Q Okay. And what recommendations did you provide to the team?

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1 A I don't recall exactly what recommendations I made, but it related to language in the
2 pleading that the U.S. Attorney thought should be adjusted.

3 Q Okay. And were there any adjustments made based upon the recommendations you
4 provided to the team?

5 A My recollection is that there were revisions made to the sentencing -- to the language
6 and rhetoric in the sentencing memorandum.

7 Q Okay. But no changes were made to the sentencing range?

8 A Well, there were no changes made to the guideline calculation because the guidelines
9 state what the guidelines state.

10 Q Okay. And there was a lot of conversation in the Inspector General's report about
11 statements that you made to the team regarding politics being a basis for some of Shea's feedback,
12 as well as actions taken by the Attorney General. Did that surprise you when you read the report?

13 A When I read the report, I disagreed with many of the characterizations of my and
14 others' conduct.

15 Q Okay. On page 31 of the report, what I'm going to read is kind of in the middle of this
16 first paragraph, it starts with, prosecutor one said that when he asked the FPC chief.

17 A I'm sorry. Is it in the --

18 Q It's the sixth line from the top at the --

19 A Prosecutor one said that he asked, is that --

20 Q That when he asked the FPC chief.

21 A Sorry. Here we go. I've got it here.

22 Q Perfect. Okay. So this sentence reads, "Prosecutor one said that when he asked the FPC
23 chief if that was what the FPC chief thought was happening, the FPC chief responded in the
negative

24 and said that he thought that Shea was trying to lower the sentencing recommendation because of
25 politics."

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1 Do you remember making a comment similar to Shea was trying to lower the sentencing
2 recommendation because of politics?

3 A I don't recall specifically what was said during my interactions with prosecutor one and
4 others.

5 Ms. Duval. There is in the next paragraph an account, a purported account of what you told
6 the OIG.

7 Oh, yes. We're getting there. I'm just reading some comments about -- there's a

8 lot of discussion about commentary that Mr. Cooney provided about the politics of the case.

9

10 Q And the last sentence in that paragraph states, in addition, prosecutor two told us that
11 he recalled that after the FPC chief said that politics was motivating the desire to lower the sentence,
12 the FPC chief said that political pressure is just what happens in big cases, regardless of
13 administration. Do you remember making any comment similar to that?

14 A I may have made a comment like that, but I don't have specific recollection of using
15 those words.

16 Q Okay. And then the next paragraph states, the FPC chief told the OIG that he believed
17 that he did acknowledge on this call that he thought Shea's desire to lower the sentence was being
18 influenced by politics, and that he may have agreed with the team that a decision based on politics
19 would be unethical. According to the FPC chief, he was trying to validate the concerns that the trial
20 team expressed, as well as acknowledge his own suspicions and belief that Shea was acting out of
21 fear of then President Trump, and, more particularly, fear of the consequences of not seeking a lower
22 sentence for an influential friend of then-President Trump.

23 What information were you going off of that Shea was acting based on politics or fear of then
24 President Trump?

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1 A I believe that in any circumstance, the use of prosecutorial authority should not be
2 wielded for a political or other improper purpose, and I had concerns throughout the process that
3 Mr. Stone's friendship and relationship with President Trump was informing the views and concerns
4 raised by the U.S. Attorney and others.

5 Q And what specific evidence or information were you making these statements on, or did
6 you obtain a suspicion and belief that Shea was acting out of fear of then-President Trump?

7 A All of the circumstances surrounding the questions, the demeanor and the conduct of
8 the U.S. Attorney indicated to me that I should be concerned about that, and that it was important
9 for me to fulfill my role of ensuring that the Justice Department conducted itself in accordance with
10 the Justice Manual, and that we not conduct any prosecutorial decision out of fear or favor.

11 Q And on page 75 of this report, under the bold heading, it states, "We found no
12 documentary or testimonial evidence that the actions and decisions of DOJ leadership, i.e., the
13 Attorney General, the Deputy Attorney General, or their senior staff, and interim U.S. Attorney Shea
14 in the preparation and filing of the first and second sentencing memoranda were affected by
15 improper political considerations or influence."

16 And then further on in the IG's report on page 83, in the middle of the first paragraph it
17 states, the FPC chief said that he would not question having stated that Shea was afraid of the
18 President, even though he was not aware of specific evidence to that effect. Do you remember
19 telling the OIG that?

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1 [3:03 p.m.]

2 Mr. Cooney. I do not recall what I said in my interview with the staff members of the
3 Inspector General several years ago.

4

5 Q Were you surprised that the OIG concluded that there was no documentary or
6 testimonial evidence that politics played a role?

7 A I disagreed with that assessment.

8 Q You disagreed with that assessment, okay.

9 On page 74 again -- sorry, made you flip from that -- the first sentence in that -- the last
10 paragraph on that page said, "We also found that the FPC chief's speculative comments in meetings
11 with the trial team about the political motivations of DC USAO and DOJ leadership in connection
with

12 their handling of the Stone sentencing contributed to an atmosphere of mistrust in the DC USAO,
13 which unnecessarily further complicated an important decision in the case."

14 Did it concern you that the OIG concluded that your comments contributed to an atmosphere
15 of mistrust in the office?

16 A I disagreed with that conclusion.

17 Q The first part of the OIG report talks about Aaron Zelinsky who came before this
18 committee and testified about the political considerations in the Roger Stone case, and the OIG
19 concluded that your statements formed a substantial basis for Mr. Zelinsky's testimony.

20 Are you aware of that?

21 A Can you point me to where in the report you're referring to?

22 Q Certainly can. There is some discussion of it on page 2 and also on page 4. Page 4 is a
23 little bit shorter of a discussion that's more concise.

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1 It says, "We identified statements made by prosecutor 1 and speculative comments by the
2 FPC chief that influenced prosecutor 2's suspicions about possible political interference and formed a
3 substantial basis for prosecutor 2's testimony."

4 A Okay.

5 Q And on page 2 it discusses how there was self-reporting made to OPR regarding certain
6 statements in Mr. Zelinsky's testimony.

7 A We are on page 2?

8 Q It is the second full paragraph, starts with "The following day, June 25th, 2020, the three
9 supervisors, the then principal assistant U.S. Attorney, chief of the DC USAO's criminal division, and
10 fraud and public corruption section chief self-reported the allegations to OPR and identified them as
11 false and frivolous."

12 A I see where it says that.

13 Q And did you, in fact, make a self-report to OPR?

14 A After Mr. Zelinsky, in sworn congressional testimony, falsely accused me of pressuring
15 him to change his sentencing recommendation on an improper basis, I referred that false allegation
16 to the Office of Professional Responsibility.

17 Q And did you have any follow-up with OPR after you made the self-report?

18 A I don't have recollection of follow-up with OPR. My recollection is that I was contacted
19 at some point by the Inspector General's office.

20 Q And did you ever become aware that OPR had referred the allegation, the investigation
21 to the OIG?

22 A I don't recall having knowledge of any referral at that time. I have some recollection
23 that it is -- that the circumstances surrounding that are discussed in the Inspector General's report.

24

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1 Q So did you refer it yourself or did you refer Mr. Zelinsky for making the false -- what you
2 characterize as false testimony?

3 A Consistent with my obligations to the Department of Justice, I referred the false
4 accusation against me to OPR.

5 Q Okay. So you referred Mr. Zelinsky to the Office of Professional Responsibility?

6 A I wouldn't describe the referral as a referral of Mr. Zelinsky. What I would describe it as,
7 as complying with my obligations when an allegation of misconduct is made against a prosecutor to
8 refer the fact of that allegation to the Office of Professional Responsibility.

9 Q Okay. Were there any -- just going back to the Hunter Biden case, were there any
10 political considerations that led to the decision not -- not to partner with David Weiss' office?

11 A I'm not aware of any political considerations that were -- that came into play in making

12 that decision.

13 Q Okay. So on one hand, you were concerned there were political considerations with
14 Roger Stone's sentence by the Republican U.S. Attorney, but everything was cool with the Democrat
15 U.S. Attorney when it related to Hunter Biden? No politics there?

16 A I am not aware of or witness any political considerations in handling the decision to not
17 partner, but instead to make whatever steps were necessary in the District of Columbia available to
18 David Weiss and his team to return charges there if they deemed it appropriate.

19 Q Okay. Were you aware that David Weiss -- I mean, he thought it was very important
20 that the District partner with him.

21 Were you aware of that consideration?

22 A I have never in my recollection spoken with or met Mr. Weiss.

23 Q Okay. So the fact that the D.C. U.S. Attorney's Office declined to partner, that was sort
24 of a -- that was the death in their mind of the 2014, 2015 tax years at least. You know, with respect
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1 to Hunter Biden, that's the Burisma years. He was making, like, a million dollars for sitting on the
2 board for doing nothing.

3 A I can't speak to what Mr. Weiss and his team may have thought or not. All I can speak
4 to are the steps that we took to make the District of Columbia available to him as a venue --

5 Q Okay.

6 A -- if he determined that charges should be brought there.

7 Q Okay. Were you surprised when it was reported -- you know, Mr. Weiss testified and
8 there were news accounts about this.

9 Were you surprised at the way the U.S. Attorney's Office in the District of Columbia was
10 characterized?

11 A I would have to see whatever news reports you're talking about.

12 Q Okay. So, you know, it was reported that -- that the D.C. U.S. Attorney's Office didn't
13 want to partner with Mr. Weiss and because of that, the 2014, 2015 tax years at least weren't
14 pursued.

15 To the extent they placed the -- they point the finger at your -- at the D.C. U.S. Attorney's
16 Office, that would surprise you?

17 A I have not seen any reports about our relationship or back-and-forth with the Delaware
18 office. If you want to show me one and direct my attention to it, I'm happy to see if I can answer
19 questions about it.

20 Q I didn't bring anything with me, so I'll defer at that point. Thanks.

21 We can go off the record.

22 [Recess.]

23 It's 3:23. We can go back on the record.

24 Mr. Cooney. And I apologize for interrupting, but could I just --
25 Sure.

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1 Mr. Cooney. -- go back to one moment from the last session?

2 I'm just trying to go back through my recollection of the Stone sentencing from -- I'm trying to
3 remember if it was four or five years ago -- and the conversations that you asked me about.

4 But I recall one question that you asked about whether anyone from the line prosecution
5 team raised concerns about the sentencing recommendation, and my recollection is that -- that I told
6 you my recollection is that no one did, and that is my recollection. That once we got to the
7 recommendation, once the guidelines were calculated, that the legal research had been conducted
8 and a full analysis had been made is that -- my recollection is that the line prosecution team
9 concurred in the calculation and in the sentencing recommendation, as did I.

10 But as I think back through, there may have been -- in that process of analyzing the case,
11 analyzing the facts, analyzing the circumstances, there may have been discussion about whether
12 certain adjustments applied, about how to go about the sentencing and what not.
13 But that once we got to the end of that process, my recollection is that there was full
14 concurrence from the line prosecution team on both the guidelines calculation, which is one step,
15 and then the second step of recommending the sentence.

16

17 Q I want to return to exhibit 12, which is the opposition, just to make a quick note.
18 In the prior hour, you were asked -- this is regarding the Jay Bratt OPR recommendation -- or
19 OPR referral, rather. You were asked if the Special Counsel's Office ever denied the claim that
20 Mr. Bratt came in with a folder full of documents about Mr. Woodward.
21 Do you remember that question line?

22 A I recall those questions.

23 Q And the statement was made over and over again that the Special Counsel's Office
24 never denied it.

25 Can you turn to page 27 of exhibit 12, please?

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1 A Certainly. And just to confirm, exhibit 12 is document 115-1 --

2 Q Exactly.

3 A -- is that right?

4 Q It's document 115-1, and it's pages 48 to 84 of that attachment to 115. Because the
5 attachment to 115 has a number of different filings as part of it.

6 A Is it page 27 on the bottom?

7 Q It's page 27 on the bottom, yes, page 27 at the bottom.

8 A Yep. Okay.

9 Q Can you read the last full sentence of -- begins "Bratt did not put together," of that last
10 paragraph?

11 A Right. I see here at the bottom of page 27 that in our pleading we wrote, "Bratt did not
12 put together a, quote, "folder," end quote, regarding Woodward or display any such thing in the
13 meeting. As discussed above, Bratt did a routine public source internet search" -- and it goes on.

14 Q So the Special Counsel's Office did deny Woodward's claims about Mr. Bratt coming in
15 with a folder, correct?

16 A Looking at this pleading, that appears to be the case, yes.

17 Q Thank you. You can put that aside.

18 Moving on to the discussion of the Hunter Biden investigation, a statement was made in the
19 prior hour that the D.C. U.S. Attorney's Office decision not to partner was the nail in the coffin or
20 something to that effect of the -- Weiss' ability to bring a case in DC. That Weiss thought it was
21 important that the D.C. U.S. Attorney's Office partner, and that the decision not to
22 partner -- effectively, he didn't bring the case.

23 You remember that -- that statement being made?

24 A I remember that, yes.

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1 Q Mr. Weiss testified before the committee on June 6, 2025, and I want to read into the
2 record what he said.

3 The question was asked: "So the decision not to partner with you, did that prevent you from
4 moving forward in the District of Columbia?"

5 His answer was: "No. It had no impact on where we ultimately -- yes, on where we might or
6 might not proceed."

7 Question: "So if you had wanted to bring charges in the District of Columbia, are you

8 confident that you would have had the authority to do so?"

9 Answer: "Yes."

10 No other questions. I just wanted to make that record clear.

11 With respect to the Hunter Biden case, were there any communications between your team
12 after you met with -- or when you were considering whether to partner or not, did you or, to the best
13 of your knowledge, anyone on your team have any communications with the White House about
this

14 matter?

15 A I am not aware of any communications within the U.S. Attorney's Office to the White
16 House about this matter.

17 Q To the best of your knowledge, did you or any member of your team -- or any member
18 of the individuals from the D.C. U.S. Attorney's Office who were considering whether to partner or
19 not have any communications with the Office of the Deputy Attorney General about whether to
20 partner?

21 A I am not aware of any communications that were had with the deputy attorney general
22 or the Office of the Deputy Attorney General about the Biden matter.

23 Q And are you aware of any conversations that were had between the D.C. U.S. Attorney's
24 Office and the Office of the Attorney General?

25 A I am not aware of any conversations.

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1 Q Was the decision not to partner with the Delaware U.S. Attorney's Office made with any
2 reference to political considerations?

3 A I am not aware of any political considerations being made in connection with that
4 decision.

5 Q Thank you. I want to move on to the discussion of the Randy -- excuse me -- the Roger
6 Stone sentencing.

7 You made the comment in the prior hour that the guidelines state what the guidelines state.

8 And I think we've talked a lot about the sentencing guidelines, but the record is not entirely clear.

9 What are the sentencing guidelines?

10 A The sentencing guidelines are a manual of considerations published by the Sentencing
11 Commission that set forth how to go about calculating a recommended period of -- or a
12 recommended sentence in a case.

13 Q And prior to a sentencing proceeding, both prosecutors and defense counsel submit
14 memoranda to the court arguing about what the proper guidelines sentence should be, correct?

15 A Typically, both the prosecution and the defense submit memoranda to the court and/or
16 to the probation office on that subject, yes.

17 Q Does the fraud and public corruption section have a policy on sentencing
18 recommendations?

19 A When I was chief of the fraud, public corruption, and civil rights section, we did have a
20 policy on sentencing recommendations.

21 Q What was that policy?

22 A The policy and the section when I was chief was that, absent extraordinary
23 circumstances, we would seek a guideline sentence in cases.

24 Q What does that mean, to seek a guideline sentence?

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1 A That means that, after calculating the applicable guidelines and providing that to the
2 court and after a determination is made as to what the guidelines are, that we would recommend a
3 sentence that fell within whatever that guideline range was.

4 Q Are you familiar with the reasons underlying that policy?

5 A I am.

6 Q What are those reasons?

7 A When I was chief of the fraud and public corruption section, first I thought that it was
8 important that in cases involving white collar defendants, public officials, et cetera, that we take a
9 consistent approach to sentencing to ensure confidence that our judgments and our
10 recommendations were on the basis of conduct and the law as opposed to any other improper
11 consideration.

12 There's a second consideration -- at least a second consideration. The second is that at the
13 time that I was chief of the fraud, public corruption, and civil rights section, my recollection is that
14 there was -- the operative policy from the Department of Justice on sentencing was the Sessions
15 memo, which made clear that in the vast majority of cases a guideline sentence would be an
16 appropriate recommendation for the Department of Justice.

17 Q And the Sessions memo was a memo from Attorney General Jeff Sessions. Is that
18 correct?

19 A That is correct.

20 Q And Attorney General Jeff Sessions was an appointee of President Trump, correct?

21 A That is correct.

22 Q Understand that the -- that that memo is no longer in effect or it's been -- it may no
23 longer be in effect, but you've used the term a couple of times "when I was chief," suggesting that
24 the policy for the fraud and public corruption and civil rights section might have changed.

25 Is that -- did you mean to say that, or is that --

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1 A I am not aware of any change in policy by the fraud and public corruption section at the
2 U.S. Attorney's Office.

3 Q Okay. I want to introduce a couple of exhibits. I want to introduce as exhibit 15 the U.S.
4 Sentencing Guidelines Sentencing Table; as exhibit 16, Section 2J1.2(b)(1)(B) from the U.S.
5 Sentencing Guidelines; and as exhibit 17, the original U.S. v. Stone sentencing memorandum.

6 A Thank you.

7 Q I'll tell you, I think the question was asked in the earlier hour, how did the -- how did you
8 reach the recommendation. And so I want to walk through how that recommendation is calculated.
9 But take as long as you want to review these documents.

10 A Just make sure I have everything here. Okay.

11 Q Can you turn to page 16 of the government sentencing memorandum. This is the
12 original sentencing memorandum filed by the career prosecutors. Says guidelines calculations; you
13 see where it says that?

14 A All right. I do.

15 Q Okay. So I want to walk through how prosecutors reached the guidelines calculation
16 that they did. It says the -- page 16 says, "Counts 1 through 7" -- those are the counts which Stone is
17 convicted of -- "are grouped for guidelines calculations purposes because they involve the same
18 victim and two or more acts or transactions connected by a common criminal objective or
19 constituting part of a common scheme or plan."

20 Do you see where it says that?

21 A I do see that.

22 Q What does that mean for -- in layman's terms?

23 A Practically speaking, that just means that there is going to be one guideline calculation
24 at the end as opposed to separate calculations for separate offenses, which could actually lead to a
25 higher period of penalty than by grouping them together.

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1 Q Thank you. The sentencing memoranda continues on, "The applicable guideline for the

2 group is section 2J1.2, obstruction of justice."

3 Do you see where it says that?

4 A I do.

5 Q And you have 2J1.2, obstruction of justice, in front of you, right?

6 A I do have that.

7 Q Exhibit 16. It says the base offense level is 14. Can you explain what that means? If you
8 need to refer to the sentencing table, feel free.

9 A In -- when -- when the guideline range is calculated, typically the first step is to
10 determine what the base offense level is. And that is usually, in my experience, keyed off of
11 whatever the offense or offenses or highest offense of conviction is. And that's where you start.
12 Then you take a second step, which is to look at all of the conduct -- offense conduct that
13 underlied that offense. And from there, the base level is either increased or decreased based on that
14 conduct.

15 Q And in this case, was the base level increased or decreased?

16 A This case, the base offense level was increased.

17 Q And the memo -- the memorandum says that eight levels are added, and it continues
18 on. See where it says that?

19 A Yes.

20 Q And I understand more levels are added later on. But these eight levels that are the
21 subject of that paragraph, can you explain why levels were added under that provision?

22 A So under 2J1.2 -- that's the applicable guideline -- there is a provision, subsection
23 (b)(1)(B), that says if the offense involved causing or threatening to cause physical injury to a
person

24 or property damage in order to obstruct the administration of justice, increase by eight levels.
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1 And in the Stone case, the team assessed -- and I concurred -- that that adjustment applied
2 because, as explained in the sentencing memo, part of Mr. Stone's campaign to keep a witness silent
3 about his false testimony to Congress was the threat, quote, "prepare to die" -- and I'll omit the next
4 word, but -- but there's another word. But prepare to die, in quotes.

5 Q And Stone also threatened to, quote, "take that dog away" -- he threatened to take the
6 dog -- take the target's dog?

7 A That is correct. As the sentencing memo goes on to say, that Mr. Stone also
8 threatened -- again, in writing -- to take that dog away from you.

9 Q So because of that conduct, the base level of 14 has eight points added to it, correct?

10 A That is correct.

11 Q So that puts us at 22, correct?

12 A I think that's right.

13 Q Then continuing on page 17, the second-to-last paragraph says, "Pursuant to
14 USSG" -- that's U.S. Sentencing -- United States Sentencing Commission Guidelines -- "Section
15 2J1.2(b)(2), three levels are added because the offense resulted in substantial interference with the
16 administration of justice."

17 Do you see where it says that?

18 A I do.

19 Q And can you explain what that means?

20 A In examining the offense conduct of an obstruction under that provision, if the
21 obstruction resulted in substantial interference with the administration of justice, then there should
22 be an increase by three levels.

23 And in this case, as was set forth in the sentencing memo, the House Select Committee, which
24 had subpoenaed Mr. Stone for testimony, because of his obstruction, the evidence demonstrated

25 that the House Intelligence Committee never received important documents, that it never heard
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1 from two witnesses, and that the committee's report on its investigation even wrongly stated that
2 there was no evidence contradicting Mr. Stone's claim that his -- all his information about WikiLeaks
3 was from publicly available sources.

4 Q So under that enhancement, an additional three levels are added to the guidelines
5 calculation, correct?

6 A That was our determination, yes.

7 Q So that takes us up to 23, 24 -- to level 25?

8 A Correct.

9 Q And then the very last paragraph on that page, it says, "Pursuant to USSG Section
10 2B1.2(b)(3)(C), two levels are added because the offense was otherwise extensive in scope,
planning,

11 or preparation."

12 Do you see where it says that?

13 A I do.

14 Q Can you explain why those two levels were added?

15 A And I don't mean to quote it back to you, but under the guideline provision, if an offense
16 was otherwise extensive in scope, planning, or preparation, then a two-level adjustment is assigned.
17 And as we set forth in the sentencing memo, in this case the evidence established that Mr.
18 Stone engaged in a multiyear scheme that involved, one, false statements and sworn testimony; two,
19 the concealment of important documentary evidence; three, further lies in a written submission to
20 Congress; and, four, a relentless and elaborate campaign to silence a witness that involved cajoling,
21 flattering, crafting forged documents, badgering, and threatening the witness's reputation, friend,
22 life, and dogs -- excuse me -- and dog.

23 Q And the paragraph then continues that "Stone's efforts were as extensive, if not more
24 extensive, than those of other defendants who received this two-level enhancement at sentencing."
25 Do you see where it says that?

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1 A I do see that.

2 Q So under that enhancement, two levels are added, so that takes us to level 27, right?

3 A That sounds right.

4 Q And then, finally, the memo continues, "Pursuant to USSG Section 3C1.1, two levels are
5 added because the defendant," quote, "willfully obstructed or impeded or attempted to obstruct or
6 impede the administration of justice with respect to the prosecution of the instant offense of
7 conviction."

8 Do you see where it says that?

9 A I do.

10 Q And can you explain why those two levels were added to the calculation?

11 A As we set forth in the sentencing memo, this adjustment was based on an effort by Mr.
12 Stone to impede or obstruct the administration of the criminal case against him. Shortly after the
13 case was indicted, Mr. Stone posted an image of the presiding judge with a crosshair next to her
14 head.

15 And in a hearing to address, among other things, Mr. Stone's ongoing pretrial release, Mr.
16 Stone gave sworn testimony about the matter that was not credible. And then, furthermore, Mr.
17 Stone repeatedly violated a more specific court order by posting messages on social media about
18 matters related to the case.

19 Q So with those two additional enhancements, that puts the sentencing -- the offense
20 level at level 29, correct?

21 A I believe that's correct. I'm not -- I'm not keeping tabs on my own here, but I think
22 that's -- I think that's right.

23 Q And the -- Mr. Stone had no prior criminal history, correct?

24 A My recollection is that he had no prior criminal history, that's right.

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1 Q So the guidelines range for offense level 29 with Criminal History I, which is zero or one
2 years, is 87 to 108 months, correct?

3 A Based on a total offense level of 29, that is correct, the -- the applicable advisory
4 guideline range is 87 to 108 months.

5 Q Okay. So that's how the team calculated the guidelines range?

6 A As set forth in the sentencing memorandum, that is -- that is correct.

7 Q When did Mr. Shea become involved in this case?

8 A My recollection is that he -- he became involved when he became the United States
9 Attorney, which was I don't recall how long before the sentencing -- the deadline for filing the
10 sentencing memorandum, but a week or ten days.

11 Q I believe that the OIG report says that he became interim U.S. Attorney on February 3rd,
12 2020. Does that sound right?

13 A That sounds about right.

14 Q Are you familiar with the circumstances by which Mr. Shea became interim U.S.
15 Attorney?

16 A I believe so.

17 Q And what's your understanding of those circumstances?

18 A My recollection is that Mr. Shea became the United States Attorney after Jesse Liu
19 departed to -- to take a position, at least at the time, at the -- at the Treasury Department.

20 Q And do you have an understanding of why Mr. Barr selected Mr. Shea to serve -- let me
21 withdraw that.

22 Mr. Shea was appointed interim U.S. Attorney by Attorney General Barr, correct?

23 A That is my understanding, yes.

24 Q And do you have an understanding of why Mr. Barr appointed Mr. Shea?

25 A I think that's a question you would have to ask Attorney General Barr.

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1 Q Did you have an understanding of whether Mr. Shea and Mr. Barr were friends?

2 A I recall having an understanding about that at the time, yes.

3 Q And what was your impression of them?

4 A My recollection is that Mr. Shea informed me that he and Attorney General Barr were
5 friends.

6 Q He told you that?

7 A That is my recollection, yes.

8 Q And when did he tell you that?

9 A My recollection is that he told me that sometime in the period after he was -- became
10 the interim United States Attorney and before the time that the sentencing memorandum was filed
11 on February 10.

12 Q Okay. So if he was appointed on February 3rd, it was sometime in that first week of
13 February that he would have told you that he was friends with Mr. Barr?

14 A That is my recollection.

15 Q What was your impression when he told you that? Were you surprised that he told you
16 that?

17 A I -- I don't recall having a specific -- a specific reaction one way or the other to him -- to
18 him informing me of that in one of our first meetings.

19 Q Did you have any -- did you -- why did you think he told you that?

20 A I can't -- I can't speculate as to why -- to why he informed me of that information. I -- I
21 got the impression that it was something he wanted me to know.

22 Q When Mr. Shea became interim U.S. Attorney, was he familiar with the Roger Stone
23 case?

24 A At the moment of his appointment, I don't know what familiarity he had with it.

25 Q Did you meet with him shortly after he was appointed to discuss the Roger Stone case?
141

1 A I recall that I did, yes.

2 Q And do you recall if he -- if he was familiar with the facts of the case when you met with
3 him?

4 A My recollection and my impression of that -- of the first time I met with him is that he
5 was not familiar with the facts and circumstances of the case.

6 Q Was it your impression that he was familiar with the sentencing guidelines? I know he
7 had been a prosecutor -- former -- in a -- a long time ago, but he hadn't worked with the guidelines in
8 a while, correct?

9 A My recollection is that my sense of it was that he was not -- that he had not worked with
10 the guidelines in some time and was not particularly familiar with how to calculate them or apply
11 them.

12 Q And did you -- was he familiar with the fraud and public corruption policy to seek a
13 guideline sentence?

14 A I -- I can't say what he was and was not familiar with at that time. I have recollection of
15 informing him of that policy.

16 Q Okay. Mr. Shea ultimately pushed back against the prosecutors' -- the career
17 prosecutors' recommendation as filed, correct?

18 A My recollection is that throughout that week of approximately the 3rd to the 10th,
19 that -- that Mr. Shea expressed disagreement with the -- with the recommendation.

20 Q I think you also said in the prior hour, though, that he had cleared prosecutors to submit
21 the recommendation that they did submit, correct?

22 A My recollection is that on the day we filed it, shortly beforehand, he -- he explicitly in a
23 discussion with me gave approval to -- to file it.

24 Q So is it fair to say that throughout the week, there were discussions and Mr. Shea was
25 kind of going back and forth on his position on the sentencing range here?
142

1 A My recollection is that it -- there may have been some back-and-forth. My recollection
2 is that at no point during that period did Mr. Shea vocalize to me any basis that -- although he may
3 have had disagreement with the recommendation, he never provided me, in my recollection,
4 any -- any basis to question the -- the guideline calculation and the applicable offense conduct.

5 Q In the prior hour, a paragraph on page 75 was read into the record. It's the -- sorry,
6 page 75 of the OIG report was read into the record -- or the first sentence of the paragraph.
7 Under section A, the paragraph -- the sentence that was read begins, "We found no
8 documentary testimonial evidence." But the following sentence was not read into the record.

9 That sentence reads, "Rather, we found that Shea's ineffectual leadership set in motion a
10 sequence of events that contributed to the trial team viewing his actions with suspicion and resulted
11 in DOJ leadership taking the extraordinary step of changing a filed sentencing recommendation."

12 Do you see where it says that?

13 A I do see that.

14 Q The question was raised in the prior hour, what basis would you or prosecutors have
15 had to believe that Mr. Shea's actions were political in nature.

16 Isn't it fair to say that the Inspector General's statement here suggests that it was Shea's own
17 leadership that made individuals suspicious of his -- of his motivations?

18 A I'm not going to speculate or try to define exactly what the Inspector General is trying to
19 say here. I -- as I said before, my assessment of all of the circumstances, including Mr. Shea's
20 comments, his demeanor, and the meetings we had that week, led me to have concerns about what
21 was motivating disagreement with the guideline-based sentencing recommendation of the career
22 prosecutors.

23 Q And let's talk about that a little bit. Because you said you disagree with the Inspector
24 General's finding that political considerations didn't play a role.

25 A I disagree with many of the characterizations in the Inspector General report.

143

1 Q So with respect to Mr. Shea's demeanor, what do you mean when you say his demeanor
2 led you to have questions about his motivation?

3 A Throughout the -- the period of these discussions, although there was concern with
4 how -- with how high the sentence appeared -- the recommended sentence appeared to be, I was
5 never provided a -- an argument under the guidelines or under any other legal authority about why
6 the sentencing recommendation should be reduced.

7 Q Did you ask for such an explanation?

8 A I don't recall specifically what words or questions I asked or that others asked, but I -- I
9 recall that there was a lot of discussion about this within -- within the office in that period.

10 Q And as you said several minutes ago, policy of the section that you were in charge of
11 was to seek a guidelines sentencing recommendation, correct?

12 A That is correct.

13 Q And what Mr. Shea ultimately pushed forward was not a guidelines recommendation?

14 A In the second sentencing memorandum, that was not a guideline-compliant
15 recommendation the way I read it, and -- but to go back and be clear, Mr. Shea did, at the end of the
16 week, approve the guideline-compliant sentencing recommendation.

17 Q The one submitted by the career prosecutors?

18 A The one that was filed by the career prosecution team on or about February 10, yes.

19 Q But the second sentencing memorandum, that was not -- the recommendation made in
20 that memorandum was not guidelines-compliant, correct?

21 A My recollection is that that sentencing memorandum recommended a sentence below
22 or substantially below the -- the guideline range.

23 Q Thank you.

24 We can go off the record.

25 [Recess.]

144

1 Go back on the record. I just want to put on the record that we have testimony
2 from whistleblowers Gary Shapley, Joseph Ziegler, we have testimony from a DOJ tax lawyer, Mark
3 Daly, that when the U.S. Attorney's Office for the District of Columbia declined to partner, that
4 was -- the was a setback for them.

5 The U.S. Attorney, David Weiss has testified that maybe it didn't have any bearing on his
6 decision, but that is contrary to the testimony we received from Mr. Shapley and Ziegler. So I just
7 wanted to put that on the record since we were going back and forth on those -- on that issue.

8 Can I respond to that briefly?

9 Sure.

10 My recollection of the Mark Daly transcript is that Mr. Daly said that the
11 conversation with the U.S. Attorney's Office in the District of Columbia provided new insights into
the

12 charging in particular as far as the willfulness angle was concerned, and so it wasn't that the
13 conversation had the effect of blocking them from bringing charges, but that it made them
14 reevaluate the strength and weaknesses. I don't want to get into a back-and-forth.
15 I think we also have testimony that at the Delaware U.S. Attorney's Office they
16 were not familiar with how to prosecute cases in D.C., and so when -- when the decision not to
17 partner came down, that was -- you made their life a little bit more difficult and, in consequence, the
18 2014, 2015 tax years weren't prosecuted. That's a lot of money from Burisma income that just
19 escaped -- you know, escaped taxation.

20 One -- one quick response.

21 I would just end by saying, I would ask the reader of the transcript to go to the
22 actual transcript. Whoever we're talking about right here should get the actual testimony of what
23 was said in each individual transcribed interview. That's all I have to say.

24 Off the record.

25 [Whereupon, at 3:57 p.m., the interview was concluded.]

145

1 Certificate of Deponent/Interviewee

2

3

4 I have read the foregoing ____ pages, which contain the correct transcript of the answers made by
5 me to the questions therein recorded.

6

7

8

9

10 _____
10 Witness Name

11

12

13

14 _____
14 Date

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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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13 INTERVIEW OF: THOMAS WINDOM

14

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16

17

18 Thursday, June 12, 2025

19

20 Washington, D.C.

21

22

2

1 The interview in the above matter was held in room 2237, Rayburn House Office Building,
2 commencing at 10:03 a.m.

3 Present: Representative Jordan.

3

1 Appearances:

2

3

4 For the COMMITTEE ON THE JUDICIARY:

5

6 GENERAL COUNSEL

7 DIGITAL DIRECTOR

8 CHIEF COUNSEL FOR OVERSIGHT

9 COUNSEL

10 PROFESSIONAL STAFF MEMBER

11 COUNSEL

12 MINORITY OVERSIGHT COUNSEL

13 MINORITY CHIEF OVERSIGHT COUNSEL

14 MINORITY GENERAL COUNSEL

15 MINORITY CHIEF COUNSEL AND SENIOR ADVISOR

16 MINORITY INTERN

17 MINORITY PROFESSIONAL STAFF MEMBER

18 AND LEGISLATIVE AIDE

19

20

21

22

23

4

1 For THOMAS WINDOM:

2

3 PRESTON BURTON

4 RACHEL LI WAI SUEN

5 Orrick, Herrington & Sutcliffe LLP

5

1 Good morning. This is a transcribed interview of Mr. Thomas Windom, former
2 senior assistant special counsel on Special Counsel Jack Smith's team. Chairman Jordan has
3 requested this interview as part of the committee's oversight of the Office of Special Counsel Jack
4 Smith and the inexplicable seizure of a constitutionally elected Member of Congress' cell phone.

5 Would the witness please state your name for the record?

6 Mr. Windom. Thomas Windom.

7 We encourage witnesses who appear before the committee to freely consult

8 with counsel if they choose, and it is my understanding that you're appearing today with personal
9 counsel. Is that correct?

10 Mr. Windom. That is correct.

11 Could counsel please state your name for the record?

12 Mr. Burton. Sure. Preston Burton, and my colleague, Rachel Li Wai Suen.

13 On behalf of the committee, I want to thank you for appearing here today to

14 answer our questions. We appreciate your willingness to appear voluntarily.

15 My name is and I am with Chairman Jordan's staff. I'll now have everyone

16 else from the committee introduce themselves as well. I'm joined by my colleague

17 , if you want to go ahead.

18 with Ranking Member Raskin's staff.

19 with Ranking Member Raskin's staff.

20 Ranking Member Raskin's staff.

21 . , Ranking Member Raskin's staff.

22 Chairman Jordan's staff.

23 Chairman Jordan's staff.

6

1 Chairman Jordan's staff.

2 Chairman Jordan's staff.

3 I'd like to now go over the ground rules and guidelines that we will follow during

4 today's interview.

5 Our questioning will proceed in rounds. The majority will ask questions first for 1 hour, and

6 then the minority will have an opportunity to ask questions for an equal period of time if they

7 choose. We will alternate back and forth until there are no more questions and the interview is over.

8 Typically, we take a short break at the end of each hour, but if you would like to take a break apart

9 from that, please just let us know.

10 As you can see, there is an official court reporter taking down everything we say to make a

11 written record, so we ask that you give verbal responses to all questions. Do you understand that?

12 Mr. Windom. Yes.

13 So the court reporter can take down a clear record, we'll do our best to limit the

14 number of people directing questions at you during any given hour to just people on the staff whose

15 turn it is. Typically, it's just two individuals from each staff. Please try and speak clearly so the court

16 reporter can understand and the folks down at the end of the table can hear you.

17 It is important that we don't talk over one another or interrupt each other if we can help it,

18 and that goes for everybody present at today's interview.

19 We want you to answer our questions in the most complete and truthful manner as possible,

20 so we will take our time. If you have any questions or if you do not understand one of our questions,

21 please let us know. Our questions will cover a wide range of topics, so if you need clarification at

any

22 point, just say so.

7

1 If you honestly don't know the answer to a question or do not remember, it is best not to

2 guess. Please give us your best recollection, and it is okay to tell us if you learned information from

3 someone else. Just indicate how you came to know that information. If there are things you don't

4 know or can't remember, just say so and please inform us who, to the best of your knowledge, might

5 be able to provide a more complete answer to the question.

6 You should also understand that by law you are required to answer questions from Congress

7 truthfully. Do you understand this?

8 Mr. Windom. I do.

9 And this also applies to questions posed by congressional staff in an interview.

10 Do you understand this?

11 Mr. Windom. I do.

12 Witnesses that knowingly provide false testimony could be subject to criminal

13 prosecution for making false statements under 18 U.S.C. Section 1001. Do you understand this?

14 Mr. Windom. Yes.

15 Is there any reason you are unable to provide truthful testimony today?

16 Mr. Windom. No.

17 Finally, I'd like to make note the content of what we discuss here today is

18 confidential. We ask that you not speak about what we discuss in this interview to any outside

19 individuals to preserve the integrity of our investigation.

20 For the same reason, the marked exhibits that we will use today will remain with the court

21 reporters to go into the official transcript, and any copies of those exhibits will be collected at the

22 end of the transcribed interview.

8

1 That's the end of my remarks. Is there anything that my colleagues from the minority would

2 like to add?

3 We want to thank the witness for taking time out of your schedule to join us

4 today.

5 I also do want to note for the record that this interview is being video-recorded, and we

6 wanted to request on the record for that video when it is final.

7 We give you the video when it comes in.

8 We actually don't get it when it comes in. We get it before you use it, and I

9 appreciate that. But it's when it's available --

10 No. We give it to you when -- like, the video needs to be mastered, right. They

11 need to take out the portions that are off the record. And then we send it to you.

12 I don't believe that we received any of the videos from this Congress.

13 I've sent several to

14 So, anyway, just to be clear, as soon as the video is ready, we have a professional

15 videographer goes through, and as soon as it's -- they take out the parts that are off the record, we

16 send it over to you.

17 Mr. Burton. If you don't videotape at all, it would make all this more efficient.

18 Well, guess when the videotaping started? I mean, the January 6th Committee

19 started the videotaping. And so, you know, our members have an interest in doing that, and that's

20 why we are where we are.

21 Mr. Burton. Well, we are not members of the January 6th Committee, so --

22 On that note, I don't believe that we received the bulk of the videos from last

23 Congress, so we can discuss that later, but put that on the record.

9

1 Mr. Burton, I understand you have some remarks you'd like to make.

2 Mr. Burton. I do. Thank you,

3 Before we begin, we understand from our communication with you that we will have the

4 opportunity to review the transcript before it's finalized, and we have requested that we be provided

5 with reasonable advance notice before any of the video recording, which we object to, is made

6 public.

7 I also -- I sent a letter to the chair last -- yesterday afternoon through you, and I respectfully

8 request that that letter and the attachments I sent to the chair yesterday be made part of the record

9 for this voluntary transcribed interview.

10 I have copies if that would help, if you're maintaining the copies as the majority. I can also

11 share a copy with Democratic staff.

12 Just two points I'd like to emphasize from that letter. Notwithstanding the Department of
13 Justice's position on privilege and unanswered questions about its leadership's conflicts of interest
14 with respect to Mr. Windom and actually with respect to the entire subject matter of the
15 committee's inquiry, in addition to limiting its approval for Mr. Windom to address the five specific
16 topics set forth in its June 4th letter, the Department acknowledged that Mr. Windom may not
17 violate Rule 6(e), court orders, or other laws with respect to his testimony today.

18 With those important restrictions and limitations in mind, along with the others
19 more -- addressed more fully in our letter to the chair, Mr. Windom will respond to the committee's
20 questions to the best of his recollection and understanding.

21 Thank you. We can mark the letter from you as exhibit No. 1.

22 Mr. Burton. Thank you.

23 [Windom Exhibit No. 1

10

1 was marked for identification.]

2 The clock now reads 10:09 a.m. We'll start the first hour of questioning.

3 EXAMINATION

4 BY

5 Q Mr. Windom, what positions did you hold at the Department of Justice during your
6 tenure there?

7 A I started in February of 2013 as an assistant United States attorney in the United States
8 Attorney's Office for the District of Maryland. I held that title throughout the entirety of my time in
9 the Justice Department, which concluded in January of this year, 2025.

10 In addition to the standard title of assistant United States attorney, I became a supervisor in
11 the Southern Division. That's the Greenbelt office of the United States Attorney's Office for the
12 District of Maryland.

13 Around early 2018, that's when I became -- I believe the sequence was an acting deputy chief
14 and then the deputy chief. I became the chief of that office around April of 2020, and then
15 concluded my term -- or my time as chief of the Greenbelt office around November of 2021. That's
16 when I began a series of details.

17 Q And what can you tell us about those details?

18 A The first detail was to the United States Attorney's Office for the District of Columbia.

19 Q And when did that detail begin?

20 A Approximately the beginning of November, kind of middle of November maybe, of
21 2021.

22 Q And were you asked to detail or did you seek out the opportunity?

23 A I was asked to go on a detail.

11

1 Q And who asked you to go on the detail?

2 A The initial person that spoke to me about a potential opportunity was an individual
3 named Rush Atkinson in the Office of the Deputy Attorney General.

4 Q Did you have any more conversations with anyone about the role before you accepted
5 the detail?

6 A I did.

7 Q And who did you speak with about the detail?

8 A I assume you're speaking not about like family and things like that, but --

9 Q That is correct, just at the Justice Department.

10 A The other individuals that I remember speaking to, in one of the conversations there
11 was a person by the name of Chris Kavanaugh. I don't remember him having a speaking role.

12 And let me maybe frame this for you as well. The time period that we're talking about would
13 have been fall or so of 2021, fall, late fall, something like that. At the time, much of the Department
14 was teleworking. And so when I say meeting or a conversation, I don't recall any of these being in
15 person. These, to my best recollection, were either by telephone or by videoconference.

16 Q Okay. And so you spoke with Mr. Atkinson, Mr. Kavanaugh. Did you speak with anyone
17 else at the Department about the detail before you accepted it?

18 A Yes. The person who I spoke to at some point during the process who was from the
19 United States Attorney's Office for the District of Columbia was John Crabb, who my understanding
20 was the chief of the Criminal Division there.

21 Q Were those the only conversations you had with Justice Department officials prior to
22 your detail beginning?

12

1 A I think that those are the only three people in terms of Justice Department officials that
2 would have been knowledgeable about the potential opportunity. I'm certain I spoke to colleagues
3 of mine in my office or other friends who were at Justice to, you know, consider whether or not going
4 on detail was something I would like to do.

5 Q And what was the purpose of the detail in November 2021?

6 A The initial conversation or conversations, it appeared to me that there was a -- there
7 had been investigative information that was developed during the course of ongoing criminal
8 investigations in the United States Attorney's Office for the District of Columbia, and some of those
9 investigative threads had not been fully explored.

10 It was my understanding that there was an opportunity to go on detail to review some of
11 these threads to explore whether additional avenues of investigation existed and ultimately to
12 determine whether I believed any of them merited investigation and then to make recommendations
13 as to what should or should not be investigated further.

14 Q And what was the focus of the investigation?

15 A The -- I think that at that time I wouldn't say that there was a focus. And I just want to
16 cabin this, I guess, to the inception of the conversations. And then the -- when I began on detail, I
17 spent -- I arrived in the U.S. Attorney's Office for the District of Columbia and began reviewing
18 information.

19 Q Was the focus of the investigation on the events that occurred on January 6, 2021, or
20 was it the 2020 election? Is that accurate, that the focus of the investigation was on the 2020
21 election? Take it separately.

22 A Okay. I think that what -- as I understood it, was that there were investigative
23 information -- there was investigative information that had been developed during the course of the
13

1 investigations into either the on-the-ground rioters who breached the Capitol Building and assaulted
2 law enforcement officers, and then also what later became the conspiracy cases, as shorthand, which
3 may involve people, I'm thinking like Oath Keepers, Proud Boys, things like that, where they may not
4 have actually in some instances entered the Capitol.

5 So those are the sorts of investigations where I began looking at the investigative files.

6 Q And you said that you began a series of details in the fall of 2021. So we have the one
7 that began in November 2021. What was the next detail?

8 A The next detail was to the Special Counsel's Office.

9 Q And when did you begin that detail?

10 A The special counsel was appointed I believe on November 18th of 2022. I began the
11 detail to that office shortly after his appointment.

12 Q And did you ask to be detailed to the Special Counsel's Office or did someone ask you?

13 A The Special Counsel asked me.

14 Q Special Counsel Jack Smith?

15 A Yes.

16 Q Did you speak with anyone else about that opportunity before accepting it, at the
17 Justice Department?

18 A I did.

19 Q Who did you speak with?

20 A I did not speak to -- well, I spoke to Mr. Cooney, J.P. Cooney, who was in the United
21 States Attorney's Office for the District of Columbia. I spoke to him about it. He had, my
22 understanding, previously worked with Mr. Smith.

23 Q Did you speak with anyone else about the opportunity before accepting it?

14

1 A I did.

2 Q Who else did you speak with?

3 A I did not speak to any other DOJ officials about it.

4 Q Just Mr. Cooney and Mr. Smith were the only ones you spoke with?

5 A In terms of DOJ officials, yes.

6 Q That is correct.

7 A I spoke to other individuals from -- that I otherwise knew from -- you know, personally
8 or professionally, who I thought may or may not have had at some point contact or knowledge of Mr.
9 Smith, but not people that would necessarily know what the specific detail would entail.

10 Q Okay. I want to go back to your first detail. I just wanted to make sure we had a clear
11 record. Just those two details or did you have another detail before January 2025?

12 A I did not have another detail before. I believe those were the two details. If I remember
13 correctly, the special counsel detail, the paperwork for it may have been for like 1 year or some
14 period of time, and so there would be additional paperwork, I assume, for like another year or
15 another whatever period of time.

16 So those are the two offices, but there may have been additional terms of details. And by
17 terms, I mean time periods.

18 Q When you began your detail at the U.S. Attorney's Office for D.C. in November 2021,
19 who was the U.S. attorney at the time?

20 A Either right when I started or shortly thereafter, Matt Graves was -- or became the U.S.
21 attorney.

22 Q And had you ever worked with Mr. Graves before?

23 A No.

15

1 Q When you arrived at the U.S. Attorney's Office for D.C. in November 2021, was that your
2 first time being involved in any investigation surrounding the events of January 6th?

3 A No.

4 Q Had you worked on investigations in your previous role at the U.S. Attorney's Office in
5 Maryland?

6 A I had. I was the supervisor, as I indicated, of the Southern Division. And the way
7 that -- just in terms of staff, there were opportunities and requirements of reviewing information and
8 investigations that other individuals worked on.

9 Q And you mentioned previously that there had been investigative information that was
10 developed as part of an ongoing criminal investigation when you arrived at D.C.

11 What was the nature of that investigation?

12 A My understanding -- and if I indicated in the singular, I meant plural. I was speaking of
13 the -- what I understood to be hundreds, if not more, of individual investigations into the Federal
14 felonies that were committed at and in the Capitol on January 6th of 2021.

15 Q And you noted that you were brought on to explore threads that had not been fully
16 explored. Can you kind of describe for us what those threads were that you were going to focus on
17 during your detail?

18 A I can give you a general sense of it. When I arrived, I began talking to prosecutors in the
19 U.S. Attorney's Office for the District of Columbia to determine kind of what their files look like,
what

20 information existed, if they believed that there were information that had been developed during the
21 course of their investigations that may not be specifically relevant to their investigative subject but
22 that may otherwise have been worth looking into.

16

1 I looked at a number of investigative files from many ongoing grand jury investigations,
2 criminal investigations, and determined that ultimately, in my view, there were a few, at least a few
3 pieces of information that merited further investigation.

4 Q And what were those pieces of information that merited further investigation?

5 Mr. Burton. I think we need to be careful about Rule 6(e) and getting specific on these issues
6 because that is, you know, one of the restrictions on Mr. Windom.

7 So I don't know, when you're asking specific information about a course or topic of
8 investigation, that he can answer that question.

9 BY

10 Q Okay. What were the topics that merited further investigation?

11 A I think that the best I can do, consistent with the strictures of Rule 6, is to say that they
12 involved events at and around the Capitol on January 6th of 2021.

13 Q And when you say events that occurred at or near the Capitol on or around January 6th,
14 are you talking about the speech that President Trump gave at the Ellipse?

15 A I think that what I said before can hold on that one, that I reviewed a significant amount
16 of information from ongoing criminal investigations, grand jury investigations. And beyond that, I
17 don't think that I'm permitted by law to discuss the details of that with you.

18 Q Because the special counsel's report that Special Counsel Smith published at the end of
19 his investigation in January 2025 noted pieces of evidence and information surrounding the speech
at

20 the Ellipse and how that played into the indictment of the President. Were you involved in that
21 investigation, in that specific piece of the investigation?

22 A If you'd like to show me the parts of the special counsel's report, I'm happy to take a
23 look at those and answer very specifically for you.

17

1 Q Did you ever investigate the speech at the Ellipse?

2 A I think that, as you indicated and as the special counsel report says and I believe the
3 indictment that was handed down by a grand jury on August 1st of 2023, all discuss information
4 about the defendant's speech at the Ellipse.

5 By defendant, you're talking about the President?

6 Mr. Windom. Mr. Trump, yes, President Trump.

7 BY

8 Q And when did you first begin looking into the actions of President Trump in regards to
9 January 6th?

10 A I don't know that I -- there's a specific timeframe that I could give to you. I think that in
11 the investigations that preceded me that involved the rioters on the ground primarily, a large volume
12 of information had been developed.

13 By virtue of that, there was a significant amount of information on any number of individuals,
14 including publicly available information. Obviously, there were, I would venture, hundreds of

people.

15 So among those hundreds of people, Mr. Trump was one of them at some point. I can't give you the
16 specific timeframe of that.

17 Q When did you begin investigating the other coconspirators that were listed in the special
18 counsel's report?

19 A So I want to be clear, I guess, on what you mean by investigating. The way that I
20 understand it, at least, as I reviewed and as other people reviewed information, you find information
21 about any number of individuals at various times throughout the course of reviewing existing case
22 files or grand jury information.

18

1 So I don't know that there is a specific point in time where this person appeared in a
2 document versus that person appeared in a document. I couldn't give that to you.

3 Q And when you came into the U.S. Attorney's Office in D.C. in the fall of November or
4 November 2021, did you work closely with others who were already at the D.C. office?

5 A I -- let me -- before answering your question, let me just make clear, my best
6 recollection is that it was around November of 2021. If it was early December, for example. I just
7 want to be clear on that, that it's somewhere in that time period.

8 So the question was did I work closely with other people who were already there in the
9 office? The answer to that is yes.

10 Q Did you have the opportunity to work with J.P. Cooney?

11 A Eventually.

12 Q When did you start working with Mr. Cooney?

13 A Mr. Cooney -- I mentioned a moment ago that when I arrived on my detail to that office
14 that I spoke to various prosecutors who had been there and who may be knowledgeable of existing
15 information and existing files.

16 Mr. Cooney was one of those individuals who I spoke to at the beginning. I wouldn't say that I
17 began working with him until much later.

18 Q When do you think you began working with him?

19 A It was around the summer of 2022.

20 Q So was he doing a separate investigation while you were working on exploring these
21 threads that needed to be pulled?

19

1 A Mr. Cooney, my recollection, was a supervisor. And the name of his section I believe has
2 changed over time, but it was either fraud or fraud and public corruption or public corruption and
3 fraud, something like that.

4 So he was a supervisor in that section doing whatever other cases that I was not involved in
5 until around the summer of 2022.

6 Q And before you started working with him in the summer of 2022, did you ever obtain an
7 understanding of his investigations related to January 6th, what he was working on?

8 A I don't know at that time if he was working on -- I don't know one way or the other if he
9 was working on investigations related to January 6th. As I said, he was a supervisor. I suppose that
10 maybe people in his section or he were working on those types of cases in addition to other cases.
11 I'm generally aware that he was involved in some cases involving what I was loosely terming
12 earlier as on-the-ground rioters or the conspiracy cases. I don't -- I don't know if that work
13 overlapped with the time when I was there, but I was not -- to the extent that he was involved in
14 that, I don't recall myself being involved in that.

15 Q Did you ever become aware that in early 2021, around February, Mr. Cooney had taken
16 a proposal to investigate ties in President Trump's orbit in his advisers related to January 6th?
17 Mr. Burton. Could you repeat that? I'm sorry.

18 Of course.

19 Did you ever become aware that in February 2021, Mr. Cooney had taken a proposal to his
20 supervisors wanting to investigate President Trump and individuals within his orbit regarding the
21 lead-up to and the events of January 6th? Did you ever become aware of that?

22 Mr. Burton. I think asking about a proposal for a course of investigation would be Rule 6(e)
23 type information.

20

1 How so? That's not before a grand jury. That's asking about a proposal that
2 went to his leadership. That's not before a grand jury.

3 Mr. Burton. That's not what Rule 6 is limited to. It's not literally what is -- happens in the
4 grand jury room. It's the course of an investigation, a course of action.

5 And I don't know that he -- well, I don't know the answer to the question, but I think if you're
6 asking about a proposal for a course of an investigation, the only investigation is going to be a grand
7 jury investigation. And I don't think, in his circumstance and as broadly as the courts interpret that
8 concept, we are going to be able to answer that question under the restrictions that that rule
9 imposes on him.

10 Okay. Let me rephrase the question.

11 Without revealing information you learned from the grand jury, did you ever become
12 aware that Mr. --

13 Mr. Burton. You don't learn information from the grand jury,

14 Excuse me. Please let me ask my question. Please let me ask my question, and
15 then you can decide whether or not you're going to allow your client to answer.

16 BY

17 Q Without revealing information you learned from a grand jury, did you ever become
18 aware in February 2021 that Mr. Cooney was having discussions with his leadership regarding
looking

19 into President Trump and his advisers and their ties to what occurred before January 6th and on
20 January 6th? Did you ever become aware of that?

21 A I think I might be able to give you some information that will get us to the next question
22 or topic on this --

23 Q Okay.

21

1 A -- consistent with my obligations under Rule 6 and any other obligations I have,
2 including my understanding is this is not one of the specific topics that the Department of Justice has
3 authorized me to discuss.

4 What I can say is I am aware of public reporting from some time -- I don't have knowledge as
5 to when a newspaper article or a report or even the source of it came out -- that at some point in
6 time prior to my detail in the United States Attorney's Office, I -- somebody or some group of
7 people -- and I believe that Mr. Cooney was identified in whatever newspaper article I saw -- had
8 sought a series of investigative steps.

9 I couldn't tell you sitting here today what even steps that article may have mentioned, but I
10 hope that that is sufficient, that whatever your next series of questions is, we can get to those.

11 Q Do you have any independent knowledge outside of that newspaper article regarding
12 those -- that conversation that Mr. Cooney had?

13 A So on this one?

14 Q That is correct.

15 A I -- what I can say is I'm aware of the newspaper article. Beyond that, I am not
16 authorized by the Department of Justice to discuss anything about that with you if I did know it or if

I

17 did not know it.

18 And if I were so authorized, my understanding based on counsel here, is that I would be
19 prohibited from discussing that with you, based on, at a minimum, Rule 6 of the Federal Rules of
20 Criminal Procedure.

21 Q And looking at other individuals you may have worked with at the D.C. U.S. Attorney's
22 Office, we'll start at the top, did you work "closely with" Mr. Graves during the beginning of your
23 detail in fall of 2021?

22

1 A I -- that would be my characterization of it. Perhaps what would make sense, instead of
2 saying, you know, closely with somebody, to give you a sense of numerosity of contacts.
3 I regularly interacted with Mr. Graves, attended meetings with Mr. Graves. How you want to
4 categorize that or characterize that, I -- I guess I leave to you.

5 Q Would he be your supervisor? Would you say he was your supervisor at the time of the
6 detail?

7 A He was not my direct supervisor. He, I think, by law, was everybody's supervisor in that
8 office.

9 Q And who was your direct supervisor, would you say?

10 A Mr. Crabb. John Crabb, the criminal chief.

11 Q And how closely did you interact with Mr. Crabb? Did you have several meetings with
12 him every week, talk to him on a daily basis?

13 A I don't know that I can say daily. We had frequent contact. I -- Mr. Crabb was, as I said,
14 my direct supervisor.

15 Q And what was --

16 A I'm sorry. I just want to be very clear here. In terms of a timeframe that we're talking
17 about, you're talking about when I began at the office or you're talking about kind of the duration of
18 my time there?

19 Q We can start with when you began at the office, and then we can discuss the duration.
20 So if you want to start with that.

21 A Sure. So what I said from Mr. Graves and from Mr. Crabb, I was referencing kind of
22 the -- when I began there and then kind of the initial time on detail in that office.

23

1 Q And what was Mr. Crabb's role in the investigative threads that you were looking at?
2 Was he looking at the same threads or did he have a different prong that he was working on, if you
3 will?

4 A Mr. Crabb was the chief of the Criminal Division of what I understand to be the largest
5 United States Attorney's Office in the country, with hundreds of assistant United States attorneys.
6 I regularly was in contact with him regarding information that I reviewed. That was certainly
7 not the only responsibility that he had in that office.

8 Q So his was more of a supervisory role, if you will?

9 A Correct.

10 Q And were there others that you worked that would have been at the same level as you
11 that worked on similar investigative threads or different prongs of the larger investigation that
12 involved January 6th?

13 A There were other individuals, other prosecutors with whom I worked.

14 Q And who would be at the same level as you? Can you give us those names?

15 A The -- I can give you kind of a sense of it, but I can't give you names. The --

16 Q Because you don't remember or -- the names?

17 A I'm not authorized by the Department to identify individual line prosecutors.

18 Q Okay. Go ahead. So give us a sense of who -- how many did you work with? Let's go

19 with that.

20 A It evolved over time. I -- there were -- you know, I started off, and then shortly
21 thereafter, another individual joined the efforts that I was beginning to look at. I -- I'd say --
24

1 Q So individual one, if you will, prosecutor number one, we'll call that individual
2 prosecutor number one, they were working on the same threads that you were working on. Is that
3 correct?

4 A They -- that individual was working with me.

5 Q Okay.

6 But you're not giving us the name?

7 Mr. Burton. No. The letter says interactions with DOJ officials. We don't understand DOJ
8 officials to be ordinary line assistants. You can get that information from the Department of Justice if
9 they wish to furnish it.

10 Or we can get a new authorization letter and bring you back.

11 BY

12 Q Okay. You said it evolved over time, so did more prosecutors join the effort?

13 A More prosecutors began working with me over time. I think that a couple more. And
14 so, as I said, I think that I started early-mid November of '21. So shortly after I started, one other
15 individual was assigned to kind of look at similar things, and worked with me on that.

16 Q What do you mean by similar things?

17 A Do the same thing I was doing, basically.

18 Q Work on the same investigative threads or different investigative threads?

19 A So I don't think that we're to the point of there even being investigative threads. The
20 time period that I'm talking about, I'm reviewing files, examining existing information from ongoing
21 grand jury investigations or criminal investigations, and speaking to prosecutors. So that's the time
22 period that I'm talking about.

25

1 Q Okay. So if we -- we already have prosecutor number one. So prosecutor number two
2 you said joined. Did they -- were they reviewing -- you said similar things, so were they reviewing
3 different investigative files than you were?

4 A Sorry. I want to make sure I know what you're talking about when you say prosecutor
5 number two. Are you talking about the second person that began working with me or another
6 individual?

7 Q So you had identified someone that we termed prosecutor number one that was
8 working with you. Then you said two more individuals joined.

9 A That sounds right.

10 Q So this one individual, prosecutor two, since you won't give us names. So prosecutor
11 two was working on similar things is what you said. And I asked you to define similar things, and
you

12 said looking at investigative files.

13 So were they looking at the same investigative files as you or different investigative files?

14 A There was a large volume of information to review. I suspect that they probably looked
15 at some of the same stuff, and I suspect that they probably looked at some different stuff. I couldn't
16 specifically tell you now, going on, you know, 3 and change years, 3 and a half years, what they
17 looked at or did not look at on any given day.

18 And I do want to be clear. It is not that I am resisting giving you the names. It's that I have
19 been given a very specific authorization of what I can and cannot provide to you. And my
20 understanding of the authorization letter from the Department of Justice is that I cannot provide that
21 information to you, consistent with my obligations.

26

1 Q So the other individual that joined, so we have two other people now other than you,
2 and you said there were prosecutor one that you were working with and two more joined. We've
3 discussed one.

4 So the other one, prosecutor three, what was their role?

5 A The same as the other individuals. I'm not going to use your nomenclature, but the
6 other individuals with whom I worked.

7 Q Okay. And then were there just three other prosecutors besides you working on the
8 January 6th-related investigations or did others join?

9 A I'm, again, not going to use your characterization of the January 6th-related
10 investigations. I've explained to you what I was doing in that time period. I -- other people -- other
11 prosecutors were assigned over time, other additional prosecutors.

12 Q How many other prosecutors were assigned to work on the same investigative files that
13 you were reviewing at that time?

14 A So I think that at some point I -- just to give timing, at some point, a recommendation
15 was made to the U.S. attorney that there were certain pieces of information that we collectively had
16 reviewed that merited further investigation.

17 So I recall that at least one of those prosecutors was working on these issues at the time that
18 those recommendations were made. And then thereafter, other prosecutors were not just kind of
19 reviewing investigative files and talking to prosecutors but also working on the investigative efforts
20 that the United States attorney approved.

21 Q And so in the fall of 2021, how many other prosecutors were you working with?

22 A The fall of '21?

23 Q Uh-huh.

27

1 A Myself. The one other individual who started shortly thereafter. And my recollection is
2 that there were approximately two people, and I don't recall if that was December of '21,
3 January-February of '22. Somewhere in that time period.

4 Q Okay. So then when did the team start to evolve and become bigger?

5 A Let's see. I think an additional person, an additional prosecutor began assisting at least
6 in around March-April-May 2022 time period.

7 Q And that was it?

8 A No. As I said, the additional prosecutors joined over time.

9 Q Okay. And at its largest, how many prosecutors were working on the same effort that
10 you were working on?

11 A You're talking about while in D.C. as opposed to in the Special Counsel's Office?

12 Q That's correct, while in D.C.

13 A So around the summer of 2022, it became apparent that additional prosecutors were
14 necessary to explore all of the information and investigations that had been approved by the United
15 States attorney.

16 Numberswise, I -- if we were around a handful of people at that time, I want to say
17 somewhere around 7 to 12 additional people joined. And I want to be clear, I guess. Seven to 12
18 additional prosecutors were asked to join during, rough timeframe, the summer of 2022.

19 Q And you had mentioned the U.S. Attorney's Office had approved various investigations.
20 When did the U.S. attorney -- I'm assuming Mr. Graves was the U.S. Attorney at that time. Is that
21 correct?

22 A Mr. Graves was the United States Attorney.

23 Q So when did Mr. Graves start approving investigations?

28

1 A My recollection is that the first recommendations on more specific investigations were
2 made to Mr. Graves in December of 2021.

3 Q Okay.

4 A Maybe like mid-December. And then my recollection is that Mr. Graves approved
5 certain investigative efforts ballpark Christmastime. So probably a little bit before Christmas, I would
6 think, of 2021.

7 Q Did he approve additional investigations over time, or was it just the recommendations
8 were made in December of 2021 and then he approved certain investigative efforts around
9 Christmastime? Is that the only approval that occurred?

10 A I recall at least one more investigative effort that Mr. Graves approved.

11 Q And when did that approval occur?

12 A Approximately January-February of 2022.

13 Q And when you say approved certain investigative effort, can you give us a sense of what
14 that investigative effort was?

15 A Not other than what I've already provided to you.

16 Q Was it he was going to allow you to investigate further, do witness interviews, you
17 know, send out subpoenas? Was that the type of investigative efforts he was allowing you to do?

18 A So I think that what I described before was reviewing files, reviewing existing
19 information, talking to prosecutors that had worked on other cases. What I'm thinking of in terms of
20 the additional lines of investigation that Mr. Graves approved would involve additional investigative
21 steps beyond those that were already existing.

22 So there were, broadly speaking, and I don't remember, you know, what -- you know, what
23 specific steps for which, you know, specific stream, but it likely included reviewing other
documents

29

1 specific to the investigative streams, perhaps obtaining records that were not in existing holdings
2 regarding those efforts.

3 Ultimately -- you mentioned speaking to witnesses in one way or another. I think broadly
4 what I can say is that eventually at some point in time that did occur.

5 Q And when did you start speaking with witnesses?

6 A I -- I don't know if I can give you a specific timeframe. I'm certain that by, you know,
7 January, February, March, kind of early 2022, there were at least discussions with counsel. I don't
8 have a sense for when conversations with specific individuals began.

9 Q And since you were reviewing existing investigative files once you started your detail
10 and then Christmas 2021, there were -- or excuse me, December 2021, there were recommendations
11 and then ultimately approval was around Christmastime. Was the goal of the new investigative
12 efforts to gain new information?

13 A That was certainly part of the investigative streams that were approved by Mr. Graves.
14 There were a series of steps, next steps, those sorts of things, investigative steps, and I'm sure that
15 some of those probably included obtaining new information, as I indicated.

16 Q And the recommendations from December 2021, who made those recommendations?

17 A The best I recall, I made them, in conjunction with at least one of the other prosecutors
18 that I was working with. It may have been that it was just the two of us assigned at that time.

19 Q And who did you make those recommendations to?

20 A I made them to Mr. Graves. I don't know if I emailed them to him or if I, you know,
21 provided them to Mr. Crabb. I -- my recollection is that I received notification of Mr. Graves'
22 approval through Mr. Crabb. So I guess it's likely that I first transmitted the -- the recommendations
23 to Mr. Crabb.

30

1 Q So the recommendation would have been, you said, likely maybe email, but there was
2 no formal, you didn't go present your recommendations to Mr. Graves. Is that accurate?
3 A I recall a Word document. And so I said email a minute ago. I'm just assuming that that
4 was emailed to Mr. Crabb. I don't recall a specific meeting with Mr. Graves where, you know, here is
5 a Word document, let's go over this line by line.
6 My recollection, however, is that prior to that time, I had had conversations with both
7 Mr. Crabb and Mr. Graves about different things that we were finding as we were looking through
8 the investigative files.
9 Q And at this point in time, were you still teleworking in the fall of 2021?
10 A I think that I was in -- when I went on detail to D.C. and also when I was the chief in
11 Greenbelt, I largely was in person. I recall the -- when I mentioned the teleworking before, I just
12 recall being in my office in Greenbelt on a, like, whether Zoom or some other call.
13 So my general practice at that time was to -- was to be in the office whether or not it was -- it
14 was required. But in the time period specifically that you mentioned when I started in D.C., I believe
15 that I was in the office certainly most days, you know, perhaps every day.
16 Q And were the other prosecutors working on this effort, were they also in office with you
17 or did they telework?
18 A I think there's another option here. The other individuals who I mentioned before were
19 not, to my knowledge, at that time on detail or working at the U.S. Attorney's Office for the District
20 of Columbia. So they may come in, you know, as needed, or they may come in just to work there. But
21 my recollection is that, at the beginning, the individuals that I -- certainly the first individual that I
22 mentioned was assigned to an office at Main Justice.
23 Q Okay. And Mr. Graves and Mr. Crabb, were they in the office as well or --
31
1 A I think that they were in probably every day.
2 Q Okay. When did you start working with the Washington Field Office of the FBI on your
3 investigative efforts?
4 A I -- relatively early on. The -- well, let me give you a sense of it. The investigations that I
5 described earlier that were ongoing were already existing when I arrived. Most, if not all, of those
6 were FBI investigations or at least involved investigations that FBI agents were working on.
7 So the -- a lot of the information, my understanding, may have come or, you know, whether it
8 was housed at the FBI or housed at D.C., involved the FBI in some way. So I think relatively early on
I
9 began interacting with the FBI in terms of reviewing information.
10 Q And who did you interact with mostly at the Washington Field Office?
11 A Those would be line agents.
12 Q Did you ever work with the Assistant Director in Charge, Steven D'Antuono?
13 A I think that the most I can say here, consistent with the Department's authorization, is
14 that I know who Mr. D'Antuono is. Specific interactions that I may or may not have had with the
FBI
15 or other investigating agencies, the Department has not authorized me to discuss with you.
16 Q Did you ever interact with Assistant Special Agent in Charge Tim Thibault?
17 A Similar answer. I think that the most that I can say is that I know who Mr. Thibault is,
18 but beyond that, my understanding of the authorization letter that the Department has provided is
19 that I have not been authorized to discuss any interactions, any specific interactions that I may or
20 may not have had with the FBI or other law enforcement agencies.
21 Q Beyond Mr. D'Antuono and Mr. Thibault, did you interact with any other individuals at
22 the FBI?

23 A Yes.

32

1 Q And were those individuals lower than Mr. D'Antuono and Mr. Thibault in the hierarchy?

2 A My understanding of Mr. D'Antuono's position is that he was the assistant director in
3 charge of the entire field office. Given that, my understanding is that everybody who worked in that
4 office was lower than him.

5 Q And so did you interact with anyone else at Mr. Thibault's level, which would be the
6 assistant special agent in charge, one of the assistant special agents in charge?

7 A Kind of the same answer I gave before. Generally, I interacted with people at the FBI in
8 various levels. If you want to give me specific names, I can answer similarly as I did for Mr. Thibault
9 or Mr. D'Antuono as to whether I know who they are. And then beyond that, I would be prohibited
10 from discussing specific interactions by virtue of the Department's lack of authorization.

11 Q Did you interact with individuals on ASAC Thibault's team?

12 A My understanding of the role of an assistant special agent in charge is that there are
13 many squads underneath them. If -- I'm trying to think of how I can --

14 Q Did you work with squad CR15?

15 A Yeah, I can -- I can be responsive now that I think that you're specific. I think it's -- I
16 think it's -- I think that it is a matter of record, but my counsel can correct me if I'm wrong here. I
17 think that it's a matter of record that I worked for -- excuse me. I worked with agents who were
18 assigned to a public corruption-focused squad at WFO.

19 I don't know if the specific designator or however the FBI terms it is a matter of public record
20 or otherwise would be included in the authorization, but perhaps that gets you what you're looking
21 for.

22 Q Did you work with any other squads other than CR15?

23 A I -- can you give me a point in time, just to be clear?

33

1 Q Let's start with the fall of 2021. Did you work with any other squads other than CR15?

2 A I think that I -- in the fall of 2021, I worked with -- and that's my phrasing of it -- that I
3 described before that some of the information that I was looking at in that time period was from FBI
4 investigations.

5 I believe that -- you mentioned CR15. I believe that the squads or squad that was working
6 more on the on-the-ground rioter cases or the conspiracy cases was not CR15.

7 Q What can you tell us about conversations you had regarding subpoenaing the Willard
8 Hotel?

9 Mr. Burton. A subpoena would be, by definition, a grand jury subpoena. So that conflicts
10 with Rule 6(e).

11 BY

12 Q Did you ever have discussions with Mr. D'Antuono regarding seeking information from
13 the Willard Hotel?

14 A I think that that falls into two different prohibitions. What I said before is that I'm -- I
15 know who Mr. D'Antuono is. And when you asked me that, whether I interacted with him or
16 whatever the specific question was before, I pointed you to the Department having not authorized
17 me to --

18 Q But Mr. D'Antuono --

19 A Excuse me, ma'am.

20 Q -- is a Department official, so --

21 A I am not done with my answer.

22 Q Go ahead.

34

1 A So for that reason, I would not be able to talk about specific interactions with
2 Mr. D'Antuono. Beyond that, the question that you most immediately posed seems to me, to the
3 extent that it occurred or did not occur, my understanding would fall, as my counsel indicated, within
4 Rule 6 obligations, which would further prevent me from discussing that with you.

5 Mr. Burton. In addition, your request to the Department specifically named those two
6 agents. Their guidance letter to us does not.

7 It says discussions with Department officials, correct?

8 Mr. Burton. FBI agents are not Department of Justice officials, as I understand the term.

9 That's ridiculous. FBI is a part of the Department of Justice.

10 Mr. Burton. I understand that, but I don't know that it --

11 Okay.

12 Mr. Burton. -- it is a Department of Justice official. But anyway --

13 If that's the position you're going to take, this is --

14 Mr. Burton. Could I please finish,

15 Regardless of whether this is an official or not, any interaction with him -- I'm aware of the
16 newspaper article that prompts this line of inquiry, which is supposedly about a subpoena to the
17 Willard, as you just said,

18 Any subpoena issued would be, by definition, a grand jury subpoena and, therefore, that topic
19 is off limits by the terms of Rule 6(e) and as indicated on page 2 of the June 4, 2025, letter providing
20 guidance.

21 BY

22 Q Did you ever become aware of what has been reportedly called a war room at the
23 Willard Hotel?

35

1 A I think that probably the best I can give you on this is I am aware of public reporting that
2 I think probably used that phrase. I don't know what the source of that was or what the timeframe
3 of that article.

4 If it is -- setting that information aside, if there were another source of information from
5 which I learned that, if that existed, my understanding is that that would be part of the Rule 6 grand
6 jury investigation, and I would not be able to discuss another source of that information with you.

7 Q Are you aware of reporting that in November 2021, you had conversations with

8 Mr. D'Antuono where he told you he did not -- you did not have enough evidence to subpoena the
9 Willard Hotel? Are you aware of that reporting?

10 A I'm aware of the reporting.

11 Q When did you begin working or obtaining information from the United States Postal
12 Service Inspector General?

13 A I'm sorry, can you repeat the question?

14 Q When did you begin working with the United States Postal Service Inspector General?

15 A For similar reasons that I said before, the Department of Justice authorization letter has
16 not allowed me to speak about specific investigative agencies with whom we worked.

17 I think that the FBI is different because that's a matter of public record otherwise. But
18 beyond -- with respect specifically to the Postal Inspection Service, if they were or were not part of
19 the investigation at some point, my understanding is that the Department's letter does not permit
20 me to discuss that with you.

36

1 [11:02 a.m.]

2 BY

3 Q There has been public reporting that you worked with the Postal Service Inspector
4 General. Are you aware of that reporting?

5 A I'm not sure if I recall that specific reporting. Do you have an article that you can show
6 me on that?

7 Q Yeah, we can enter the article.

8 This is the Washington Post article from June 19th, 2023, titled "FBI resisted opening probe
9 into Trump's role in Jan. 6 for more than a year." This will be exhibit No. 2.

10 [Windom Exhibit No. 2

11 was marked for identification.]

12 Mr. Windom. Is this the same one that I -- has the thing that you mentioned a minute ago?

13 BY

14 Q That is correct. The Willard.

15 A Okay. Do you mind pointing me to the --

16 Q Yeah, I'll get it. So if we count -- 1, 2, 3, 4, 5, 6, 7, 8 -- page 9, there's a big, bold thing
17 that says, "I'm not serving subpoenas on the friggin' Willard."

18 A I'm sorry. Are you pointing me to the --

19 Q Yes, to page 6.

20 A -- Willard part or the postal inspection part?

21 Q The postal inspection part comes right after that.

22 A One, 2, 3, 4, 5 --

23 Q And there's a big, bold heading that says, "I'm not serving subpoenas on the Willard."

37

1 A Got it. So the paragraph that you want to point me to?

2 Q So there is -- if you look underneath the heading, there's a paragraph -- one, two, three,
3 four, five, six -- the eighth paragraph, just to describe what we were talking about, it said, "At a
4 meeting in November 2021, Windom asked D'Antuono to assist in a grand jury investigation, which
5 would include subpoenaing the Willard hotel."

6 The next paragraph down says, "D'Antuono was skeptical. The investigative track sounded
7 eerily similar to the Cooney proposal that had been shot down in February, he later confided to
8 colleagues."

9 The next paragraph: "'I'm not serving subpoenas on the friggin' Willard,' D'Antuono told
10 Windom, according to a person familiar with their discussions. 'You don't have enough to issue
11 subpoenas.'"

12 The next paragraph says, "Windom seemed surprised at the flat rejection."

13 And then the next paragraph is where the Postal Service comes in. It says, "In the next
14 several weeks, Windom would turn to consider the fake electors and discreetly inquire if another
15 agency might help: the U.S. Postal Service inspector."

16 A And just for clarity for the court reporter, the exhibit that you have handed me is
17 differently paginated than the one that you have. So whatever page numbers were stated may be
18 different than the official exhibit.

19 Q Uh-huh.

20 A I think that what I can say to your original question is, to the extent that I was not
21 previously aware of this public reporting, I now am aware of this public reporting.

22 Q And --

23 A I -- sorry.

38

1 Q No, you go ahead, sir.

2 A On the -- I -- and now that I have this in front of me, on the prior question that you
3 asked about -- and I don't remember the specific question, but generally about Mr. D'Antuono and
4 his statement, I -- again, I can't -- within what the Department has authorized, I can't give specifics.
5 I think, to the extent that it's helpful, I can generally say that I do not recall an episode like

6 this occurring.

7 Q Uh-huh.

8 A And given the relative responsibilities of prosecutors versus agents, it is somewhat
9 surprising to me that such a thing would have occurred.

10 Q And then if you go to -- it's three pages ahead of the Willard.

11 A When you say --

12 Q Turn back three pages.

13 A -- "ahead," forward or backward?

14 Mr. Burton. It's backwards.

15 Uh-huh. I'm looking at the heading that says, "A prosecutor missteps with talks
16 of seditious conspiracy."

17 Mr. Burton. I'm sorry, I'm trying to keep up with you, but --

18 Right here.

19 Mr. Windom. It's the third one.

20 Mr. Burton. I've got it.

21 Yep.

22 Mr. Windom. It's the third one back.

23 Yep. And I want the paragraph directly above that heading.

39

1 Mr. Windom. Okay. I got it.

2 BY

3 Q That paragraph says, "Officials at the National Archives had discovered similarities in
4 fraudulent slates of electors for Trump that his Republican allies had submitted to Congress and the
5 Archives. The National Archives inspector general's office asked the Justice Department's election
6 crimes branch to consider investigating the seemingly coordinated effort in swing states. Citing its
7 prosecutors' discretion, the department told the Archives it would not pursue the topic, according to
8 two people with knowledge of the decision."

9 Were you aware of this reporting prior to today?

10 A I think that the best that I can do is say that, since I was aware of the initial episode that
11 you referenced from this article, it's likely that I read this article or at least skimmed it at some point.
12 Assuming that is correct, I would have been aware of this paragraph, I assume.

13 Did the reporter call you for comment?

14 Mr. Windom. Carol Leonnig and Aaron Davis, June 20th of 2023. I don't have any recollection
15 of speaking to those people about this article or knowing of its existence prior to.

16 So they didn't call you for comment?

17 Mr. Windom. Not that I'm aware of.

18 BY

19 Q Did you work with the Archives Inspector General?

20 A I think that I -- that is a matter of public record. And so, regardless of the Department's
21 authorization, which doesn't specifically mention the Archives, I believe that there have been filings
22 in the case regarding discovery where the Archives was referenced as having been one of the
23 agencies with whom we worked.

40

1 Q And when did you begin working with the Archives?

2 A I -- on that one, I'm not sure I can give specifics within the authorization. I think that the
3 best I can do is say that it was while I was on the detail to the U.S. Attorney's Office to the District of
4 Columbia.

5 Q Uh-huh.

6 A So prior to the time in the Special Counsel's Office.

7 Q Okay. So you worked with the Archives prior to your role on Special Counsel Jack
8 Smith's team, which would have started in November 2022. Is that correct?

9 A The answer to the first part of your question is yes.

10 The second part of your question as to when I started with Mr. Smith, I don't actually know if
11 that was the end of November or the beginning of December, but that time period, at least, of 2022.
12 BY

13 Q Did you have any communication with Washington Post reporters during your time
14 in -- the times we're discussing now?

15 A During this time period, no. But --

16 Q At the Special Counsel's Office, did you talk to Washington Post reporters?

17 A No.

18 Q Okay. Have you ever talked to any Washington Post reporter?

19 A Yes.

20 Q Okay. But not related to any of these investigations?

21 A I'm not sure if it's helpful, but, within the last month or two, a Washington Post reporter
22 showed up at my house, and I sent them on their way.

23 Q Okay. Did you have any emails from Washington Post reporters about --
41

1 A I -- and maybe it's helpful to give you, kind of, the larger picture. As a rule, I didn't speak
2 to reporters about cases, not just in the Special Counsel's Office or in D.C. but historically. Each
office

3 along the way has had a press person.

4 Q Uh-huh.

5 A To the extent that questions were asked of me as an unsolicited incoming, at least in
6 Maryland, I would pass that along to the press person. In the Special Counsel's Office, that's my best
7 recollection.

8 There are -- and I can't quantify it -- any number of times that I have received text messages,
9 emails, social media, you know, friend requests or whatever the different platform is --
10 Q Uh-huh.

11 A -- asking me either questions or to comment, and I universally have not engaged, not
12 responded. That's at least my recollection today.

13 Q Okay.

14 We'll go off the record. We're at the end of our first hour.

15 [Recess.]

16 We'll go back on the record.

17 And I apologize, I didn't get a chance to introduce myself at the beginning of the first round.

18 My name is and I am with Mr. Raskin's staff on the House Judiciary Committee.

19 Thank you very much for coming in, Mr. Windom.

20 And before I turn things over to my colleague I just have a couple housekeeping
21 matters I want to put on the record.

22 First, at the beginning of the last hour, there was an exchange about the videotaped
23 interviews. And I just want to put on the record, we have received recordings of two transcribed
42

1 interviews. We have not received the others. And I take my colleague's assurances to heart that
2 those will be provided when they are ready.

3 You received all the videos that are completed. The videographers have to go

4 through their process to cut out the periods that were off the record, and they do other things, which
5 I'm not entirely sure what it is, but it takes them some time.

6 Understood. And thank you for those assurances.

7 I also wanted to address some of the frustration that came to light in my colleague's
8 questions in the last round about the narrow scope of the Department of Justice's authorization
9 letter, which hems in the testimony that Mr. Windom is authorized to provide to the committee
10 today.

11 And I want to tell my colleagues that we share this frustration and would welcome the
12 opportunity to work with them to insist upon the Department of Justice to live up to this
13 administration's claim that it is the most transparent in history.

14 In particular, we have found that the Department of Justice has shown a particular
15 unwillingness to share information that touches upon evidence of criminal wrongdoing by the
16 President.

17 And this is particularly troublesome in the Department of Justice's -- the current Department
18 of Justice's continued refusal to release Volume 2 of Special Counsel Smith's report, which we
19 understand lays out evidence of how Donald Trump, while a private citizen, retained hundreds of
20 classified documents at his Mar-a-Lago clubhouse and then deliberately defied grand jury
subpoenas,

21 obstructed law enforcement, hid evidence, and lied about his continuing retention of these records.

22 The Department's refusal to release Volume 2 of Special Counsel Smith's report, in sharp
23 departure from the Department of Justice's historical practice, including during the last
43

1 administration, of publicly releasing these special counsel reports, prepared at taxpayer expense, is
2 troubling, particularly as it appears to be part of a pattern by this administration of using the
3 Department of Justice to cover up evidence of criminal wrongdoing by President Trump.

4 And so I would -- I share my colleagues' frustration and would like to express once again that
5 we are standing by, willing to work with them to conduct oversight of the Department of Justice and
6 press this Department of Justice to live up to its claims and this administration's claims of
7 transparency.

8 I'm going to hand it to you.

9 Thank you.

10 Mr. Windom, thank you again for joining us today.

11 At the top of our hour, I want to go ahead and introduce a couple documents. We're not
12 going to turn to them right away, but I'd like you to have them in front of you.

13 The first one, which I believe is exhibit 3, we'd like to introduce Volume 1 of Special Counsel
14 Smith's report.

15 [Windom Exhibit No. 3

16 was marked for identification.]

17 And because of the length of the report, we only have limited copies. If anybody
18 wants an additional copy, we can certainly get one for them.

19 Mr. Windom. Thank you.

20 And then as exhibit 4 we'd like to introduce the superseding indictment in United
21 States of America v. Donald J. Trump. That's case No. 1:23-cr-257-TSC in United States District
Court

22 for the District of Columbia.

23 [Windom Exhibit No. 4

44

1 was marked for identification.]

2 Mr. Windom. Thank you.

3 EXAMINATION

4 BY

5 Q Mr. Windom, a couple of followup questions from the prior hour.

6 Regarding the Willard Hotel subpoena question, not talking to that particular subpoenas,
7 whether they were served or not served, in general, what's the process for obtaining a subpoena?
8 A The process for obtaining a subpoena -- and I think that it's fair to say that this was not
9 just my time in the Special Counsel's Office but in my 12 years in the Department.
10 A determination is made, at a minimum by the prosecutor, at times in consultation with
11 agents, as to investigative steps that should be undertaken in whatever the investigation is. One of
12 those potential investigative steps is to serve a grand jury subpoena.
13 Prosecutors have the ability to issue those on their own without first going and requesting
14 that from the grand jury. There is a template. And, typically, that can be served any number of ways.
15 That can be served by the prosecutor, by staff in the prosecutor's office, by fax machine, by email,
16 hand delivery. Agents also can serve subpoenas. They can be delivered by mail. There are any
17 number of options to actually serve the subpoena.
18 In terms of obtaining the subpoena, it largely is determining that that is an investigative step
19 that may provide useful information and then, process-wise, getting that to the subpoena recipient.
20 Q And with respect to the process, what I understand you to have just said is that it is not
21 necessarily necessary to even involve an agent to serve a subpoena; that can be done directly by a
22 prosecutor. Is that correct?
23 A That's my understanding.
45
1 Q Or by a prosecutor's staff?
2 A By staff. Or by fax machine.
3 Q Thank you.
4 I want to take a couple steps back. You said in the earlier hour that you started at DOJ in
5 2014. Is that correct?
6 A I think it as February 11th of 2013 --
7 Q 2013.
8 A -- was my first day.
9 Q What was your educational background?
10 A I went to college at Harvard. Graduated in 2000. I went to law school at the University
11 of Virginia School of Law. Graduated in 2005.
12 Q Did you do clerkships after you graduated from law school?
13 A I did.
14 Q Who did you clerk for?
15 A I clerked for a judge on the Fifth Circuit.
16 Q Are you able to provide the name of the judge?
17 A Sure. Edith Brown Clement.
18 Q Who appointed Judge Clement?
19 A I think she was appointed twice. She was first on the district court, appointed by, I
20 believe, President George Bush, the first President Bush. And then my recollection is that she was in
21 the first class of appellate court nominees by George W. Bush. So two different Presidents.
22 Q Okay. And both George Bush and George W. Bush were both Republican Presidents. Is
23 that correct?
46
1 A That's my understanding.
2 Q What work did you do prior to joining the Department of Justice?
3 A Prior to -- so, after my clerkship, which ended around August or Labor Day of 2006,
4 shortly thereafter I started at a law firm in Washington, D.C.
5 Q Are you able to provide the name of that law firm?
6 A Sure. It's Williams & Connolly.

7 Q And were you an associate at Williams & Connolly?

8 A I was.

9 Q How long were you at Williams & Connolly?

10 A I was there for just over 6 years.

11 Q And so was your next step to go to DOJ, or were there any intervening --

12 A It was. I think I ended my time at Williams & Connolly in January of 2013 and began at
13 the Department in February of 2013.

14 Q And you indicated that you joined the U.S. Attorney's Office in Maryland, correct?

15 A Correct.

16 Q And until you were detailed to the District of Columbia, your entire career at DOJ was at
17 the district of Maryland, correct?

18 A Yes.

19 Q What type of work did you do there?

20 A The Southern Division in Maryland is housed in Greenbelt. That's where the office is. It
21 covers, geographically, five counties that are sort of most contiguous or adjacent to D.C.,
22 Montgomery County being the largest at, you know, a million or so folks, Prince George's County,
you

23 know, being the second-largest at about a million or so folks, and then three other counties.

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1 The Southern Division did not have sections. It was a generalist office. And I'm contrasting it
2 to the Baltimore office, for example; the Northern Division had different sections. So I could, as a
line

3 prosecutor in Greenbelt, do any type of case, really, maybe with some exceptions, but that was my
4 understanding. And I basically did all kinds of cases in my time there.

5 Q If you had to put a number on it, can you estimate the number of cases that you worked
6 on? Just cases, not trials.

7 A Yeah, let me cabin that to just the ones that I specifically worked on myself. Because, as
8 the supervisor in the office, there would be hundreds and hundreds of other ones of which I was
9 aware and made supervisory decisions on but did not, you know, file papers in or conduct
10 investigative steps myself.

11 I would say, at a minimum, hundreds that I specifically worked on myself. I recall
12 probably close to 100 different dispositions and over 100 sentencing proceedings.

13 Q And can you estimate the number of trials that you worked on?

14 A Twelve. Twelve that I prosecuted to verdict.

15 Q Did you win any awards during your time with the Maryland office?

16 A I did.

17 Q Can you describe those awards for us?

18 A Let's see. Without getting the titles of them correct, I know that I was given awards for
19 prosecution of violent crime, prosecutions of fraud, prosecutions that involved significant issues.

20 I was, I guess, out -- it was while I was there, but they weren't office awards -- I was given an
21 award of National Security Prosecutor of the Year by the Baltimore Field Office of the FBI, and one
22 year I received an award from the FBI Director.

23 Q Okay.

48

1 Moving on, Chairman Jordan wrote to you on April 7th, 2025. Are you familiar with that
2 letter?

3 A I'm generally familiar with it.

4 Q We can introduce it if you'd like to see it.

5 A If there's a specific question you have, that might be helpful.

6 Q And this will be exhibit 5.

7 A Thank you.

8 [Windom Exhibit No. 5

9 was marked for identification.]

10 BY

11 Q And I'm going to ask you about a line in the second paragraph on the first page, but take

12 as long as you want to --

13 A I'm fine, if you just want to point me to where.

14 Q The second paragraph on that first page, the second full sentence reads, "Specifically,

15 Special Counsel Smith and his team, including you, orchestrated partisan and politically motivated

16 prosecutions of President Donald J. Trump and his co-defendants."

17 Do you see where it says that?

18 A I do.

19 Q What's your response to that allegation?

20 A I don't agree with it.

21 Q Can you explain why?

49

1 A I am unaware of any foundation for that statement to have been made. At all times in

2 the office, my intention and my goal and what I actually did was to follow the facts and to follow the

3 law wherever they may lead.

4 I guess I'm somewhat surprised to see this here because, during the course of the litigation in

5 the District of Columbia, the defendant and his counsel made this same claim or something similar on

6 a number of occasions. They had the opportunity to litigate that fully in the district court. They did

7 so. And after that litigation, the district court found no evidence of selective or vindictive

8 prosecution, which is what this would refer to.

9 Q Thank you.

10 Is it fair to say that you agree with what Special Counsel Smith said in his report, that this was

11 a righteous prosecution predicated on sufficient facts and evidence to justify bringing the charges

12 that were brought?

13 A I generally agree with Mr. Smith's report. I agree that, certainly, there were sufficient

14 facts to prove the defendant's guilt beyond a reasonable doubt had we proceeded to trial.

15 Q And I want to turn to those charges now. And, as I do that, we'll be referring to both the

16 superseding indictment and then the description of the charges that is in the Smith report beginning

17 at page 33.

18 Mr. Windom, Count One of the indictment charges President Trump -- or charged President

19 Trump with violating 18 U.S.C., section 371, which is the conspiracy to defraud the United States,

20 correct?

21 A Yes.

50

1 Q And ordinary people who are not lawyers are probably familiar with crimes like theft

2 and murder, and conspiracy to defraud the United States is something that is not necessarily part of

3 common parlance.

4 I'm wondering if you can tell us in layman's terms what this charge alleges.

5 A Sure. So I think the best thing to do would be to refer to the special counsel's report for

6 completeness on this issue. The section on Count One begins on page 34.

7 Big picture, you know, there's a number of different elements that a prosecutor would have

8 to prove, that a grand jury would have to find, and did find.

9 But, here, that would be the defendant conspired with other individuals -- and there are

10 unidentified numbered co-conspirators, I believe, in this superseding indictment -- to defraud the

11 United States. In this case, according to the evidence and according to the special counsel report,
12 that was through a series of steps that included deceitful or dishonest means.

13 Q And the term "defraud," in the charge "defraud the United States," "defraud" doesn't
14 just mean cheating the government out of money or property, correct?

15 A That is my understanding.

16 Q What does "defraud" mean in this context?

17 A So, here, it also refers to schemes to interfere with or obstruct a lawful government
18 function.

19 The lawful government function that served as one of the bases for Count One is described
20 more fully in the special counsel report. Kind of, at core, that function -- and then this kind of bleeds
21 over into Counts Two and Three regarding the obstruction -- involved the process of selecting and
22 certifying the President of the United States.

51

1 Q And that was the process of selecting and certifying the President of the United States
2 on January 6, 2021, correct?

3 A I believe that the time period of the conspiracy predated that. I believe it may have
4 started around November 13th. But the certification that I think serves as the culmination of those
5 processes occurred in 2021 on January 6th.

6 Q Thank you.

7 The special counsel's report details the four elements of this crime, and I want to walk
8 through those one by one.

9 The first element is that the defendant entered into an agreement to commit the act at issue.

10 What does that mean in this context? What was the agreement?

11 A The agreement was an agreement with others to defraud the United States, to obstruct
12 a lawful government function, which, here, as I said before, was the process of selecting and
13 certifying the President of the United States.

14 Q And the statute or the, I guess, case law on the statute requires prosecutors to show
15 that the defendant -- in this case, Mr. Trump -- acted by deceitful or dishonest means, correct?

16 A That's my understanding.

17 Q Did prosecutors find that Mr. Trump acted by deceitful or dishonest means?

18 A We did.

19 Q And can you explain what those means were or how you understood that they were
20 dishonest?

21 A Sure. I think that the special counsel report -- and I don't want to read it word for word,
22 so I will summarize -- goes into fairly explicit detail on this. And I'll kind of go through the
23 paragraphs, I guess.

52

1 Other than that, there are -- my understanding is, this was intended as a kind of summary of
2 the major categories of information that we developed as part of the investigation, or that the
3 Special Counsel's Office developed, and so other documents, other filings, things like that, may
4 include still other pieces of information.

5 According to the special counsel report, the core of the defendant's obstructive scheme was a
6 false narrative of outcome-determinative voter fraud. That was kind of -- the deceit was kind of a
7 through-line for all of the conduct.

8 These were statements and conduct that was not just false but also, importantly, I think, that
9 the defendant knew was false. He knew that the information was false, according to the evidence
10 that was gathered and according to the special counsel's report, for any number of reasons.

11 The first one that's outlined here is that the false claims that the defendant was making were
12 repeatedly debunked to him by a variety of people -- Federal officials, State officials, courts, judges,

13 people who would have actually been knowledgeable of the facts on the ground, in the best position
14 to ascertain the truth.

15 Campaign personnel that Mr. Trump hired, whose sole role as being campaign personnel was
16 to get Mr. Trump elected, in some instances told him that the false claims he was making were, in
17 fact, false. There are some specific examples of this in the report that I can refer you to.
18 I mentioned courts before. There were a number of lawsuits that put Mr. Trump on notice
19 that his claims were false. There were -- this is something that is noted in the special counsel report.
20 Sometimes in cases, it's not just the actions that a defendant takes but actions the defendant doesn't
21 take. Here, the evidence that the special counsel developed showed that the defendant avoided
22 consulting some informed sources, such as State election officials, in the very States that the
23 defendant was saying fraud occurred.

53

1 Another piece of information that was developed in the special counsel's report is that, on a
2 number of occasions, the false claims that the defendant and his conspirators made changed,
3 oftentimes from day to day. There are some examples, I think at least two, in the report.
4 But, for example, in Arizona, one day, the allegation was that 36,000 non-citizens voted in the
5 State. Five days later, it was, quote, "beyond credulity" that a few hundred thousand didn't vote.
6 Three weeks after that, "The bare minimum was 40- or 50,000. The reality is about 250,000." These
7 are quotes. Days after that, the assertion was 32,000. And, ultimately, the conspirators landed back
8 where they started, at 36,000.

9 What this showed, according to the special counsel report, was not just an objective falsity
10 but what, based on this evidence, appears to be making numbers up from whole cloth, such that they
11 were unfounded to begin with.

12 Q In addition to the evidence you just described, Mr. Trump also said even before the
13 election took place that he planned to pursue false claims -- or fraud claims. Excuse me. Is that
14 correct?

15 A There is evidence that was developed by the special counsel and outlined in the special
16 counsel report that the defendant had made claims prior to the election that he would, you know,
17 declare fraud of some kind. And the ones that I'm thinking of right now are outlined at pages 38 and
18 39.

19 Q And why is the fact that Mr. Trump said even before the election took place that he
20 planned to pursue fraud claims, why was that an element that helped to show that he had
21 knowledge that what he was doing was deceitful?

54

1 A In general, it's helpful to show intent if a defendant makes a claim about something he
2 is going to do and why he is going to do it before it is done. And the evidence here that was
3 developed and outlined in the special counsel report, in my view, does just that.

4 Q And the special counsel report also details statements that Mr. Trump made, such as, "It
5 doesn't matter if you won or lost the election, you still have to fight like hell." When President-elect
6 Biden appeared on television in November, Mr. Trump said to a staffer, "Can you believe I lost to this
7 F'ing guy?" And then he called Vice President Pence "too honest" for declining to join the conspiracy.
8 Can you explain the importance of those particular statements in showing that Mr. Trump
9 was acting in a deceitful manner?

10 A Without really going beyond what is written in the special counsel report, the
11 defendant's intent in spreading the knowing falsehoods is evidenced by exactly these statements.
12 When, you know, the Vice President of the United States, whom the defendant had chosen as
13 his running mate, declined to join the conspiracy, the defendant said that the Vice President was "too
14 honest." That was a piece of evidence that the special counsel thought important enough to put in
15 his report.

16 BY

17 Q So, just to put it in layman's terms, kind of having listened to your testimony, it seems
18 that, in essence, Count One, the evidence in there is about showing that the President entered into
19 an agreement with others to overturn the results of the 2020 Presidential elections by illegal means.

20 A That is a --

21 Q In sum and substance.

22 A That is kind of a shorthand way to say it, I guess. I would want to be precise if you're
23 talking about a specific count. And the special counsel report kind of lays out the elements that, as
55

1 prosecutors, we would have to prove to a petit jury beyond a reasonable doubt and the evidence, at
2 least the major categories of evidence, that the special counsel believed met that burden.

3 Q And in furtherance of that conspiracy of that agreement, President Trump repeatedly
4 said that the elections were stolen, but your evidence showed that that was a lie and that he knew
5 that that was a lie.

6 Is that, in sum and substance, the evidence you were describing earlier?

7 A I think that, generally speaking, that that is correct. I think that, as with any trial, you
8 have to have the hard evidence to back up the overall statement. And my understanding is that the
9 special counsel's report details the major categories that substantiate the view that the defendant
10 undertook deceitful or dishonest means, at least according to the language of the elements of Count
11 One, and made false statements that he knew were false.

12 Q And, just to be clear, the lying is an action that President Trump himself undertook in
13 order to advance this conspiracy. But the other participants in the conspiracy, themselves, took on
14 other steps in order to advance this conspiracy. Is that right?

15 A There was evidence that's detailed in the special counsel report that false claims were
16 made not just by the defendant but also by co-conspirators. There was other evidence that, beyond
17 words, actual conduct was taken by the defendant and by the conspirators.

18 Q Are there any other examples of some of the acts taken by other conspirators that you
19 can describe for us?

20 A There are. I think that Co-Conspirator 1 is identified here as somebody who made some
21 of the false claims with respect to numbers of non-citizens voting in Arizona.

22 I think that the first 30 or so pages of the special counsel report -- well, my understanding of
23 the structure here is, the first 30 or so pages are the facts, or a core of the facts, the major categories
56

1 of facts, that were developed during the investigation and that those are referenced sometimes in
2 shorthand or in shorter versions when discussing the counts.

3 BY

4 Q Moving on to Counts Two and Three, which is obstruction and conspiracy to
5 obstruct -- and this is page 45 of Volume 1 of the report.

6 Generally speaking, what does the obstruction statute prohibit, not in respect to this case but
7 speaking broadly? In layman's terms, what does obstruction say -- or the statute say?

8 A Sure. Title 18, United States Code, section 1512 has any number of subparts. There are
9 other statutes that cover obstruction as well.

10 The one that was charged in Count Two and relatedly in Count Three involved, for Count Two,
11 conspiracy to obstruct an official proceeding and, for Count Three, it's the substantive act of
12 obstruction as opposed to just a conspiracy to obstruct.

13 Q And "official proceeding" in this case was the proceeding before Congress, correct?

14 A Yes. The official proceeding here was the certification of -- well, there's a definitional
15 statute which identifies an official proceeding as, quote, "a proceeding before the Congress."

16 Q And in this case that was the January 6 certification, correct?

17 A That is correct.

18 Q There are four elements of the crime of obstruction, correct?

19 A For the substantive obstruction?

20 Q Uh-huh.

21 A Let me move over to that page of the report.

22 For the conspiracy, it's just two elements, but for substantive obstruction, it is four.

57

1 Q The first element is that the defendant -- in this case, President Trump -- obstructed, influenced, or impeded an official proceeding or attempted to do so, correct?

3 A Yes.

4 Q And as we just said, here, that official proceeding was the certification of the vote on January 6, 2021.

6 A Right. That was a proceeding before the Congress.

7 Q Okay.

8 And the second element is that, in the course of doing so -- in other words, in the course of obstructing, committing the obstructive act -- the defendant committed or attempted to commit an act that impaired the integrity or rendered unavailable records, documents, objects, or other things for use in the official proceeding, correct?

12 A Correct.

13 Q And what were the specific bad acts here?

14 A A lot of the evidence of deceit and willfulness for Count One are -- they translate to showing deceit and willfulness and intent for each of the counts. And so the kind of core of those facts are outlined in what we talked about before and then otherwise are expanded on in the first 30 or so pages of the report.

18 Q So it's things like Donald Trump falsely claiming that vote counts in Arizona were off when he knew that was false, correct?

20 A That is an example of it. I think that, here, specific to the obstruction counts for Counts Two and Three, there's more of a discussion about the creation of false documents, which in this case

22 would be the fraudulent elector certificates that the conspirators arranged to transit to the United States Congress.

58

1 Q Can you describe the fraudulent elector scheme briefly for the record?

2 A Generally speaking, sure. And if I misstate anything, it's all laid out in detail in the report.

4 In seven States that the defendant lost -- in which the defendant lost the popular vote, there was an effort for people who would have been electors for him had he won -- to get those people together or, should they be unwilling, to replace those people with other people who would serve as fraudulent electors, to sign pieces of paper that stated that they were -- and I'm not going to get the wording right, but -- essentially the, you know, duly-qualified electors for that State.

9 In two of the seven States, there was some qualifying language. And, again, the specifics are in the report, I think. But, basically, two of those seven States, the people who agreed to sign those pieces of paper said something to the effect of, "We are the duly-authorized electors if a court later finds that we are." In five of the States, my recollection is there was no such qualifying language.

13 That scheme to put together those fraudulent certificates, fraudulent pieces of paper, was arranged by a number of conspirators, with the knowledge of the defendant, as is outlined in the special counsel report.

16 And then those individuals attempted to mimic as closely as they could the actual procedures that, had they been legitimate electors, they would have had to comply with -- things like mailing

the

18 pieces of paper by -- I forget if it's certified mail or registered mail -- showing up and signing the
19 pieces of paper at a specific location in a particular State, things like that.

20 And then those certificates, at least some of them, made their way to Congress, with the
21 intent that they be used contrary to or to supplant the legitimate elector certificate from those
22 States.

59

1 Q And did the special counsel make findings or uncover evidence to suggest how the
2 defendant and the co-conspirators intended to have those certificates accepted at Congress?

3 A I don't know that I would use the word "findings." My understanding of the report is
4 that it's intended to set forth what occurred during the pendency of the office and the results of -- or
5 at least the major categories of the results of the investigation.

6 Setting that, kind of, characterization aside, the report has a large number of details about
7 how the mechanics of the fraudulent elector scheme worked in practice.

8 Q And, sitting here today, can you summarize that for the record, what the evidence
9 showed?

10 A Sure. Beyond what I said before, and just looking at, you know, pages 11 through 16 of
11 the special counsel report, it kind of -- it basically tracks what I said before. There are some
12 additional components about how the co-conspirators, when they were trying to get fraudulent
13 electors to agree to sign these pieces of paper, how the co-conspirators lied, in some instances, to
14 the people who would sign the certificates and said that the certificates would only be used in the
15 event that ongoing litigation was resolved in the defendant's favor. There was a deception aspect to
16 it, kind of internal deception. The conspirators, again, deceived some of the fraudulent electors.
17 I think that there was also evidence of phone calls and of other communications that are
18 outlined in the special counsel report. To the extent it's not obvious, the footnotes -- and, just for
19 clarity, because I, you know, am being consistent here with what we are permitted to
20 discuss -- regardless of the Department's authorization letter, there are matters of public record.
21 When the first folks that were sitting in that chair asked me questions that were a matter of public
22 record, I was able to answer those things. For your questions, I'm doing the same thing.

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1 These footnotes identify -- well, the whole report of Volume 1 is a matter of public record.

2 But the footnotes identify in large part ECF numbers, which are electronic case filing docket entries,
3 that are publicly available. And then the ones that start with "SCO," S-C-O, dash, and then a number,
4 those are Bates numbers to show the source of an existing document that may or may not otherwise
5 be on the public record.

6 Q Thank you for that.

7 With respect to the fraudulent elector scheme, the report details efforts to work with the
8 Republican National Committee, doesn't it?

9 A There are some instances that are discussed of that in the report.

10 Q Can you describe those efforts?

11 A Yes. Let me find the page here.

12 Mr. Burton. I just want him to stick to the report.

13 Understood.

14 BY

15 Q And this is, I think, page 12, and it goes on after that.

16 A That's right.

17 The special counsel's investigation uncovered evidence of a phone call between the
18 defendant and Co-Conspirator 2 on one hand and the chairwoman of the Republican National
19 Committee on the other end of the phone.

20 And, during that call, the chairwoman was told that it was important for the RNC to help
21 organize the defendant's elector nominees in the seven States that I mentioned before, or the fact of
22 those seven States.

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1 The Co-Conspirator 2 told a lie to the chairwoman of the Republican Party intended,
2 according to the evidence, to induce that person's cooperation -- excuse me -- to induce the
3 cooperation of the fraudulent electors, that those electors' votes would be used only if ongoing
4 litigation in that particular State proved successful for Mr. Trump.

5 And then, from that point, Mr. Trump communicated with some of the other co-conspirators
6 about the plan. And those conspirators, in turn, worked with the more logistically focused
7 conspirators.

8 Q Right. So, in other words, Mr. Trump and his co-conspirators attempted to enlist the
9 official Republican -- the arm of the Republican National Committee that deals with campaign work,
10 right? They tried to get them to use their power, their work with the States, to develop these false
11 electors?

12 A So I'm not sure if I can go so far as to agree with what you just described. I think that
13 the most I can say is that evidence showed that the defendant and the conspirators attempted to
14 have the chairwoman of the Republican National Committee assist in organizing the fraudulent
15 elector nominees.

16 BY

17 Q Just to make sure that this is clear for the record, on election day -- for example, let's
18 take the example of the State of Pennsylvania -- the voters of the State of Pennsylvania go and cast
19 their ballots, those ballots are counted, and one of the Presidential candidates wins that State, right?
20 And so, in 2020, the 2020 election, President Biden won the State of Pennsylvania.

21 After that election, 20 electors gather in a room to officially cast the vote for Pennsylvania's
22 20 electoral votes.

23 Is that -- that's how the process works?

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1 A Without agreeing with each of the specifics of what you said about perhaps the number
2 and, you know, whatever the process was at that time, as a general matter, the candidate that wins
3 the popular vote in Pennsylvania is entitled to, in my understanding, the votes of the electors in total
4 from that State. And there's a process that is outlined by the Constitution and Federal statute as to
5 how they vote and how those votes are ultimately counted.

6 Q And so the ballots of those 20 electors are then sent to Congress, which is what is
7 counted on January 6th by Congress to officially ascertain the results of the election. Do I have that
8 correct?

9 A My understanding of the process is that, yes, the legitimate electors sign whatever
10 certificates that are, I understand, sealed and they bear the seal or signature of the executive of the
11 States and that those are mailed to Congress to be counted at the certification proceeding.

12 Q So am I correct in understanding, as part of this conspiracy, it assembled people who are
13 not the duly-empowered electors of a number of States to fill out a form that fraudulently
14 represented that Donald Trump had won the electoral votes for that State and attempted to send
15 that document to the Congress of the United States?

16 A That, in summary, is what the special counsel's report says. I think that, beyond that, at
17 least in a number of those States, they did in fact send -- if not in all of those States -- they did in
fact

18 send, as opposed to just attempting to send, the fraudulent documents to the United States
19 Congress.

20 Q So, in sum and substance, the conspiracy created false ballots, electoral voter

21 certification ballots, to send to the Congress of the United States for the January 6th certification?
22 A The evidence shows that the conspiracy involved the creation of false documents.

23 BY

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1 Q We will move on to the "Conspiracy Against Rights" statute. And this is discussed
2 beginning on page 49 of the Smith report.

3 The fourth count of the indictment charged Mr. Trump with violating the "Conspiracy Against
4 Rights" statute. And I don't know that this is a statute that's commonly understood by every
5 American. Can you explain briefly what the statute says?

6 A Sure.

7 The charge here essentially was that the defendant entered a conspiracy to injure, oppress,
8 threaten, or intimidate one or more persons in the exercise of or enjoyment of a right or privilege
9 secured by the Constitution.

10 Here, the right that was guaranteed by the Constitution was the right to vote and the right to
11 have one's vote counted. So, in sum and substance, it was a conspiracy to injure that fundamental
12 right to vote.

13 Q And the individuals injured by this alleged crime would've been the voters in the States
14 where President Trump was trying to overturn the vote, correct? Or trying to overturn the vote
15 count, I should say.

16 A I want to be specific on what the special counsel report says. I think that there were a
17 number of potential victims of the crime, whether that's, you know, how that's viewed as the people
18 in the five States where there was no qualifying language, the people in the seven States where there
19 was qualifying language -- the additional two States where there was qualifying language, or all of
the

20 voters in the United States who otherwise voted for a candidate other than the defendant.

21 Q So, essentially, the victim would be all the voters who voted for President Biden?

22 A Perhaps in layman's parlance. I don't know -- and just to be very clear, there are
23 statutory definitions of victims that may or may not come into play. But that is what is alleged as
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1 part of the conspiracy against rights, is that, here, the defendant and the conspirators acted in
2 concert together to injure the right of at least one individual to vote and to have one's vote counted.

3 Q Mr. Windom, there have been -- some have said that Mr. Trump's actions were speech
4 protected by the First Amendment. In fact, the superseding indictment -- I think it is paragraph 3 of
5 the indictment -- recognizes that Trump, quote, "had a right, like every American, to speak publicly
6 about the election," meaning the 2020 election, "and even to claim falsely that there had been
7 outcome-determinative fraud during the election and that he won."

8 But your office claimed and a court ultimately found that Mr. Trump's actions were not
9 protected by the First Amendment, correct?

10 A There is a paragraph in the superseding indictment which is at least similar to what you
11 just described, and I think that it is uncontested that the First Amendment permits certain forms of
12 speech.

13 And there is case law and there is litigation here that the First Amendment is not absolute; it
14 has some limits. And at least one of the limits that the courts have held for a substantial period of
15 time is that the First Amendment does not protect speech that is rendered during the course of
16 criminal conduct that is deceitful, that is fraudulent, and things of that nature.

17 This is my shorthand. This is more specifically discussed in the report and in other litigation
18 filings.

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1 [12:14 p.m.]

2

3 BY

4 Q So, in other words, the fact that Mr. Trump had -- and we all have -- the First
5 Amendment right to say whatever we want about any given election, in this particular case, Mr.
6 Trump's actions were not protected by the First Amendment because he took it one step further,
7 correct?

8 A In this case, the evidence that we intended to use at trial was permissible to use, was
9 otherwise not forbidden for use by the First Amendment, and the principal reason for that is that, as
10 outlined in the report, it showed deceit and fraud.

11 Q Thank you.

12 We can go off the record. Thank you.

13 [Recess.]

14 We'll go back on the record. The time is now 12:23. We'll start our next hour of
15 questioning.

16 Mr. Windom, during the first hour with us, you refused to provide names of DOJ
17 officials. You're relying on your DOJ authorization letter. However, I would point out that the DOJ
18 authorization letter authorizes you to provide unrestricted testimony to the committees irrespective
19 of potential privilege, and this accommodation is unique to the facts and circumstances of this
20 particular matter.

21 So the parts of the letter that you're referencing that relate to, you know, Department policy
22 about not identifying line attorneys is -- is defeated by the fact that it said, "Nevertheless, the
23 extraordinary events underlying this matter constitute exceptional circumstances, warranting an
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1 accommodation of Congress in this particular case. Given these extraordinary circumstances, the
2 Department authorizes you to provide unrestricted testimony to the committee."

3 So I'll just -- I'll just identify this before --

4 Mr. Burton. And, notably, the part you omitted in your reading was "as limited in
5 paragraphs 1 through 5 above."

6 Your ask to the Department of Justice -- and I have great respect for the staff of this
7 committee -- did not request listing personnel. Our reading in the context where Mr. Windom is in
8 adverse litigation with this Department, in the context of this Department, limiting -- and being quite
9 specific, and recognizing other limitations -- I assume they know how to write a letter as well.
10 We're going to interpret "DOJ officials" in the most appropriate narrow fashion, as stated in
11 this letter.

12 Your -- request originally to the Depar- -- to the Department, for example, listed
13 certain FBI agents. Those people are not listed in this letter.

14 So I appreciate your pointing out that language. There, it says "as limited." So we're going to
15 interpret that as appropriate. We do not believe ordinary line assistants qualify as DOJ officials.
16 That's just preposterous, but will proceed with the questions.

17 BY

18 Q During your investigation, did you ever become aware that the Inspector General at the
19 Justice Department was conducting a related investigation into Acting Assistant Attorney General
20 Jeffrey Clark?

21 A And just to set the timeframe, can you -- let me know if you want me to describe things
22 before -- when I was in D.C. or when I was in the special counsel's office or just generally?

23 Q Let's start with when you were in D.C.

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1 A Okay. The -- I think that what I can say to that is, is yes, I was aware that there was
2 a -- and you mentioned -- you mentioned OIG. I was aware that there was like a Senate or House

3 committee that did some interviews or depositions or something like that, related to -- to Mr. Clark.
4 The Office of the Inspector General, I think to the extent that I was aware of that, if it existed, I'm not
5 sure, and I'm happy to take counsel here, if that's included in the Department's authorization.

6 Q Did the Inspector General's investigation ever merge with the larger investigation that
7 you were conducting at D.C. or within the special counsel's office?

8 A Without going into the specifics of what investigation was what or what was looking at
9 what, I think it's public information that the Office of the Inspector General for the Department of
10 Justice was one of the agencies with which we worked.

11 Q And when did the appetite come about for obtaining contents of Congressman Scott
12 Perry's cell phone?

13 A Can -- you're using the word "appetite." Can you give me some definition there?

14 Q The desire. When did you identify Congressman Perry as possibly having relevant
15 evidence to your inquiry?

16 A I'm not sure of the exact timing that discussion began regarding information that may
17 establish criminal conduct that was to be found on Congressman Perry's personal cell phone.

18 There is a -- and you may have it, I'm sure, in one of those boxes. There's a redacted affidavit
19 from, I think, the Middle District of Pennsylvania that goes into substantial detail on kind of the --
the

20 evidence that supported the judge's probable cause finding. There's probably some dates in there.

21 Q But you just don't independently remember right now when you began identifying
22 Congressman Perry as possibly having relevant evidence to your inquiry?

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1 A Best I can probably do is a timeframe. I think that the warrant in the Middle District of
2 Pennsylvania was August of 2022. If you want to show me the affidavit, I'm happy to kind of go
3 through and see if there's an indication of when we started developing the evidence that's outlined
4 in the affidavit. It's got to be sometime before August of 2022 and, you know, after the time that my
5 detail started.

6 Q How did the contents of Mr. Perry's phone tie into the broader investigation?

7 A I think that, as outlined in the special counsel report, there was information that
8 ultimately was recovered from Congressman Perry's personal cell phone that, prior to the Supreme
9 Court's decision in the summer of 2024, we had intended to use at a trial of the defendant, Mr.
10 Trump, and that, as noted in the report, that evidence would have been admissible in trials of any
11 other individuals, setting aside the Supreme Court's decision.

12 Q And what was that evidence?

13 A For the same reasons that we've discussed before, you're talking about, I guess, a few
14 different prohibitions that do not let me talk about that. The first is, though I recognize that the
15 Department's authorization talks about certain aspects of the seizure of Congressman Perry's cell
16 phone, there are certainly Rule 6 issues here. Beyond that, there are -- I'm aware of a variety of
17 public access litigation I think both in the Middle District of Pennsylvania and in the District of
18 Columbia. Those are the two places where Federal judges found probable cause to search
19 Congressman Perry's phone.

20 My recollection is that, as a result of that litigation, the different district court judges did not
21 permit the release of certain information; hence, what I described before, the redacted affidavit. I
22 think that there's other redacted documents. So kind of an overlapping series of statutes and court
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1 rules and rules of criminal procedure, setting aside the authorization, that prohibit me from
2 discussing that in detail, other than what's in the special counsel report.

3 Q Whose idea was it to seek a warrant to obtain Congressman Perry's cell phone?

4 A I don't know who first -- it could have been me, it could have been somebody else, who

5 first proposed getting a warrant. I think that --

6 That could have been your idea?

7 Mr. Windom. What I said before, I don't know whose idea it was at its inception.

8 Perhaps most relevant for y'all, the approval for moving forward with such a warrant -- I

9 described kind of the supervisory structure in the District of Columbia before -- would have been Mr.

10 Crabb and Mr. Graves.

11 My recollection is that for major -- well, certainly for strategic decisions and certainly for

12 major investigative steps, that Mr. Graves was, at a minimum, consulted if not, you know, directly

13 approved.

14 Did you articulate to your supervisors why you thought this was such a good

15 idea?

16 Mr. Windom. I'm not sure if -- well, setting aside whatever's permitted in the authorization, I

17 don't know that I can recall specific contents of conversations now that would have occurred around

18 3 years ago. I recall generally that, you know, I was involved in the, you know, the decision to

19 propose a search warrant to -- that that was approved by Mr. Crabb and by the U.S. attorney.

20 I think that -- and you may have a better recall than I do -- but I think that the special counsel

21 report talks about in -- at least in this instance, this is a situation where the Public Integrity Section

at

22 Main Justice would also have to be consulted, according to their rules.

23 So I hope that that's responsive to your question.

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1 BY

2 Q Why execute the warrant while he was on travel?

3 A I saw reference to that in an article, maybe, or in your -- your topics. Maybe it's helpful

4 to give you a sense of how the process actually works for obtaining and then executing a search

5 warrant.

6 So in this case, my recollection is that there's the redacted affidavit and the

7 redacted -- probably the warrant sheets itself, which call for both a warrant to search the person of

8 Congressman Perry for his cell phone and then what I think is called a location warrant, to ping the

9 phone location to basically see where it is.

10 When -- my recollection is that when the agents -- when the agent swore out the affidavit in

11 the Middle District of Pennsylvania, that's where, my understanding, Congressman Perry lived at the

12 time. That's where his residence was. And that was the right venue under Rule 41 to seek that -- to

13 seek that warrant, which is where he was physically located.

14 After that, once the court in the Middle District of Pennsylvania found probable cause to

15 believe that there would be evidence of I think it was four separate Federal felonies on Congressman

16 Perry's personal cell phone, there is a defined period of time -- I believe it's 14 days -- it can change.

17 It's written on the face of the warrant. And during that time, the agents -- I'm giving you a typical

18 circumstance -- the agents come up with an operational plan to execute a search warrant.

19 I don't recall the specific details or the timing on this one. I know that there was at least one

20 other prosecutor that I worked with at my same level that was working on, you know, obtaining the

21 search warrant and working with the agents to effectuate it.

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1 My recollection is that at the time that the warrant was signed by the judge, that the belief

2 was that Congressman Perry was in the district, and I think that that was borne out by later

3 information.

4 My recollection is that the agents then came up with an operational plan, as is common, to

5 execute the warrant. I don't remember the specific details after that. I'm assuming that since we

6 had -- there was, as part of this, the ping warrant on the phone that they were able to determine his

7 location and then -- you know, whether it was the first place they thought he would be or wherever
8 he ended up being. And my recollection is that they executed the warrants on the date that they had
9 planned to do so regardless of, you know, what the location was or who he was with. Those are
10 circumstances that are operational in nature that are outside the day-to-day control of, you know,
11 even if -- certainly, I think, in my mind, outside of the control of the agents, but outside the control
12 of
13 the prosecutors as well.

13 Q So you were never told, prior to the execution of the search warrant, that the agents
14 were now going to have to go and find Mr. Perry at his vacation home?

15 A Probably the best I can do is to tell you what likely occurred. I don't recall the specifics
16 of it in that time period now going on 3 years ago.

17 What probably would occur in a operational situation, if the agents -- which again, I don't
18 recall -- had to travel from, let's say, Harrisburg -- you know, the Harrisburg area, I think, is in the
19 Middle District of Pennsylvania -- to a different district where the Congressman was, they likely
20 would have reached out to a prosecutor -- I can't say that that was me -- just to notify that, hey, you
21 know, the subject of the execution of the search warrant wasn't at location 1; we have to -- you
22 know, we have to go to location 2.

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1 I'm surmising here based on the fact of the ping warrant. I don't specifically recall any of that.

2 And again, it may have -- to the extent that it did happen, that may have been a conversation with
3 one of the other prosecutors.

4 Q And what can you tell us about the discussions leading up to the execution of the
5 warrant? Did you have any discussions with other prosecutors regarding seeking a warrant for Mr.
6 Perry's cell phone?

7 Mr. Burton. do you mean other than the ones he's discussed already, or you just
8 want to reiterate that?

9 Well, he said that they may have spoken to another prosecutor, so I'm trying to
10 figure out how many other prosecutors were working on obtaining Mr. Perry's cell phone.

11 Mr. Windom. Again, and please correct me here, but my recollection is that that was August
12 of 2022?

13 BY

14 Q Mm-hmm.

15 A Okay. I think I previously described the staffing over time in the D.C. U.S. Attorney's
16 Office that would have been around the time that I began working with Mr. Cooney and that other
17 prosecutors were added to the investigative efforts.

18 My recollection is that there was one other person -- one other prosecutor who I worked with
19 specifically on, you know, obtaining this warrant.

20 Q Mm-hmm.

21 A There likely were others that were less involved in kind of the day-to-day -- you know,
22 you got to do the paperwork for it, you got to arrange the -- with the court to swear something
23 out -- for the agent to swear something out.

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1 There likely were other prosecutors that we worked with that were at least aware of it.

2 Certainly, as I said before, Mr. Crabb and Mr. Graves would have been the ones that authorized it.

3 And then ultimately it was up to the Federal judge to authorize it, which happened here in at least
4 two instances.

5 Q And you mentioned Mr. Cooney. Did you have conversations with Mr. Cooney about
6 seizing Congressman Perry's cell phone?

7 A I don't recall any. During that time period, I'm sure I would have just because he would

8 have been working with me at that point. So I would be surprised if that didn't occur. I'm sure it
9 occurred. I don't recall any specific conversation.

10 Q Did you have conversations with this other prosecutor you have mentioned regarding
11 seizing Mr. Perry's cell phone?

12 A Regarding obtaining judicial authority to seize the cell phone? Yes.

13 Q Okay. And did you ever discuss with this other prosecutor whether or not you should
14 seek consent before going to a warrant?

15 A Going back 3 years, I'm not sure if I specifically recall that. I think what may be helpful is
16 that, any time investigative steps are -- at least in my experience, any time that investigative steps
17 are discussed, they will include a range of options.

18 So to the extent that consent was an option here, perhaps that was discussed. I don't have a
19 specific recollection of that.

20 Q So you can't remember whether or not you discussed reaching out to a Member of
21 Congress regarding obtaining a cell phone prior to going to a warrant?

22 A I don't have a specific recollection of that. I suspect that that either was discussed or
23 was, if not discussed, then considered by the United States attorney who would have approved us
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1 moving forward to reach out to chambers to arrange for the agent to swear out the affidavit that had
2 ample probable cause to find that evidence of criminal conduct existed on Congressman Perry's cell
3 phone.

4 Q So why didn't you seek consent in this instance?

5 A I'm not -- again, like I -- as I said before, I don't recall one way or the other discussions. I
6 think that there are a number of possible investigative steps. Here, there was a warrant.

7 I think that what's important, as y'all are looking at this for your legislative inquiry, is that a
8 judge in Pennsylvania issued the warrant on a finding of probable cause. Agents executed it and
9 obtained the cell phone and imaged it. And what that means is they essentially took a copy and they
10 put it in a box. They did not then review the contents of the phone.

11 Then the next step of that was a separate search warrant in the District of Columbia. As part
12 of that search warrant, there is addendum C, I think it is. And again, this is all public information.
13 That has a protocol. And the protocol exists because of the D.C. Circuit's ruling in Rayburn House
14 Office Building. I'm not sure if we're in Rayburn, but it is -- that's the name of the case. And the
15 protocol essentially dictates that, at that point, the Congressman and his counsel come immediately
16 into play with the court as an arbiter of what the government can and cannot get.

17 The addendum C, the protocol, my recollection, began a process whereby Congressman Perry
18 was given access to a copy of the image that had been taken. And Congressman Perry had the ability
19 in the first instance to designate what he believed to be privileged under the Speech or Debate
20 Clause to the Constitution. That's before anybody from the government looks at -- looks at this,
21 looks at any of this.

22 Congressman Perry made certain determinations. My recollection is that there were
23 some -- there was some information on the phone over which he did not claim any privilege. And
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1 then there were parts of it, and I'm going to ballpark some numbers here, but let's just say 2,000
2 items over which he claimed a privilege.

3 Thereafter, it started a series of cascading court decisions from the district court in D.C. to
4 three judges on the D.C. Circuit to a separate district court in the District of Columbia. All five of
5 those judges, my recollection, specifically found that Congressman Perry had an overbroad view of
6 what the Speech or Debate Clause allowed him to protect.

7 And eventually -- and again, guesstimate numbers here, but of the 2,000 or so records over
8 which Congressman Perry claimed a privilege, ballpark, 1,600 of them ultimately were released to

the

9 government.

10 So to the extent that there's some thought that perhaps Congressman Perry should have
11 been asked for consent at the inception rather than proceeding to a search warrant, what the
12 process ultimately ended up with was a judicially arbitered system whereby Congressman Perry had
13 the ability to invoke every privilege that he wanted with respect to Speech or Debate. The courts
14 ruled on all of that. But the core of the evidence was preserved from the inception so that whatever
15 the court later decided would be the final word and not simply the word of -- or the view of the law
16 of Congressman Perry.

17 Q But I think, you know, we can all agree that cell phones nowadays have a lot of
18 information about a person on it. Is that correct? Would you agree with that?

19 A To the basic view that cell phones have lots of information, as a general matter, yes, I
20 can agree with that.

21 Q And you were seeking very specific information from his cell phone, correct?

22 A I want to be very clear on your use of the word "you." Here, the United States Attorney
23 and, as I indicated before, likely the Public Integrity Section, approved moving forward with this.

An

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1 agent, a Federal law enforcement agent signed an affidavit that two different judges found had
2 probable cause to believe had evidence of criminal conduct on Mr. Perry's -- Congressman Perry's
cell

3 phone.

4 There are specific things within the warrant that the government, as with every warrant, are
5 permitted to look for and to find. Here, it was somewhat the flip because the Congressman himself
6 was able to determine in the first instance what he thought might be privileged or not. And then that
7 is -- we proceeded down the path of litigating the portions that he believed might be covered by the
8 speech or debate privilege.

9 Q I understand that. And you had said that the Justice Department obtained a -- what you
10 called a copy of his whole cell phone. Is that correct?

11 A An image, yes. In common parlance, I would say copy, but I'm sure there are people
12 more scientifically inclined to -- who know better as to the terminology. I think it is called an image
in

13 the filings.

14 Q So the complete copy would include any photos he had on his phone. Is that correct?

15 A My understanding is that the image is a replica of the contents of the phone.

16 Q But you weren't looking for, like, photos of him and his young daughters. Is that
17 correct?

18 A You can look specifically at the redacted affidavit for specificity on what the agent
19 believed there would be probable cause to find and what the two Federal judges found there would
20 be probable cause to find. I'm happy to go through -- typically, there's an attachment B which lists
21 the categories of information that a government agent can search.

22 Again, here, it is different because we're in a situation where a Congressman was given,
23 pursuant to the speech or debate privilege and the binding D.C. Circuit precedent, the ability in the
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1 first instance to look at anything and to determine a privilege designation before any government FBI
2 agent, government prosecutor looked at any contents of the phone.

3 Q But, you know, the thing that we're trying to get at here is seizing the phone of a sitting
4 Member of Congress is a pretty big deal. And so when you receive a full copy, the Justice
5 Department takes a full copy of a sitting Member of Congress' cell phone. You now have all of the

6 contents on his phone. And I understand that he went through and looked at privilege. But why not
7 just ask him to turn over the information you were seeking?

8 Mr. Burton. Just to be clear, when you're using "you," you're meaning the Department of
9 Justice, not Mr. Windom personally?

10 Yes. Correct.

11 Mr. Windom. Yeah, I mean, beyond what I've said, I'm not sure that I could detail every
12 consideration. As I said before, the United States Attorney for the District of Columbia was the one
13 that ultimately approved this. At least that's my recollection. At a minimum, it would have been his
14 criminal chief, Mr. Crabb. But I am fairly certain it's Mr. Graves in consultation with the Public
15 Integrity Section.

16 With respect to -- you know, "consent," I think, is the word that you were using. What I think
17 was borne out by the considerable litigation that occurred after the seizure is that Mr.
18 Perry -- Congressman Perry had a different view of what the law was than what it actually was.
19 After that litigation, we obtained more information than he believed the government was
20 entitled to but, as I said, five different judges found otherwise.

21 Would you have remembered if you would have discussed seeking consent from
22 a Member of Congress?

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1 Mr. Windom. Yeah. I mean, I see what you're doing with trying to ask the same question in a
2 different way. As I've said before, I don't recall here today if I was part of a discussion on that. In
3 general, different investigative techniques are discussed over the course of investigations: warrant,
4 subpoena, consent. The ultimate decision-maker here would have been the leadership of the United
5 States Attorney's Office.

6 And what was your involvement with obtaining the warrant?

7 Mr. Windom. I guess I'll start with the one in the Middle District of Pennsylvania, the first
8 one. My recollection is that it was a -- a role that I had taken many times before with warrants.
9 Preparing the paperwork, reviewing the draft that ultimately is signed by the agent. Editing the draft,
10 I'm sure, occurred.

11 As I said before, there was at least one other prosecutor who worked on this with me, so we
12 likely, you know, both held those responsibilities.

13 BY

14 Q You're not giving us the name of that prosecutor?

15 A That person is a line prosecutor, and so --

16 Q You are too.

17 A Yes.

18 Q Okay.

19 A Or I was.

20 Q Right. But during times relevant.

21 A Correct.

22 I'm sorry. I lost my train of thought. Where was I?

23 We were discussing your role in obtaining the warrant.

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1 Mr. Windom. Sure. So the Middle District of Pennsylvania -- I'm sure I was involved in editing
2 the affidavit, at least organizing the preparation of the paperwork by legal assistants. Likely, either I
3 or the other prosecutor that I'm thinking of had contact with the U.S. Attorney's Office for the Middle
4 District of Pennsylvania.

5 Just the way, in my experience, logistically how it works is when seeking a warrant in a district
6 where you are not the prosecutor, you call the home office because they know the procedures there
7 for, like, what judge is on duty that week or, you know, the proper formatting or font of the

8 paperwork.

9 So likely, that occurred. Spoke to somebody there. Likely, that person, whoever it was,
10 contacted chambers for the Federal judge and arranged a time to swear out -- for the agent to swear
11 out the warrant. I'm sure I was involved in all of that in some manner, whether that was actually
12 effectuating it or discussing it with the other person and discussing it with supervisors.

13 Those are more the logistics of it. This was August of '22. The affidavit has a significant
14 amount of information that supported the probable cause. So I'm sure I reviewed that, edited it, had
15 discussions with the affiant about it prior to swearing it out.

16 And then I remember being part of a similar process in D.C. for the second warrant

17 where -- something similar except it was our -- it was the jurisdiction in which we were located, so
we

18 didn't have to call, you know, a AUSA in Pennsylvania. We would have arranged with chambers
19 to -- for the affiant to swear out the second warrant, which included the addendum C protocol that I
20 had previously recounted.

21 While you're going through this process, getting ready to seek a warrant and then

22 getting a warrant for Congressman Perry's cell phone, what kinds of discussions were you having
with

23 other prosecutors regarding the Speech or Debate Clause?

80

1 Mr. Windom. You know, setting aside conversations that I may have had with folks on the
2 line, I am certain that it was discussed, whether or what application there was or the speech -- of the
3 Speech or Debate Clause prior to seeking and obtaining the warrant in the Middle District of
4 Pennsylvania. My recollection is it is because of the Speech or Debate Clause that we sought -- that
5 the government at that time sought authorization only to seize and to image the device as opposed
6 to, you know, looking through the information.

7 My recollection is that the phone was returned to Congressman Perry within a matter of
8 hours on whatever day it was seized and the image was made. So I'm certain that there was
9 discussion of the Speech or Debate Clause, mindfulness of it.

10 Generally speaking, the folks with whom I worked were career, seasoned prosecutors who
11 otherwise had been familiar with at least the contours of the clause in other circumstances. And
12 then, as I indicated before, the litigation in the District of Columbia and the second search warrant
13 specifically included search protocols which, as I understand it, were required by the Rayburn
House

14 Office Building case.

15 BY

16 Q How did they get into his phone?

17 A The mechanics of it?

18 Q Yeah.

19 A I can tell you generally what I know about how that stuff works, but I couldn't tell you in
20 this instance which program --

21 Q Did he provide a password or --

22 A I'm sorry?

23 Q Do you know if he provided a password?

81

1 A I don't believe that he did, but I don't recall.

2 Q Okay. So how do you get into the phone without a password?

3 A If you have a copy of the affidavit, I think that there's a few different options that are
4 listed. One of them is -- and I don't want to misspeak, so I will speak generally, I guess.

5 Usually, my understanding in my experience in cases of seizures of cell phones, there's a -- as

6 part of the attachment, it permits facial recognition; so basically the agent holding up the phone to
7 the person's face. There may be other things that are listed --

8 Q Is that what happened in this case?

9 A If I can finish my answer, please, sir.

10 As I said before, I don't know what specifically happened in this case. I believe that that was
11 part of the addendum, the protocol for execution of the warrant in the Middle District of
12 Pennsylvania.

13 Separate from that, if it wasn't or if it didn't occur -- which, as I said, I don't recall -- there are
14 people who have technical expertise and who have access to law enforcement versions of devices
15 and software to get into phones that are locked. I don't recall sitting here now even if the phone was
16 locked.

17 Q Did you participate in any discussions where you talked about how you're interfering
18 with the Congressman's duties by taking his phone from him?

19 A Did I participate in discussions --

20 Q Did you even consider that?

21 Mr. Burton. When he was on vacation.

22 What's that? Yeah. Congressmen work even when they're on vacation, believe it
23 or not.

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1 Mr. Windom. I think that the most I can say there, consistent with my obligations, is that
2 there was a procedure in place. It was -- every legal obligation, my understanding, was fulfilled. It
3 was approved by a Federal judge in Pennsylvania. The warrant was executed in the manner and the
4 time in which we were authorized to do so.

5 And as I said before, the Congressman was deprived of his phone for, as I understand it,
6 according to the litigation, a matter of hours and, according to y'all, while he was on vacation.

7 BY

8 Q But as you sit here today, you don't remember raising the fact that you're interfering
9 with his duties while taking the phone. You don't remember any conversations where you flagged
10 that as a consideration here.

11 A I'm not going to agree with that characterization. I think that --

12 Q But you don't remember it. Well, tell me what you do remember about you raising that
13 topic?

14 A Let me take your questions in turn.

15 As I said before, I don't agree with the characterization that you've just made. I have
16 indicated to you that we're going on 3 years now since discussions occurred regarding the seizure of
17 Congressman Perry's cell phone.

18 My recollection is that, as I said before, any decision as to move forward would have been
19 made by the United States Attorney, would have been approved or consulted with the Public
20 Integrity Section.

21 To the extent that there were any arguments that Congressman Perry made or could have
22 made with respect to his congressional duties, there was a substantial amount of litigation regarding
23 that, and I would --

83

1 Q Before you took the phone? I'm asking you, before you took the phone.

2 A In terms of the timing of that? All I can say is that, you know, going on 3 years now, I
3 don't recall the specifics. I don't believe that I would be able to talk about, even if I did, specific
4 conversations with other line prosecutors. I'm certain that appropriate consideration was given, as is
5 my experience at least, to all substantial issues. And in this case, the United States Attorney made a
6 decision, and one and, you know, then other Federal judges agreed with respect to the probable

7 cause finding.

8 Q But you do under- -- do you acknowledge that when you take the phone from him, he's
9 unable to conduct business with his top advisers and with other Members of Congress?

10 Mr. Burton. I don't think there's any factual basis that supports that. You're assuming he's
11 using his phone to do those things. You're assuming a lot. He's stated that he doesn't recall --

12 Well, when you take Mr. Perry's phone, he's not able to have communications
13 with his colleagues and Congress.

14 Mr. Burton. I don't know that to be true.

15 Okay. He's unable to make telephone calls.

16 Mr. Burton. With that phone.

17 With that phone, correct. Do you know if he used a different phone?

18 Mr. Burton. It's your questions, --

19 So you're interfering with his duties as a, you know, Representative. He
20 represents 750,000 people.

21 Mr. Burton. He has -- he's --

22 So the question --

23 Mr. Burton. -- he's answered the question.

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1 Mr. Windom. Where was the question?

2 BY

3 Q You didn't -- you don't recall any discussions about the fact that you're interfering with
4 his duties while the phone is away from him. He can't call other Members of Congress. He can't call
5 his chief of staff. He can't call his wife, if his wife was at the -- at the store.

6 A Beyond what I said before, I think that I would just reiterate that I don't agree with the
7 characterization of your question. I do not believe that, as my counsel just stated, there would be a
8 factual basis to support the question. We're talking about --

9 Q But you're interfering with his duties while his phone's gone.

10 A I'm going to continue with the answer to your first question. We're talking about a
11 period of time of, as I understand it, a number of hour --

12 Q Many hours, yeah.

13 Mr. Burton. Do you want to -- were you there? I mean, he's telling you what his
14 understanding was.

15 Okay.

16 BY

17 Q Many hours, correct?

18 A I'll continue with my answer, if that's okay.

19 Q Okay.

20 A My understanding is that Mr. Perry did not have his personal cell phone for whatever
21 the number of hours was, and that during that time period, obviously he was unable to use his
22 personal cell phone. I do not have information, sitting here today, going on 3 years, as to what other
23 devices he may or may not have had, if he had, for example, laptops, iPads, computers. I'm staring
at

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1 two different cell phones that has in front of her here, others on the table -- other
2 communication devices that Mr. Perry would have been entitled to.

3 I also don't recall -- though, again, this is just my recollection. I don't recall the litigation in
4 this matter, of which much was publicly unsealed, discussing that. If you have that information and
5 would like to point it to me, I'm happy to review it. But that's -- you're making a characterization that
6 I simply don't recall being part of the litigation.

7 Q Right. But my question was, before you took the phone, did you raise concerns that,
8 hey, if you take the Congressman's phone, you're interfering with his duties? He represents 750,000
9 people from Pennsylvania. This is something serious that we need to talk about here at the Justice
10 Department before we proceed.

11 A Beyond the answer I've already given the first five or seven times you asked this
12 question, I don't have anything to add. The United States Attorney approved moving forward with
13 this. It was in consultation at least with the Public Integrity Section, is my understanding. And
agents

14 executed a search warrant that was authorized by a Federal judge in Pennsylvania.

15 Q Okay. And you said yourself and then another line prosecutor, who you've refused to
16 identify, and then your immediate supervisor, the head of Criminal Division, and Matthew Graves
17 were the four DOJ people?

18 Mr. Burton. Yeah. I would object to him "refusing." He's not authorized to provide that
19 information.

20 In your reading of the letter.

21 The letter, as I mentioned, says you're authorized to provide unrestricted testimony to the
22 committee irrespective of potential privilege, as limited by the paragraphs 1 through 5. This is
clearly

23 within number 5.

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1 We're talking about -- I'm asking questions about the basis for the seizure of stealing

2 Mr. Perry's phone. So, anyway.

3 Mr. Windom. I'm not sure what the pending question is.

4 BY

5 Q I'm asking if you remember anything, and you said you don't, which is really remarkable
6 that you don't remember anything about discussion that the DOJ officials, you know, talked about
7 interfering with Mr. Perry's duties as a Congressman.

8 A I understand that you are saying certain words and making certain characterizations of
9 what did and did not occur. I have provided to you today on multiple occasions over the last 15
10 minutes in response to the same question --

11 Q Okay.

12 A -- my recollection of what occurred --

13 Q Very little. So I'll return to

14 A I'm going --

15 Q Unless Mr. Jordan has some --

16 A I would appreciate being able to, as said earlier, finish my answer without
17 you speaking over me. May I do that?

18 Q Okay. I thought you just said that you've told me everything.

19 A As I said before, and as I was attempting to continue, I provided you my recollection,
20 now going on 3 years, of what occurred. I've identified the individuals who approved moving
forward

21 with the search warrant. I've identified that at least two Federal judges found probable cause to
22 execute the warrant; that the warrant was, in fact, executed; and the manner in which Congressman
87

1 Perry's rights under the Speech or Debate Clause were manifestly attended to by virtue of the
2 protocols entered by the district court in the District of Columbia.

3 Q Right. But my question was about interfering with his duties by depriving him of his
4 phone.

5 Mr. Burton. And that's an interesting characterization.

6 He's told you the facts. You can interpret the facts how you wish. I'm sure you will. He's told
7 you he doesn't recall a discussion that you are -- keep going back to. And you've expressed your view
8 that you find that however you find it.

9 Can we move on to something --

10 Chairman Jordan. Did you know the Inspector General's Office would scan the phone before
11 you took the phone?

12 Mr. Windom. I'm sorry, Congressman?

13 Chairman Jordan. Did you know the Inspector General's Office would scan the phone before
14 you took the phone?

15 Mr. Windom. My recollection is that I -- there were -- the FBI and then the Department of
16 Justice Office of Inspector General were the two law enforcement agencies that are identified in the
17 search warrant attachment.

18 I don't recall right now which of those two agencies imaged the phone. Certainly one of them
19 did, and that was the purpose of the first warrant in the Middle District of Pennsylvania.

20 Chairman Jordan. What's customary? The FBI doing it or the Inspector General doing it?

21 Mr. Windom. I can't speak to a customary situation. I think what is customary in this case is
22 that there were at least two Federal law enforcement agencies that were working with us on the
23 investigation, and my recollection is that in some instances during the course of the investigation,
88

1 which spanned the time prior to the special counsel, sometimes the one law enforcement agency
2 would image a phone or review a phone in some way. Sometimes another law enforcement agency
3 would. Generally speaking, my understanding is those are typically done based on staffing and
4 availability.

5 Chairman Jordan. Did you have a preference in previous investigations who would scan the
6 phone?

7 Mr. Windom. I've had -- sorry. Go ahead.

8 Chairman Jordan. I'm just asking, did you have a preference?

9 Mr. Windom. In previous investigations, I've worked with a number of different law
10 enforcement agencies, including --

11 Chairman Jordan. You said two law enforcement agencies. What two were you referring to,
12 just to be clear?

13 Mr. Windom. In this one --

14 Chairman Jordan. FBI and IG?

15 Mr. Windom. This specific search warrant authorized the movement of the phone, my
16 recollection -- and this is attachment D -- by the FBI or to the DOJ OIG's laboratory in the Northern
17 District of Virginia.

18 Chairman Jordan. Okay. It's our understanding that the Inspector General's Office scanned
19 the phone. Is that your understanding?

20 Mr. Windom. Sitting here today, I don't recall. It was certainly one of those two. I know that
21 the Office of the Inspector General did participate in forensic review, forensic extraction of certain
22 devices as part of the investigation. It would not surprise me if they were the one that did this here,
23 but it could have been the FBI as well.

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1 Chairman Jordan. Okay.

2 So you didn't take it back to Virginia to do it?

3 Mr. Windom. I did not do anything. The government, according to the search warrant
4 affidavit, I recall, transported the phone back. At some point, it was in the District of Columbia
5 because that is where we received the second Federal judge's authorization to search. And just by
6 purposes of the venue provisions of Rule 41, it would have had to have been in the district in order

7 for the judge in the District of Columbia to issue that warrant.

8 So you take the phone in New Jersey and then you take it at least to Washington,

9 D.C., and then, presumably, back to Jersey?

10 Mr. Windom. No. My understanding is that since it was a matter of hours, just logistically,

11 that that would have taken place somewhere proximate to wherever the phone was seized. When

12 I -- and perhaps I was inarticulate before. When we obtained the search warrant in D.C., my

13 understanding, the image of the device was in D.C.

14 There are, likely, redacted publicly available documents which discuss in detail this

15 information. I'm giving you my recollection of what occurred during those few weeks.

16 And I know you've discussed the litigation that ensued following the seizure of

17 Congressman Perry's cell phone. And the Court of Appeals for D.C. in September of 2023 found,

18 among other things, that his conversations with his colleagues about the 2020 election certification

19 vote and vote on proposed election reform legislation were quintessential legislative acts entitled to

20 the privilege. And what I would like to know is whether or not you had conversations, prior to

21 executing the warrant, with your fellow prosecutors regarding whether or not these conversations

22 would be privileged.

90

1 Mr. Windom. I think that what I can provide you is that, as I said before, we had

2 conversations, I'm certain, regarding the Speech or Debate Clause and what the contours of the

3 clause were. And that is why we took the extremely protective measures that we did in terms of a

4 warrant first to image the device and then a second warrant in D.C. whereby, for Congressman

5 Jordan's edification since he -- I don't think, sir, that you were here when I was saying this part

6 earlier, and I apologize if you were.

7 There was a addendum C, my recollection is, a protocol whereby essentially the district court

8 judge was the arbiter of what was and was not privileged. But in the first instance, Congressman

9 Perry had the ability to assert any privilege he wanted with respect to the Speech or Debate Clause

10 and then to litigate that fully up through and including the D.C. circuit and then back to the district

11 court on remand before the government saw any of these --

12 BY

13 Q How long did it take, all the litigation?

14 A Timewise, I think that the warrant was August of 2022. I don't have a strong

15 recollection here, but I think maybe there was a decision either in the circuit or by the district court

16 December of '23. I think this is publicly available. So --

17 Q So you're --

18 A -- 16 months, something like that.

19 Q So why not just ask Mr. Perry's lawyer for the emails you want? Like, if there's emails

20 between him and Jeff Clark, or whatever you're searching for, why don't you just ask him for it?

21 Emails with Jeff Clark aren't, you know, obviously -- you know, that's different from

communications

22 he would have with members of his staff or Members of Congress. So you don't know whether he

23 would have just given them to you because you didn't ask.

91

1 A So you're stating your view of the Speech or Debate Clause. I think what I went through

2 earlier was a fairly explicit and detailed version of what Congressman Perry believed was -- was the

3 protection of the Speech or Debate Clause.

4 Q It's a little different, though, once you take the phone.

5 A I'm going to continue with my answer, and then you can ask another question.

6 Congressman Perry had the opportunity to invoke whatever privilege he wanted. The

7 ballpark numbers that I gave before, he invoked a privilege over, ballpark, 2,000 items. And the

8 district court on remand -- so that would be the third court to look at it -- released something like
9 16- or 1,700 items.

10 To the extent that one can draw any conclusions about what Congressman Perry would have
11 done had he been asked consent, I commend you to review what he actually did once litigation
12 occurred. Beyond that, I have no information.

13 Q They didn't -- they didn't ask?

14 On page 100 of special counsel's report, which --

15 Chairman Jordan. Can we go off the record for just one second?

16 Oh. Sorry. Go off the record.

17 [Discussion off the record.]

18 We'll go back on the record.

19 BY

20 Q Page 100 of special counsel report -- it's exhibit 3. And I can read the passage for you
21 that I'm interested in. Let you flip to page 100 before I start.

22 A Thank you.

23 Go on.

92

1 Q It says, "In addition" -- this is at the top. "In addition, the office consulted with PIN
2 regarding investigative steps that involved gathering evidence connected to congressional staff."
3 Was the congressional staff in question related to Congressman Perry?

4 A I can't speak to that in terms of specifics. All I can say is what is written here in the
5 report.

6 Q Were you involved with discussions with PIN regarding evidence connected to
7 congressional staff?

8 Mr. Burton. Do you mean him personally or the office?

9 Him personally.

10 Mr. Windom. The timing of -- so this says, "The office consulted with PIN." It does not use
11 the phrase, you know, the time of -- period of time spanning the -- prior to the appointment of
12 special counsel.

13 My recollection is that the primary point of contact in the Special Counsel's Office with the
14 Public Integrity Section was another person. I certainly had communications with the Public
Integrity

15 Section about a number of different items, which are kind of categorized -- many of which are
16 categorized here.

17 I don't remember if I was the one that was on a phone call or an email with the Public
18 Integrity Section regarding staff. I am aware, at least in part, of what this refers to. And I was aware
19 that the Public Integrity Section, whatever was required by the Justice Manual in terms of the verb
20 "consultation" or "approval," whatever it was, was adhered to in this case.

21 What does this refer to?

22 Mr. Windom. This refers to the office consulting with the Public Integrity Section regarding
23 investigative steps involving gathering evidence connected to congressional staff.

93

1 In what congressional staff were you seeking evidence?

2 Mr. Burton. I don't believe he can answer that under Rule 6(e).

3 BY

4 Q Was it connected to Congressman Perry?

5 A I can't identify information about that.

6 Q So there could have been a broader effort to sweep in evidence from other
7 congressional staff?

8 A A few things, I guess.

9 First, I am not going to agree with the characterization of your question, the words that
10 you've used. All I can say is that in response to the question, what does this mean, this sentence
11 here, I am -- my understanding is that I am prohibited by Rule 6 of the Federal Rules of Criminal
12 Procedure, and perhaps other standing orders of the court, setting aside whether the Department's
13 letter even authorizes me to discuss that, from discussing this with you.

14 Q Okay. So you're not going to discuss whether or not you were going after other
15 congressional staff information?

16 A For this -- and I appreciate you reiterating the question in a different way. Again, I'm not
17 going to agree with the characterization of what you have just said. The only thing that I am able to
18 say, consistent with my obligations under the Department's authorization letter and Rule 6 of the
19 Federal Rules of Criminal Procedure, and perhaps other standing orders of the court, is that I cannot
20 identify the congressional staff that are referred to on page 100 of the special counsel report.

21 Q What was your involvement in drafting the special counsel's report?

22 A I was involved in the drafting and editing process.

23 Q Did you -- can you tell us if you drafted specific portions of it?

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1 A Unlikely. If you'd like, we can go page by page. I can tell you the process that was
2 undertaken in the office.

3 Q We can go through the process, if you'd like. Go ahead.

4 A It's your question, so I'm happy to answer it if you'd like to ask it.

5 Q Did you help draft the results of the investigation section? That was number 1, referring
6 to the table of contents here.

7 A I'm certain that I had input into that section, whether it was initial draft or editing.

8 Q Do you believe you had input into all of the major sections of volume 1?

9 A I had the ability to recommend edits to the entirety of the report.

10 Q Okay.

11 A There were -- going back to kind of the process, there were, obviously, drafts along the
12 way as there are with respect to any document. I was involved in drafting some of the sections. I
13 had the ability to recommend edits. Whether or not they were accepted, I had the ability to
14 recommend them, as did any number of other people in the office.

15 The fundamental thing to understand, though, is that this is the report of the special counsel
16 and that the final word on what is included and is not included in volume 1 of the report was up to
17 the special counsel.

18 Q And when did you personally start working on the report?

19 A Timeframe that I started maybe drafting some parts or editing would have been, I think,
20 best recollection, November of 2024.

95

1 [1:20 p.m.]

2 BY

3 Q And if you'd -- just sticking with the report, since we have it out, on page 2, it talks about
4 a series of alleged criminal efforts. And so I just kind of wanted to go through and ask which efforts
5 you were involved with investigating. And this can be back while you were at D.C. or it can be at the
6 Special Counsel's Office, whichever time period you prefer.

7 But one of them was to allegedly induce State officials to ignore true vote counts. Were you
8 involved in that portion of the investigation?

9 Mr. Burton. Wait. I'm sorry. Where?

10 Page 2 of the report, the very last few words on that page before the footnote, it

11 says, "This included" -- and that's where I'm starting to read -- "attempts to induce State officials to

12 ignore true vote counts."

13 BY

14 Q Were you involved in this portion of the investigation?

15 A I was involved in the portion of the investigation that involved uncovering evidence of
16 the defendant's attempts and the conspirators' attempts to induce State officials to ignore true vote
17 counts.

18 And, then, without wasting the time to read the rest of it -- I'm happy to if you would like to.

19 Q Uh-huh.

20 A The rest of that sounds -- I think that I was involved in some way in each of those lines of
21 investigation.

96

1 Q Okay. And did those lines of investigation begin when you were first detailed to the U.S.

2 Attorney's Office in D.C., or did they just start where -- your involvement just begin when you
became

3 a part of Smith's team?

4 A My recollection, without, you know, full recall here, going back 3 years and change, is
5 that at least some investigation with respect to each of these different components, I guess the five
6 components of the conspiracies, was in existence prior to -- and I worked on in some capacity --

7 Q Uh-huh.

8 A -- prior to the appointment of the special counsel.

9 Q And when you were accepting the detail over to D.C. in November 2021, did you have
10 an understanding that this would be the type of alleged criminal effort that you'd be investigating?

11 A I think I described before the conversations that I had with the individuals, and I do not
12 recall these specific things being part of that discussion.

13 I think that what I talked about before -- and the record will be clear on this from my prior
14 answer -- is that I began reviewing a number of investigative files from ongoing criminal grand jury
15 investigations, spoke with prosecutors, and recommended certain lines of investigation to the United
16 States Attorney, who then approved them.

17 We can go off the record.

18 [Recess.]

97

1 [2:05 p.m.]

2 It is 2:05. We can go back on the record.

3 BY

4 Q Mr. Windom, just a couple of questions about the Scott Perry cell phone issue. And I
5 know we went through this in some substantial amount of detail, we'll say, in the last hour. I just
6 want to get a clean record. So I'm going to be asking you some of the same things again. I'm not
7 trying to torture you, I promise.

8 In the prior hour, you were asked about a seizure of Representative Perry's cell phone. And I
9 think, at one point, the line was used by majority counsel that accused prosecutors of stealing
10 Mr. Perry's phone. Do you remember that?

11 A I don't remember the use of that word, but I'm not sure all the different questions.

12 Q Do you consider the seizure of his cell phone to be stealing the phone?

13 A No. I think as I explained in some detail, the process whereby the government obtained
14 Congressman Perry's phone included approval authority by a senior member of the U.S. Attorney's
15 Office in the District of Columbia, the Public Integrity Section consultation.

16 And then, ultimately, after the agent signed a comprehensive affidavit describing probable
17 cause to believe that evidence related to four Federal felonies would be found on Congressman
18 Perry's phone, a neutral, detached magistrate, by law, under Rule 41, under the case law, is to review

19 that. Here, that's exactly what happened.

20 After that, a second Federal district judge, in this case, in the District of Columbia, also went
21 through the same process -- reviewed an affidavit, found probable cause, signed a search warrant.
22 So there's two Federal judges who found probable cause.

98

1 And, acting on the orders of the court regarding seizing an electronic device, searching the
2 different locations that are described in the affidavit, the agents executed the warrant in accord with
3 the law.

4 Q You keep referencing the Public Integrity Section. Is that the Public Integrity Section at
5 the U.S. Attorney's Office in the District of Columbia or the Public Integrity Section at DOJ Main
6 Justice?

7 A The one at Main Justice within the Criminal Division.

8 Q Okay.

9 And I want to introduce as exhibit 6 section 9-85.000 from the Department of Justice Justice
10 Manual.

11 [Windom Exhibit No. 6
12 was marked for identification.]

13 BY

14 Q Are you familiar with the Justice Manual?

15 A I am generally familiar with the Justice Manual, yes.

16 Q The Justice Manual lays out procedures that prosecutors are required to follow prior to
17 or when they bring cases, correct?

18 A Among other things, yes.

19 Q Can you turn to section 9-85.110? It's on page 2 as printed.

20 A Yes.

21 Q Section 9-85.110 is "Investigations Involving Members of Congress," correct?

22 A Yes.

99

1 Q To the best of your knowledge, did the seizure of Representative Perry's phone follow
2 all of the procedures outlined in this section?

3 You can take a minute to review.

4 A My recollection is that -- and this would've been in the U.S. Attorney's Office for the
5 District of Columbia -- that the requirements of the Justice Manual were adhered to.

6 Just for clarity, reading every word here, I'm not sure if this was the operative version in
7 August of 2022. Generally speaking, it sounds consistent to me with what was required at that time.
8 My recollection is that the Public Integrity Section would have been consulted, whether or not
9 it was me who did the consulting. The process for doing so typically includes formalizing that
10 consultation or approval in a message from Public Integrity to the prosecutor who has requested the
11 consultation.

12 Q And, specifically, the fourth page of this is printed. About halfway down, it says, "The
13 application for a warrant for records, information, or property belonging to a Congressional office,
14 Member of Congress, or Congressional staffer or for a location or device in which legislative
materials

15 are likely to be found requires approval by PIN."

16 Do you see where it says that?

17 A I do see that.

18 Q That requirement was adhered to in this situation, correct?

19 A Assuming it was approval as opposed to consultation back in August of '22, the answer
20 to that is yes.

21 Q Thank you.

22 A Whatever was required back then pursuant to the Justice Manual, my recollection, was
23 adhered to.

100

1 Q And you've said a number of times today that prosecutors had probable cause to
2 believe that there were evidence of four felonies on Mr. Perry's phone, correct?

3 A That's my recollection from the affidavit.

4 Q Are you able to tell us today what those four felonies were?

5 A Do you happen to have a copy of the redacted affidavit?

6 Q We do. We can introduce that as exhibit 7.

7 [Windom Exhibit No. 7

8 was marked for identification.]

9 BY

10 Q And this is the affidavit that accompanied the August 2nd, 2022, application for a
11 warrant, which I believe was the first application.

12 A So the question that you posed was, what were the four felonies?

13 Q Uh-huh.

14 A Okay. Thank you for providing the document, because this does comport with my
15 recollection.

16 On page 3, paragraph 7, it lists four -- the four felonies. And that's what the affiant believed
17 that there was probable cause for.

18 And then on the very first page of the document that you handed me, there's a section in the
19 middle that says, "The search is related to a violation of," and then it identifies the four -- the same
20 four statutes, signed by the United States magistrate judge.

21 The four that I recalled, which this does support: substantive obstruction, under Title 18,
22 United States Code, section 1512(c); conspiracy to obstruct, under Title 18, United States Code,
101

1 section 1512(k); false statements, under Title 18, United States Code, section 1001; and conspiracy to
2 defraud the United States, under Title 18, United States Code, section 371.

3 Q Thank you.

4 Now, the courts apply particular safeguards to materials from Members -- seized from
5 Members of Congress -- or -- excuse me. Let me rephrase that.

6 There are particular safeguards that apply to materials seized from Members of Congress,
7 correct?

8 A Speaking as a general matter, yes. It depends which circuit that you're in, as for the
9 level of protection. But they all stem from the Speech or Debate Clause of the United States
10 Constitution.

11 Q And, in this particular case, Mr. Perry was given an opportunity to review and assert
12 privilege over the contents of his phone, correct?

13 A Correct. The protocol in the District of Columbia was that Congressman Perry, in the
14 first instance, would be able to assert the privilege. He did so in a manner that the courts found to
15 be overbroad.

16 That was litigated. And, ultimately, after that litigation, the government obtained information
17 from the device -- again, to your question, though, after Congressman Perry in the first instance had
18 the ability to assert his privilege.

19 Q I just want to make a note for the record that what we just introduced as exhibit 7, the
20 application for a warrant by telephone or other reliable electronic means, is available publicly online
21 through the Reporters Committee for the Freedom of the Press.

22 Mr. Windom, you just referred to a court ruling. I want to introduce as exhibit 8 the

23 memorandum opinion from Judge Boasberg dated December 19th, 2023.

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1 [Windom Exhibit No. 8

2 was marked for identification.]

3 BY

4 Q Is this the relevant ruling on Mr. Perry's privilege claims that you were referring to?

5 A This -- hang on one second.

6 This is certainly one of them. The others that I was referring to would've predated this.

7 There was an initial one by then-Chief Judge Howell, I recall, where she found overbreadth to

8 Congressman Perry's invocation of the privilege.

9 Then it went to the D.C. Circuit, where I believe that it was a unanimous panel that found

10 something similar.

11 Was remanded to a new chief judge. Chief Judge Boasberg had become chief judge in the

12 interim, and that's the position to whom these things go. And then this is Chief Judge Boasberg's

13 memorandum opinion.

14 I'm not sure if I said this earlier, but I think that the docket will reflect that Congressman Perry

15 did not appeal this ruling.

16 Q Thank you. And this memorandum opinion is the final disposition of the ruling on

17 privilege claims, right?

18 A That's my recollection, since the Congressman elected not to appeal.

19 Q Okay.

20 So, at the bottom of the first paragraph on the very first page, the memorandum opinion

21 reads, "Having now analyzed each of the 2,055 documents still at issue, the Court will order Perry to

22 disclose 1,659 of them, but not the 396 others," correct?

23 A I believe that you've read that correctly.

103

1 Q So the final ruling was that the vast majority of the documents -- or materials on

2 Mr. Perry's phone that prosecutors sought were not privileged, correct?

3 A That is true. But just to be even more specific, these were just the documents over -- or

4 the items that Congressman Perry asserted a privilege. There was a separate volume of material, my

5 recollection is, over which Congressman Perry agreed that there was no privilege, and those also

6 were produced to the government.

7 Q Thank you.

8 We can go off the record.

9 [Recess.]

10 We'll go back on the record. It is 2:19 p.m. We'll start our next round of

11 questioning.

12 BY

13 Q Mr. Windom, prior to joining Special Counsel Smith's team -- he was appointed on

14 November 18th, 2022 -- had you previously worked with Mr. Smith?

15 A No, I don't believe so.

16 Q And I believe in our first hour you had mentioned speaking with individuals who had

17 maybe worked with Mr. Smith. Do I have that right?

18 A Yes.

19 Q And what did they tell you about Mr. Smith?

20 A Based on those conversations, I came to view Mr. Smith as somebody with high

21 integrity.

22 Q Anything else about his reputation that you heard?

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1 A That's the takeaway that I recall. I assume that there were other specific things that
2 they said, but the gist of the conversations was that he was a person of high integrity.
3 Q And prior to Mr. Smith's appointment -- and this is in the Washington Post article I
4 admitted into the record earlier -- it appears that Attorney General Garland had summoned
5 prosecutors to Main Justice to flag for them the impending appointment of Mr. Smith and ask that
6 they stay on.

7 Were you involved in this November 18th meeting?

8 A And, sorry, just to be clear, because I think I know the meeting you're talking about --

9 Q That's correct.

10 A -- but if you're talking about something from the article, if you want to point that out to
11 me, I'm happy to read it. Independent from the article, I think I know what you're talking about.

12 Q Go ahead. Let's go with independent.

13 A Okay. Was I involved in that meeting? Yes.

14 Q And who else was in that meeting besides you and the Attorney General?

15 A There were a number of people, maybe I can describe --

16 Q Uh-huh.

17 A -- coming into the meeting.

18 I was advised that day that I was invited to a meeting or an attendance in the Attorney
19 General's Conference Room that was to take place sometime not long after I was advised of this,
like,

20 an hour or two later, I think, is my recollection. I think it's Friday.

21 I went to the RFK Building, Main Justice, went to the Attorney General's Conference Room. I
22 don't remember who was there when I arrived versus, you know, who arrived shortly thereafter.

23 Q Uh-huh.

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1 A So, ultimately, the group of people that I recall: Mr. Cooney was there.

2 Q Uh-huh.

3 A I believe, but I am not certain, that Mr. Crabb and Mr. Graves were there. Other
4 prosecutors with whom I was working in the District of Columbia on these investigations were there
5 or arrived shortly thereafter.

6 Q And just to be clear, sorry to interrupt, but the D.C. prosecutors were the line --

7 A Correct.

8 Q -- prosecutors that you worked with?

9 A Correct.

10 Q Okay. Please continue, sir.

11 Was Jay Bratt one of them?

12 Mr. Windom. No, but -- sorry. In response to your question, the answer is no. In response to
13 her question -- I'll get to that in a moment -- the answer is yes, Mr. Bratt was present. He was not
14 one of the people that I was working with in D.C.

15 Okay.

16 Mr. Windom. So that was, kind of, this group of folks.

17 Uh-huh.

18 Mr. Windom. This group of folks, there were people who I knew to be working on what at
19 that time was the separate -- what became the classified documents case. I believe that Mr. Bratt
20 was there. I'm not certain, but I believe that he was there. Other prosecutors who I either knew to
21 be working on that or thereafter learned were working on that.

22 Uh-huh.

23 Mr. Windom. Who else? So that's the folks that were invited.

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1 At some point shortly after I arrived, the Attorney General entered the conference room. He
2 had staff with him, a number of them. I don't know if that's two or four or what. My recollection is
3 that Lisa Monaco, the Deputy Attorney General, also came in, either with Attorney General Garland
4 or shortly thereafter, and was present for that brief meeting.

5 BY

6 Q Was Bradley Weinsheimer in that meeting? He worked in the DAG's Office.

7 A I know who that is, and I would recognize him. His face is not coming to mind as
8 somebody who was there. He may have been.

9 I think, ballpark numbers, there were at least 20 people there. So -- and I was on, like, one
10 end of a side of the room. So I'm not sure that I -- I just don't remember if he was there.

11 Q Was there anyone else from the DAG's Office in attendance that you can remember?

12 A Yes. I believe that at some point during -- and I don't know if they walked in with
13 Ms. Monaco, but I believe that Molly Gaston, whose name you're familiar with, came in at some
14 point. At the time, she was on detail to the Office of the Deputy Attorney General.

15 And I believe at some point Mr. Atkinson, who I named earlier, came in at some point, who I
16 don't believe -- maybe he was on detail. I thought he was an employee in that office.

17 Q And other than the Attorney General, obviously, who had a speaking role at the
18 meeting?

19 A The Attorney General did, as you said. I would suspect that Ms. Monaco may have said
20 something, but I don't remember -- I don't remember with any specificity.

21 Attorney General Garland, if you'd like me to say what he said or what I remember --

22 Q Yes. Please do.

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1 A So Attorney General Garland comes in and is at the head of the table in the Attorney
2 General's Conference Room. I can't recall if he sits down or if he's standing up. It's a brief meeting.
3 He says something to the effect of, without recalling the exact words, now 3-ish years ago,
4 you know, "Thank you all for coming on short notice. I wanted to let you all know that I've decided to
5 appoint a special counsel. That special counsel is Jack Smith."

6 I don't remember the exact words, but I do recall it was similar to what he either said shortly
7 thereafter when he went to announce this publicly or maybe it was in the order appointing Mr.
8 Smith, but, you know, something about the reason that he was appointing Mr. Smith.

9 Q Uh-huh.

10 A And I do recall at least something similar to what you mentioned earlier. I recall him
11 saying something along the lines of, you know, "I hope that y'all will continue working with Mr.
12 Smith" or that "y'all will consider working with the special counsel," something along those lines.

13 Q Was Jack Smith in the meeting?

14 A No.

15 Q And what was the reasoning for the appointment? Was it because President Trump had
16 announced his candidacy a few days before?

17 A I would have to refer you for the exact wording to what I think was the press statement
18 that he made.

19 Q Uh-huh.

20 A Because my recollection is, this meeting occurred, and I walked out the door and left,
21 and at that moment the Attorney General was going to -- I don't remember if it was the Great Hall or
22 some other room -- to make this press announcement, where my recollection at the time is he said
23 publicly basically what he told us.

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1 Q And how long after the November 18th meeting that you had with the Attorney General
2 did you officially join Smith's team?

3 A Within -- so I think I said before, it was a Friday. It was the Friday before Thanksgiving, is
4 my recollection. I would have accepted Mr. Smith's -- at some point, Mr. Smith asked me to join the
5 team. I would have accepted that offer by the first week or so of December --

6 Q Uh-huh.

7 A -- maybe the second week, maybe the last week of November, somewhere in that
8 timeframe.

9 Q And when was your first time meeting Smith?

10 A Around the first week of December.

11 Q And how often did you interact with him when you were on the special counsel's team?

12 A Daily.

13 Q Daily?

14 Did you have any involvement in the gag order motion that was filed after the indictment on
15 September 15th, 2023?

16 A I had involvement in an order under Local Rule 57.7, which prohibited both parties, the
17 government and the defense, from making certain statements. But I'm not going to subscribe to
18 your language of a "gag order."

19 Q Okay. And the -- the order was then curbed by a panel of judges; is that correct? It was
20 narrowed?

21 A Without agreeing to your first characterization, my recollection is that a unanimous
22 panel of the D.C. Circuit upheld in large part the Rule 57.7 order, did narrow it in some respects.
23 There's an extensive opinion on this.

109

1 Q Uh-huh.

2 A But the basis, my recollection -- and there are filings on this -- for the findings in the
3 District Court and in the Circuit Court were that the 57.7 order should be entered both to protect
4 against threats and intimidation of witnesses and to preserve the integrity of the administration of
5 justice.

6 Q But the first order sought to keep him from talking about the -- keeping President
7 Trump -- to not allow him to talk about or criticize the case at all. Is that correct?

8 A You'd have to show me the first order. I don't remember the specific language of it.

9 I do know that the order applied equally, per the local rule, to both parties. And so -- well, at
10 least that's my recollection of it.

11 Q And then, in December 2023, there was another filing, similar, that would have
12 prohibited President Trump from being able to cite concerns regarding the National Guard, D.C.
13 Mayor, or undercover agents on January 6th. Do you remember this?

14 Mr. Burton. Do you have a date for that filing, I'm sorry.

15 I have December 27th, 2023.

16 Mr. Windom. And my counsel is showing me a docket, it looks like.

17 Mr. Burton. I'm just showing a docket printout.

18 Mr. Windom. December what?

19 Mr. Burton. What's listed on December 23 on the docket says "motion in limine."

20 That's correct.

21 Mr. Burton. Okay. Is that what you're --

22 That's the motion --

23 Mr. Burton. -- referring to?

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1 -- I'm referring to.

2 Mr. Burton. Okay.

3 Ms. Suen. December 27th?

4 Mr. Burton. Yes.

5 Ms. Suen. Okay.

6 Mr. Windom. If you have that for me to look at -- a motion in limine typically is an exclusion
7 regarding potential trial evidence. So, if you want me to take a look, I'm happy to take a look at it. I
8 don't agree or disagree with what you just said on what it is.

9 BY

10 Q But you were involved with at least the initial filing of the motion on September 15th,
11 2023?

12 A I was involved in -- I'm sorry, you said the date was?

13 Q September 15th, 2023.

14 A I was involved in some capacity with that, yes.

15 Q And then were you involved with the subsequent litigation regarding that order?

16 A I was involved with it in some capacity. I was not the person that argued it in the D.C.
17 Circuit.

18 Q And who argued that, if you remember?

19 A Can we hold on just for a second? I just want to clarify --

20 Q Yes.

21 A -- something with my counsel.

22 Q We'll go off the record.

23 [Discussion off the record.]

111

1 We'll go back on the record.

2 BY

3 Q Go ahead, sir.

4 A Sure. I believe that your -- well, why don't you re-pose your question to make sure the
5 record's clear?

6 Q My question was, you had suggested that you were involved with the various filings
7 regarding the initial motion from September 15th, 2023, and you said, "I was not the one who argued
8 it in court." And so my question was, who argued?

9 A Sure. My recollection is that in the District Court Ms. Gaston argued that and in the
10 Circuit Court Cecil VanDevender argued that.

11 These are matters of public record. There are transcripts which identify them. I believe that
12 Mr. VanDevender's name is actually on the Circuit Court opinion as the arguing attorney.

13 And, just for clarity, that is something that I wanted to confer with my counsel on to make
14 sure was a matter of public record.

15 Q Are you aware of an effort to get transcripts from interviews conducted by the House's
16 January 6th Select Committee?

17 A I am aware that the House Select Committee provided material to the Special Counsel's
18 Office --

19 Q And --

20 A -- which included -- I'm sorry. Go ahead.

21 Q You're okay. I was just going to say, were you in communication with the committee, or
22 was there another person at your office who was in communication with the committee?

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1 A For something specific like that that involves the House Select Committee, to the extent
2 that there were communications, I have not been authorized by the Department to discuss those
3 with you.

4 Q You can't even answer whether or not you, specifically, were in communication with
5 them?

6 A That's my understanding of the authorization letter.

7 BY

8 Q Did they give the materials to you voluntarily, sua sponte, or did you guys request it
9 from them?

10 A I think what's a matter of public record and is detailed both in the special counsel report
11 and in Rule 17(c) subpoena litigation in the District Court is that the House Select Committee
12 provided the Special Counsel's Office with a volume of material and that all of that material was
given

13 to the defendant during litigation.

14 Q But did you ask for it, or did they just provide it on their own?

15 Mr. Burton. I think that would implicate Rule 6(e).

16 Sorry, I don't see that, but -- I mean, we're asking about your communications
17 with the House of Representatives.

18 Mr. Burton. But if they're communications in the course of the grand jury investigation, that
19 would be covered by Rule 6(e).

20 No --

21 Mr. Burton. As to the government.

22 BY

23 Q Have you had any communications with congressional staffers on this case?

113

1 A For the same reasons that I said before, if I did, I would be unable to discuss those based
2 on, at a minimum, the lack of authorization to do so from the Department's authorization letter and
3 then possibly, depending on how far down the line we were able to one day go, Rule 6 or other
4 standing orders of the court.

5 Q Okay. So you're not willing to disclose your communications with the House Select
6 Committee?

7 Mr. Burton. I think characterization of his willingness as incorrect.

8 You're not going to disclose.

9 Mr. Burton. He is unable to disclose.

10 So he's not going to disclose. Okay.

11 BY

12 Q And if it's helpful, I can point you to the footnote in the Smith report where the
13 discussion of the January 6th Select Committee happens. It's not in the text of the report. It's
14 reserved for a footnote, footnote 251, to be specific, on page 93.

15 A I'm sorry. Page --

16 Q Ninety-three. Footnote 251 --

17 A Okay.

18 Q -- says, "The Office's investigation included consideration of the report issued on
19 December 22, 2022, by the U.S. House of Representatives' Select Committee to Investigate the
20 January 6th Attack on the United States Capitol, as well as certain materials received from the
21 Committee."

22 What were the certain materials received from the committee?

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1 A So what I can confirm is that this comports with my recollection. If you have -- I don't
2 know that the detail on what was received was specifically public, but it may be. There are some
3 docket entries, which I'm happy to look at if you have them.

4 The defense filed a motion for Rule 17(c) subpoenas. This would've been around September,
5 October, November of 2023. That was litigated. We responded with a responsive brief that included
6 more information, is my recollection, than just what's in this footnote.

7 To the extent that that describes the material with more specificity, I'm happy to go through
8 that with you. But absent recalling what is already public, I don't believe that I can describe with
9 specificity that material.

10 Q Did you receive transcripts of interviews?

11 A For the same reasons that I said before, it's entirely possible that the information that
12 you're asking for is public. And if you have the motion that the defense filed and our responsive
brief

13 and the court's order -- well, I guess there's a reply brief too -- and the court's order, it likely gives
14 more information than just the sentence that you read.

15 Q Uh-huh.

16 A But absent reviewing that right now, I don't recall what is public. And unless it's public, I
17 don't believe that either under the Department's authorization letter or Rule 6 or potentially the
18 protective order in the case, any sealing orders, that I am permitted to tell you with specificity what
19 those materials are.

20 Q Why didn't you just conduct interviews yourself? You're the Department of Justice.

21 Why did you need the transcripts?

22 A I'm not sure what the predicate of your question is except it may be assuming that we
23 had certain things, which I have said I'm not sure if that's publicly available.

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1 Q Why would you need to seek transcripts from a House committee if you could conduct
2 the interviews yourself as the Department of Justice?

3 Mr. Burton. You've mischaracterized. He has not said he sought transcripts. He's not said
4 whether he received transcripts.

5 If there is something in the public record that discusses that, as he's referenced, that you
6 want to look at and show, I think he will be comfortable answering with greater specificity.

7 But if it's not in the public record, it implicates not only the scope of the letter but, more
8 importantly in my judgment, Rule 6 and also the protective order entered by Judge Chutkan.

9 BY

10 Q So I take it you're not going to answer that question. Is that correct?

11 A Relying on the exact thing my counsel just said.

12 Q What can you tell us about any communications that the Special Counsel's Office had
13 with Fulton County District Attorney's Office?

14 A I think that the most I can say is that I was not involved in any
15 communication -- certainly any substantive communication, but any communication -- with
16 Fulton Coun- -- and just for clarity and to make sure that I understand, you're talking about the
17 county in which there was a State indictment against Mr. Trump and a variety of other people? Is
18 that correct?

19 Q That's correct. That would be Fulton County in Georgia.

20 A Sure.

21 Q The district attorney there is Fani Willis, if helpful for your recollection.

22 A My answer stands. I don't recall being part of any such communication, substantive or
23 otherwise.

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1 Q Were you aware of any ongoing communications that you may not have been a part of?

2 A The best I can say on that is I am not aware, whether it is me or somebody else in the
3 office that had any substantive conversations there. If there were anything that I was aware of, I
4 don't think that I would be permitted to discuss it. But I'm not aware, sitting here today.

5 Q And on the special counsel's report, footnote 1, which is on page 2, the footnote says,

6 "This section of the report summarizes the evidence uncovered by the office's investigation and,

7 therefore, includes conduct for which the Supreme Court later held Mr. Trump to be immune from
8 prosecution."

9 Did you have any role in the decision to include immune conduct in the report?

10 A I'm not sure if I can say I had a decision in it. I certainly was aware of it.

11 The footnote goes on to say that --

12 Q Uh-huh.

13 A -- if I remember correctly -- and let me just read the rest of it.

14 Right.

15 So the first section of the report lays out, as it's titled, "The Results of the Investigation." The
16 information that would have served as proof beyond a reasonable doubt had we gone to trial for the
17 jury to consider did not include discussion of the evidence that the Supreme Court held to be
18 immunized. And that's reflected right here in this footnote.

19 Q Uh-huh. But why include conduct, as the next sentence says -- "that conduct is not
20 included in the superseding indictment that the office obtained after the Supreme Court's decision."

21 So why include conduct that you couldn't charge in the superseding indictment?

22 Mr. Burton. When you're using "you," you mean the Special Counsel's Office?

23 Yes.

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1 Mr. Burton. Okay.

2 As I've said the whole day, Mr. Burton. Yes.

3 Mr. Burton. No. Sometimes "you" is him personally, and sometimes "you" is special counsel.

4 Mr. Windom. As you said, the conduct that either the Supreme Court found to be immune or
5 that we believed to be rebuttably immune, some of that conduct was included in the superseding
6 indictment.

7 My understanding of this part of the special counsel report is that it includes information that
8 the Supreme Court determined to be immunized.

9 The ultimate decision on what was included in the report content-wise, sections, structure,
10 that sort of thing, was up to the special counsel.

11 BY

12 Q So it was Jack Smith's decision to include immune conduct in the report?

13 A I think that it was Jack Smith's decision, as he says -- I believe he says in here, to include
14 the information that's included in the report.

15 Q And what was your involvement in the classified documents case, if any?

16 A Can you give me a timeframe?

17 Q Any timeframe. Just tell us what your involvement was, sir.

18 A I didn't work on that case.

19 Q Uh-huh.

20 A And I will bifurcate this into my time on detail in the U.S. Attorney's Office and my time
21 on detail to the Special Counsel's Office.

22 I recall interactions with the -- at least Mr. Bratt and I believe one other person when they
23 were at the National Security Division when that investigation was ongoing prior to the Special
118

1 Counsel's Office. And these interactions were more in the way of informational updates that
2 occurred every so often --

3 Q Uh-huh.

4 A -- logistical issues mainly, to make sure that, to the extent any investigative steps that
5 we were -- or maybe not "any" -- but to make sure that investigative steps that we might be
6 undertaking were known to them and vice versa.

7 But I had no input into what their investigative steps were. They weren't in our office, in the

8 U.S. Attorney's Office for the District of Columbia. There was just the occasional informational
9 updates.

10 That's the -- that's my time in D.C.

11 Q Uh-huh.

12 A My time in the Special Counsel's Office, again, I did not work on that case. There were
13 interactions. We all sat on the same floor. We were occasionally in meetings together if there were
14 updates that affected both sides, both the classified documents case and the election case, or issues
15 that both sides needed to have input on.

16 Q Did you ever conduct any interviews for the classified documents case?

17 A I did not, to my recollection, conduct interviews for that case.

18 Q Uh-huh.

19 A There were overlapping witnesses.

20 Q Uh-huh.

21 A And I believe that there's a public filing on this.

119

1 When there were witnesses that were interviewed as part of the election case and the same
2 witnesses were interviewed by the classified documents case team, the practice was to produce both
3 of those interviews to the defendant in both of the cases.

4 Q Uh-huh.

5 A That was the practice.

6 There were times where, for, you know, logistical reasons, we arranged with -- and by "we", I
7 mean the folks on the election case team, maybe me, maybe not me -- would arrange with
8 prosecutors on the documents team and counsel for a witness to make it easier for everybody,
9 basically, to have the questioning occur by both teams on the same day but not necessarily at the
10 same time.

11 There may have been a time -- I do not recall any time where I was present for one of those
12 interviews when somebody from the classified documents team was asking questions.

13 Q Okay.

14 So, if The New York Times credited you with conducting 29 interviews in the classified
15 documents case, that's inaccurate?

16 A I mean, I guess I'm not going to speculate on if The New York Times did.

17 What I can say is, I recall the defense making an argument in litigation -- and I don't know if
18 that was on the election case or on the document case -- that certain prosecutors on one side had
19 conducted certain interviews on the other.

20 My recollection is that the response that the office filed to that was essentially what I just
21 said. There were overlapping witnesses, and, to the extent that were the case, then it was the
22 practice to produce the interview that occurred on the other case of the same witness in the first
23 case.

120

1 Q Did you have any involvement with the search warrant at Mar-a-Lago?

2 A No.

3 Q Okay.

4 And once you were detailed, throughout your time on detail to the U.S. Attorney's Office in
5 D.C., November 2021, through your tenure on Smith's team, did you have any communications with
6 Ms. Monaco besides the November 18th meeting that we've just discussed?

7 A I did.

8 Q And how many conversations did you have with Ms. Monaco?

9 A Conversations, two that I recall. Total interactions, four.

10 Q And when did the two conversations occur?

11 A The two conversations occurred in -- the first one I believe was in early 2022, and I don't
12 know if that means January or March or April.

13 Q Uh-huh.

14 A That was similar to what I described before, some sort of video teleconference. It was
15 an update on investigative efforts, to my recollection. I was not alone in that.

16 The second one was either October or November of 2022, before the appointment of the
17 special counsel. That was an in-person meeting at the United States Attorney's Office for the District
18 of Columbia. Similarly, I was not the only person there.

19 Q Uh-huh.

20 A I had a speaking role in both of the two, I guess -- I don't know if they're called
21 "conversations" or "meetings."

22 Q And it was just to update Ms. Monaco on the status of the investigation?

23 A That's my recollection.

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1 Q And then the four interactions you described, when did those occur?

2 A So those two meetings that I described are -- I'm including that in the interactions.

3 Q Okay. So, then, just two separate interactions and the conversations.

4 A That's my recollection.

5 Q Okay.

6 A The third time I recall being in a room with Ms. Monaco was November 18th. And,
7 again, that's if she was there --

8 Q Uh-huh.

9 A -- because I don't have a clear recollection of her being there.

10 And then the fourth time that I interacted with Ms. Monaco was in January of 2025, this year,
11 and I don't know the date, first or second week.

12 Q Uh-huh.

13 A Well, first, second, or third week, I guess. And -- yeah, that's that time.

14 Q Okay.

15 And did you ever have any communications with Bradley Weinsheimer,
16 communications/interactions with Bradley Weinsheimer?

17 A Regarding this case?

18 Q That's correct.

19 A Okay. Like I said before, I know who Brad Weinsheimer is. I don't recall having any
20 interactions with him.

21 I think that I was on some -- we get a lot of email, a lot of spam email, and I remember
22 hundreds and hundreds of names being on a spam email where he also was -- there were any
23 number of people, not just in the Department, and he also was on there as a name that I recognized.

122

1 Q Okay.

2 A But I had no clue who the spam person was.

3 Q Beyond the November 18th, 2022, meeting with the Attorney General, did you ever
4 have any other occasion to interact with the Attorney General on this case?

5 A The only other time that I remember is the same interaction with Ms. Monaco at
6 the -- in January of this year.

7 Q Uh-huh.

8 And, during your investigation, so including your time on detail up through your time on the
9 Smith team, did you ever interact with anyone that's associated with the Biden White House?

10 A For that, to the extent that I -- and I can answer that in part.

11 Q Okay.

12 A To the extent that there were specific interactions with the incumbent Executive at that
13 time, my understanding is that the Department's authorization letter does not cover that.

14 Q Uh-huh.

15 A I can tell you what's publicly available.

16 Q Okay.

17 A When -- it is publicly available. It's included in the report. We said this in open court.

18 And, also, I believe that there was some media public-access litigation where you can go and find
19 docket entries and affidavits and filings, arguments.

20 In the time period, I think it was around August of 2022 through around March of 2023, we
21 were engaged both while in the D.C. U.S. Attorney's Office and in the Special Counsel's Office in
22 litigation over executive privilege.

23 Q Uh-huh.

123

1 A And I think what the public information is is that, as a predicate to that litigation, the
2 government reached out to the incumbent Executive and also to the former President -- so both the
3 White House Counsel's Office at the time, I believe it was, and then counsel for Mr. Trump -- to
4 determine whether they were going to try to invoke executive privilege over certain witnesses'
5 testimony.

6 Q Uh-huh.

7 A I believe that it was 14 witnesses -- this is all public -- it was 14 witnesses.

8 As part of that, as I said, the government reached out to both the White House Counsel's
9 Office and to counsel for Mr. Trump to determine whether they would seek to invoke executive
10 privilege.

11 Q Would it be accurate to say that if you had communications with the Biden White House
12 it would have been regarding executive-privilege assertions?

13 A I don't want to define or limit or expand or characterize what those conversations may
14 be if they occurred. I'm simply not permitted, based on my understanding of the Department's
15 authorization letter, to discuss that one way or the other, if they happened. What I am able to point
16 you to is what is in the public record.

17 Q So you could've had conversations with the Biden White House beyond discussions
18 regarding executive-privilege assertions?

19 Mr. Burton. He can't answer that if they were under the investigatory function.

20 BY

21 Q As part of your investigation, did you ever review materials or information provided by
22 FBI confidential human sources?

23 A I'm trying to think what, if anything, I can respond to this.

124

1 The most that I could probably say is that the FBI was involved in the investigation. I reviewed
2 a number of investigative files from ongoing grand jury investigations. My recollection is that there
3 was some litigation on this, and so there are some public filings which discuss confidential human
4 sources.

5 I think that that is in a motion that the defense filed to compel discovery. I believe that we
6 would've responded to that in an opposition brief somewhere in December of 2023. And I believe
7 that the court entered an order that discusses in some respect confidential human sources in August,
8 September, October of 2024. I don't recall the specifics of those.

9 Q And there's also a public report from Inspector General Horowitz regarding the use of
10 confidential human sources by the FBI on January 6th. Were you aware of that? I believe it came
out

11 in December 2024, November or December 2024.

12 A I think I've heard that such a thing existed. I don't recall reviewing it.

13 Q During your investigation, did you ever become aware that the FBI had 26 confidential
14 human sources in the D.C. area on January 6th?

15 A Again, I think that, if I had become aware of anything, specifics, regarding any number of
16 things related to the investigation, whether it's, you know, confidential human sources or virtually
17 anything else, I would be, A, not authorized to discuss it based on the Department's letter; but, B,
and

18 more broadly, prohibited by Rule 6 from discussing anything that was obtained pursuant to
19 then-ongoing grand jury investigations.

20 Q Were you aware of reports of misconduct to the Office of Professional Responsibility
21 pertaining to individuals working on Jack Smith's investigations?

22 A I am aware of one.

23 Q Okay. And what can you tell us about that?

125

1 A I can tell you what I remember of public filings that were made on this issue.

2 Q Uh-huh.

3 A My recollection is that there was an allegation that a defendant made in the Southern
4 District of Florida, and I don't recall which one, regarding Mr. Bratt.

5 Q Does "Walt Nauta" help you out at all --

6 A I don't know --

7 Q -- for the name of the defendant?

8 A -- which one it was. I know Walt Nauta is one of the named defendants, but I don't
9 know if it was him or a different one.

10 I know that there was an allegation made. I know that there was a briefing on this in
11 Florida -- I believe that there's a transcript -- at which this was discussed. And my recollection is
that,

12 somewhere along the line, the Special Counsel's Office, in a filing or in a transcript, told Judge
Cannon

13 in the Southern District of Florida that it had made a self-referral, I believe the language is, to -- and
I

14 think it was OPR, the Office of Professional Responsibility.

15 Q And do you have any knowledge beyond what was in the public findings regarding the
16 incident between Mr. Bratt and Mr. Nauta's counsel, Stanley Woodward?

17 A I don't have any firsthand knowledge.

18 BY

19 Q Did Mr. Bratt relate anything to you about the allegation?

20 A I don't recall Mr. Bratt saying anything to me about the allegation.

21 Q Were you aware that Mr. Woodward was being considered for a judicial post at any
22 point in time?

23 A I recall that that was part of the allegation.

126

1 Q And were you aware that he was being considered for a judicial post separate from that
2 allegation?

3 A I don't believe so.

4 BY

5 Q Were you ever in contact with OPR? Did they seek to interview you, ask you for
6 documents or anything?

7 A No. The only thing that I remember about OPR -- and I think it's OPR -- at some point

8 late in 2024, I was advised that somebody from OPR had asked for my email address, which seemed

9 odd to me because, as far as I understood, it was available in the directory.

10 Q Uh-huh.

11 A But I never received any sort of contact or communication from them that I know of.

12 BY

13 Q Have you had any communication with the Weaponization Working Group that's

14 currently being operated out of the Deputy Attorney General's Office?

15 A The -- I'm sorry. Who's on that?

16 Q What's that?

17 A Who is on this?

18 Q There's an initiative inside the Deputy Attorney General's Office currently, a

19 Weaponization Working Group, and one of their missions is to evaluate the prosecution of President

20 Trump.

21 And my question was, have you had any outreach from them? Have they sought to interview

22 you?

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1 A Not that I know of. I don't think I was familiar with the name of it. I know generally that

2 there was an Attorney General order of some kind that talked about something like this. But, to my

3 knowledge, I have not received outreach from whoever is doing that.

4 Q If they do reach out to you, do you intend to cooperate with them?

5 Mr. Burton. I don't think we'll -- if what you discuss happens, we'll assess it at the time it

6 happens.

7 So it's possible you may not choose to cooperate if they reach out for questions?

8 Mr. Burton. I don't -- I'm not going to accept your characterization as to what "cooperation"

9 means.

10 Uh-huh. Sit for an interview.

11 Mr. Burton. We'll assess -- if that event occurs, we'll assess it at the time.

12 Uh-huh. But it hasn't happened yet? They haven't reached out to you yet?

13 Mr. Burton. No.

14 BY

15 Q The materials that the January 6th Committee provided the Justice Department -- what

16 safeguards were implemented, or guardrails, to evaluate the information and provide it in the

17 context of the political spectrum that they were conducted in?

18 So the January 6th was a committee that operated with no, you know, functioning minority.

19 It was essentially a majority-only committee. And, you know, they were on a political mission,

20 essentially, to damage the President.

21 And so the information they collected and produced to the Justice Department was -- you

22 know, certainly had to be viewed in the prism of political -- you know, it's essentially political

23 opposition research provided to the Justice Department.

128

1 And I'm asking, to what extent were there guardrails or safeguards put in place to handle that

2 material in such a way?

3 Mr. Burton. I don't think, to the extent that that material is discussed -- and we're not

4 accepting your characterization of the committee or its function or those issues. I think there's a

5 limited discussion in the special counsel's report, and that's what he's confined to.

6 Uh-huh.

7 Mr. Burton. He has not confirmed nor denied what, if anything, they received from that

8 committee, other than what is in the public domain. I think he's referenced there may be other

9 references in other public documents, which I think he can discuss. But, I don't think he's

10 able to discuss matters relating to the investigatory phase of the special counsel's investigation.

11 BY

12 Q So what can you tell us about how the Justice Department handled the materials
13 provided by the January 6th Committee?

14 A I think that I'm limited to two sources of information.

15 The first is the footnote which pointed me to earlier on page 93. That's footnote
16 251. And a sentence which may be, at least in part, responsive to your question is that those
17 materials, meaning the materials obtained from the House Select Committee, comprised a small part
18 of the office's investigative record, and any facts on which the office relied to make a prosecution
19 decision were developed or verified through independent interviews and other investigative steps.
20 So that was the first source of information.

21 The second source of information are the filings that I have pointed you to, which -- I don't
22 remember the exact content, but they are a matter of public record, and there are many more pages
23 than the few sentences that we've covered today -- which may shed light on this.

129

1 Q So do I understand it correctly that the communications that the Special Counsel's Office
2 had with the January 6th Committee you can't talk about because of 6(e)?

3 A I think that what I said before is, to the extent that there were contacts, my
4 understanding is that, from the authorization letter, I would not be permitted to discuss those, if they
5 occurred, other than what's in the public record.

6 And, beyond that, depending on what the questions were -- and I think it probably would
7 cover everything -- that likely implicates Rule 6(e) and possibly other orders, such as the protective
8 order in this case.

9 Q Okay. So let's say you got a new authorization letter from the Department specifically
10 authorizing you to speak in an unrestricted manner about any communications you had with the
11 January 6th Committee. Would you then be able to provide us --

12 Mr. Burton. I think --

13 -- with any information?

14 Mr. Burton. Are you finished? I didn't want to interrupt you.

15 I'll take your nod as a yes.

16 The Department cannot authorize, as it acknowledges in the June 4th letter, a violation of
17 Rule 6(e). And I think we would have to have a very clear understanding as to whether this
18 committee has sought an order from the court permitting a discussion of Rule 6(e), has the
19 Department sought such an order from the court.

20 So I appreciate that there may be another guidance letter from the Department, but the
21 Department, absent a court order, cannot authorize anyone --

22 So --

23 Mr. Burton. -- to violate Rule 6(e).

130

1 So is it your position that communications that somebody had on a special
2 counsel team with the January 6th Committee would be covered by 6(e)?

3 Mr. Burton. I think if it is for the purpose of the investigation, yes, I think that is interpreted
4 broadly by the courts. And if you or the Department wants to get an order narrowing that, that's
5 your prerogative.

6 Okay.

7 Ready to go off the record?

8 We can go off the record.

9 [Recess.]

131

1 [3:16 p.m.]

2 It is 3:16. We can go back on the record.

3 BY

4 Q I want to return to the conversation in the earlier hour about the order entered
5 pursuant to local criminal Rule 57.7(c). You remember that conversation?

6 A I do.

7 Q The Special Counsel Smith report page 112 notes that, quote, "A significant" --

8 Ms. Suen. What page?

9 Page 112.

10 BY

11 Q Says, "A significant challenge that the office faced after Mr. Trump's indictment was his
12 ability and willingness to use his influence and following on social media to target witnesses, courts,
13 and Department employees, which required the office to engage in time-consuming litigation to
14 protect witnesses from threats and harassment."

15 Do you see where it says that?

16 A I do.

17 [Windom Exhibit No. 9

18 was marked for identification.]

19 BY

20 Q I want to introduce as exhibit 9, the government's motion to ensure that extrajudicial
21 statements do not prejudice these proceedings. It's document number -- ECF No. 57.

22 A Thank you.

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1 Q But on the first page of this pleading, the second sentence of the first paragraph reads,
2 "Through his statements, the defendant" -- referring to President Trump -- "threatens to undermine
3 the integrity of these proceedings and prejudice the jury pool, in contravention of the 'undeviating
4 rule' that in our justice system a jury's verdict is 'to be induced only by evidence and argument in
5 open court, and not by any outside influence.'"

6 Do you see where it says that?

7 A I do.

8 Q What does it mean to undermine the integrity of the proceedings in this context?

9 A I think that the remainder of both this motion and the district court's discussion of it on
10 the record kind of bear out with more specificity exactly what that statement means.

11 As a general matter, the Rule 57.7 order that was sought by the special counsel and then
12 ultimately entered by the district court and narrowed but affirmed in large part, is my recollection,
13 by

14 the circuit court sought to, in summary, prevent intimidation and threats to witnesses, and also to
15 protect the integrity of what was then going to be a forthcoming trial by jury.

16 Q And what was the specific concern about impacting the jury pool?

17 A I think that there were a few. And if you give me a moment, I'd like to look through here
18 to make sure that I state it correctly.

19 I recall some discussion in this document and at the hearing on the motion about potentially
20 polluting the jury pool with information -- false or disparaging information about witnesses or
21 putative witnesses, prosecutors, the court system. I recall some discussion of a concern that there
22 were a number of false accusations that to that point had been levied. I recall verified threats and
23 harassment that had occurred of witnesses as identified, I think, nonspecifically, because I believe
133

1 that there's a redacted version or redacted appendix, that to the extent that the intimidation or
2 harassment were successful, it would have had the ability to influence those witnesses' testimony.

3 Q What about the threats as on page 7 of the pleading? I don't want to call them threats,

4 but I'll just read from the tweets themselves that are cited here.

5 August 8th, 2023, 4:47 p.m., Donald J. Trump posted, "The Obama-appointed judge in the
6 free speech indictment of me by my political opponent, crooked Joe Biden's Department of Injustice,
7 shared professional ties with the law firm that worked for energy company Burisma." And it goes on.
8 "How is the law firm paid? So horrible. This is a classic conflict of interest." Gateway pundit,
9 in quotes.

10 And then the following tweet that's included on this page reads, "There's no way I can get a
11 fair trial with a judge, quote/unquote, 'assigned' to the ridiculous freedom of speech/fair elections
12 case. Everybody knows this, and so does she, exclamation point. We will be immediately asking for
13 recusal of this judge on very powerful grounds, and likewise for venue change out if" -- a mistake. I
14 think it's supposed to say "out of D.C."

15 See where it says that?

16 A I do see that.

17 Q How did those type of tweets, those type of posts by President Trump, who at this time
18 was the defendant in the case, how did those risk impairing the integrity of the case?

19 A I think that what we wrote -- or what the special counsel wrote in the filing was that
20 these two specifically were examples of the defendant attacking, undermining, and attempting to
21 intimidate the court and the jury pool. These are some -- this is one of the categories of information.
22 I think that there are a number of subsections and a number of examples that are used in this motion
23 to describe the conduct.

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1 And then there is a section, I believe it starts around page 12, which discusses that it is
2 reasonably likely that statements such as these would prejudice the jury pool.

3 Q In other words, these types of statements could make it impossible to have a fair trial in
4 this case. Is that a fair statement of the concern with respect to the jury pool?

5 A I don't know if I would adopt the word "impossible," hence why I will rest on whatever
6 language there is in this pleading. I think, generally speaking, there was a concern that the
7 defendant's statements would lead to intimidation of witnesses and would undermine the integrity
8 of the justice system.

9 Q So fair to say that the goal of this pleading was to ensure that there could be a fair trial.
10 In other words, this was designed to protect the integrity of the proceedings?

11 A The intent of this motion, the intent of local Rule 57.7 specifically, which has existed on
12 the books long before the Special Counsel's Office filed a motion on that, my understanding, is to
13 protect the fair administration of justice.

14 Q And then there was some discussion in the prior hour about the order that was entered
15 by the district court and the court of appeals ruling. I want to introduce those both for the record.
16 We'll do the order from Judge Chutkan, which is ECF No. 105, as exhibit 10. And then we'll do the
17 court of appeals ruling which is dated December 8th, 2023, as exhibit 11.

18 [Windom Exhibit Nos. 10 and 11

19 marked for identification.]

20 BY

21 Q And take as long as you'd like to review. And I'm going to ask you if having reviewed
22 this, if it refreshes your recollection about the extent of, first, Judge Chutkan's ruling, and then,
23 ultimately, you said in the prior hour that much of the order was left intact by the D.C. Circuit. And
135

1 so to ask you if this refreshes your recollection, if you can talk more about what ultimately was left in
2 place. I think the language is perhaps on page 30.

3 A Sure. This generally comports with my recollection. My recollection is that this
4 obviously was heavily litigated. It was the subject of briefing in the district court. It was the subject

5 of briefing in the circuit court.

6 You may notice that there's a header on the top of the circuit court opinion which says "Public
7 Copy -- Sealed Information Deleted," because there's some redacted portions which my recollection
8 is that that is some of the evidence that supported the motion.

9 And, ultimately, the circuit court affirmed in part the district court's opinion. And it lays out
10 various things that both -- and this is I think important -- both the defendant and the government
11 could not do. So the order, my understanding, is applied to all parties and their counsel.

12 Q And you said that, in the prior hours, well, that you felt that that was important. Why
13 do you emphasize that point?

14 A The allegation, if I remember correctly, was made somewhere along the line that this
15 was intended only to apply to the defendant. But my recollection of the local rule, and then now that
16 I'm seeing this again in the circuit court order, was that it applies equally to both parties.

17 Q I am going to move on. Page 2 of the cover letter accompanying Special Counsel Smith's
18 report about -- in the second full paragraph about halfway through. This is paragraph -- Special
19 Counsel Smith is talking about the work done by the prosecutors on his team. And he says, "The
20 intense public scrutiny of our office, threats to their safety" -- referring to prosecutors' safety -- "and
21 relentless unfounded attacks on their character and integrity did not deter them from fulfilling their
22 oaths and professional obligations."

23 Do you see where it says that?

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1 A I do.

2 Q Mr. Windom, were threats and harassment an issue of concern to prosecutors working
3 on this case?

4 A I will speak for myself. They were -- I was aware that -- of these -- of the potential for
5 threats and harassment.

6 Q And how were you aware of that potential?

7 A Public statements that I saw. I was generally aware that I -- individuals on the team had
8 received communications of one kind or another. I was personally made aware that there was some
9 information somewhere on the internet specifically about me in terms of at least what I would
10 consider a threat and at a minimum harassment. I know just based on the volume of incoming mail
11 that occasionally I saw there was a lot of mail directed to the office that fits the description that the
12 special counsel put in his letter.

13 Q Did the threats and harassment and the volume of mail that you've described, did that
14 impact your office's ability to do its work? And I understand you can only speak from your own
15 perspective.

16 A Not in my mind.

17 Q Thank you.

18 We can go off the record. Thank you.

19 [Discussion off the record.]

20 Can we go back on the record now?

21 Mr. Burton. Thank you both, to all staff.

22 With respect to this -- today's voluntary transcribed interview, following the majority's second
23 session of questioning, after which we took a short lunch break, when I came back I was asked by
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1 majority staff whether the Department of Justice had contacted us. I advised majority staff that,
2 during the break, I checked my communications. It is my practice to turn off my phone when I am
3 representing a client in a situation like this.

4 And during that second questioning session, I was -- I received a voice mail from two
5 individuals from the Department of Justice's Office of Legislative Affairs. One is not an attorney. The

6 other is, I think, an attorney. I promptly called them back during the break and left my mobile phone
7 number, which is also available on my firm's website. And I have not yet, as of the last break,
8 received a responsive communication. So I did try to call them back. I wanted to put that on the
9 record.

10 The second thing is, we had, as majority staff knows, requested that a Department of Justice
11 representative be permitted to be in the room during today's process. I was advised that under the
12 committee rules, that is not the committee's practice, nor is it permitted. But I was advised that a
13 Department representative would be outside if there was a need for consultation. I wanted to put
14 on the record that at no time today was there a Department of Justice person outside at least to
15 identify themselves to us at any time. So thank you.

16 Thank you. We can go off the record.

17 [Whereupon, at 3:34 p.m., the interview was adjourned.]

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1 Certificate of Deponent/Interviewee

2

3

4 I have read the foregoing ____ pages, which contain the correct transcript of the answers made
5 by me to the questions therein recorded.

6

7

8

9

10 _____
10 Witness Name

11

12

13

14 _____
14 Date

15

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5 COMMITTEE ON THE JUDICIARY,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

8

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13 INTERVIEW OF: J. BRIAN BURNETT

14

15

16

17
18 Thursday, June 25, 2026
19
20 Washington, D.C.
21
22
23 The interview in the above matter was held in room 2237, Rayburn House Office Building,
24 commencing at 10:28 a.m.

2
1 Appearances:
2
3
4 For the COMMITTEE ON THE JUDICIARY:
5
6 , INTERN
7 , DEPUTY GENERAL COUNSEL
8 , PROFESSIONAL STAFF MEMBER
9 , DIGITAL DIRECTOR
10 , CHIEF COUNSEL FOR OVERSIGHT
11 , COUNSEL
12 , RESEARCH ASSISTANT
13 , MINORITY LEGAL INTERN
14 , MINORITY FELLOW
15 MINORITY CHIEF COUNSEL AND SENIOR ADVISOR
16 , MINORITY FELLOW
17 , MINORITY LEGAL CLERK
18 , MINORITY LEGAL INTERN
19 , MINORITY SENIOR COUNSEL
20
21
22 For J. BRIAN BURNETT:
23
24 STEVEN H. COOK, ESQ.
25 Law Office of Steven H. Cook

3
1 . We'll go on the record.
2 Good morning. This is a transcribed interview of Mr. James Brian Burnett, formerly with the
3 Justice Department's Office of Inspector General.
4 Chairman Jordan has requested this interview as part of the committee's oversight of Special
5 Counsel Jack Smith's office and the preceding investigation.
6 Would the witness please state your name for the record?
7 Mr. Burnett. Brian Burnett.
8 . We encourage witnesses who appear before the committee to freely consult
9 with counsel if they so choose. And it's my understanding that you're appearing today with
10 personal counsel. Is that correct?

11 Mr. Burnett. Correct.
12 . Could counsel please state your name for the record?
13 Mr. Cook. It's Steven H. Cook, S-t-e-v-e-n, middle initial "H" like "hotel," last name Cook,
14 C-o-o-k.
15 On behalf of the committee, I want to thank you for appearing here today to
16 answer our questions. The chairman also appreciates your willingness to appear voluntarily.
17 My name is , and I'm with Chairman Jordan's staff. I'll now have everyone
18 else from the committee who is here in the room introduce themselves as well.
19 . , with Chairman Jordan's staff.
20 . , Ranking Member Raskin's staff.
21 . Ranking Member Raskin's staff.
22 . , Ranking Member Raskin's staff.
23 . , Ranking Member Raskin's staff.
24 . , Ranking Member Raskin's staff.
25 . , Ranking Member Raskin's staff.

4
1 , Chairman Jordan's staff.
2 . , with Chairman Jordan.
3 . , Chairman Jordan.
4 . , Chairman Jordan's staff.
5 . Thanks.
6 I'll now go over the ground rules and guidelines that we'll follow during today's interview.
7 Our questioning will proceed in rounds. The majority will ask questions first for 1 hour, and
8 then the minority have an opportunity to ask questions for an equal period of time if they choose.
9 We'll alternate back and forth until there are no more questions and the interview is over.
10 Typically, we take a short break at the end of each hour, but if you'd like to take a break apart
11 from that, please just let us know.
12 As you can see, there is an official court reporter taking down everything we say to make a
13 written record, so we ask that you give verbal responses to all questions. Do you understand?
14 Mr. Burnett. Yes.
15 . There is also an official committee videographer video-recording the interview
16 as well, as you'll see.
17 So the court reporter can take down a clear record, we'll do our best to limit the number of
18 people directing questions at you during any given hour to just those people on the staff whose turn
19 it is.
20 Please try and speak clearly so the court reporter can understand and so the folks down at
21 the end of the table can hear you.
22 It is important that we don't talk over one another or interrupt each other if we can help it.
23 That goes for everybody present at today's interview.
24 We want you to answer our questions in the most complete and truthful manner as possible,
25 so we'll take our time.

5
1 If you have any questions or if you do not understand one of our questions, please just let us
2 know. Our questions will cover a wide range of topics, so if you need clarification at any point,
3 please just say so.

4 If you honestly don't know the answer to a question or do not remember, it is best not to
5 guess. Please give us your best recollection. And it is okay to tell us if you learned information
6 from someone else. Just indicate how you came to know that information.
7 If there are things you don't know or can't remember, just say so, and please inform us who,
8 to the best of your knowledge, might be able to provide a more complete answer to that question.
9 You should also understand that, by law, you are required to answer questions from Congress
10 truthfully. Do you understand that.
11 Mr. Burnett. Yes.
12 . This also applies to questions posed by congressional staff in an interview. Do
13 you understand this?
14 Mr. Burnett. Yes.
15 . Witnesses that knowingly provide false testimony could be subject to criminal
16 prosecution for making false statements under 18 U.S.C., section 1001.
17 Do you understand this?
18 Mr. Burnett. Yes.
19 . Is there any reason you are unable to provide truthful answers to today's
20 questions?
21 Mr. Burnett. No.
22 . Finally, I'd like to make note that the content of what we discuss here today is
23 confidential. We ask that you not speak about what we discuss in this interview to any outside
24 individuals to preserve the integrity of the investigation.
25 For the same reason, the marked exhibits that we will use today will remain with the court

6
1 reporters so they can go in the official transcript, and any copies of those exhibits will be collected
2 when we wrap up.
3 That is the end of my preamble.
4 Is there anything that my colleagues from the minority would like to add?
5 . Nothing from us.
6 Thank you, again, for being here.
7 . Mr. Cook, do you have anything before we start?
8 Mr. Cook. No. Just very briefly, I have advised my client just -- it's a little bit redundant to
9 some of the things you said -- I have advised him to avoid guessing. The committee, of course, I
10 understand, is interested in facts, not speculation, not guessing. And I have instructed him to stay
11 focused on what he knows, not what he might speculate about or guess.
12 And I've also instructed him, as you've just suggested, that if he doesn't remember
13 something, he should say that, that he doesn't remember, and, again, not guess or speculate.
14 It is a voluntary appearance. He is eager to assist the committee. And, despite that, I think
15 I've alerted everybody to the fact that he had very limited involvement. But, again, he's happy to
16 be here.
17 And then the only other thing I would say -- I mentioned to you all before everybody got
18 here -- I suffer from lower-back problems, and if it's not going to be too disruptive, I may stand up
19 from time to time. Part of getting old. You all don't appreciate that yet, but it's coming.
20 . It's already here for me.
21 Mr. Cook. Okay.
22 That's all I have. Thank you.
23 . Okay. Great. Thank you, Mr. Cook.
24 The clock now reads 10:34 a.m. I'm going to turn it over to my colleague to start

25 the first hour of questioning.

7

1 EXAMINATION

2 :

3 Q Let's start by walking through your professional background.

4 Can you tell me when you joined the Department of Justice and what positions you've held?

5 A I joined DOJ OIG August of 2009. I worked there for a little over 15 years before I

6 retired on November 15th of 2024. And there I held the title of special agent and then senior
7 special agent till the end of my career.

8 . And who was the Inspector General during your tenure there?

9 Mr. Burnett. Michael Horowitz.

10 :

11 Q To your knowledge, why was the DOJ OIG involved in the investigation into

12 President Trump, his campaign, or anything related to the 2020 election?

13 A Our involvement was due to Jeffrey Clark, who at the time had been Acting Assistant

14 Attorney General for the Civil Division. And there was an allegation of, did he attempt to alter the
15 results of the 2020 Presidential election, either criminally or violate administrative policy in the
16 process?

17 Q And when did you become involved in that investigation?

18 A When the case was opened, it was assigned to me. The timeframe I don't recall

19 exactly. Maybe 2021. But you would have to get that -- go back to the agency and ask, and they'd
20 be able to say when the case was opened.

21 Q Okay. And what was your role in the investigation?

22 A I was the case agent.

23 . And what were your responsibilities as the case agent over the case?

24 Mr. Burnett. In this case, it was a different case, unique, as far as the over 30 years of law

25 enforcement experience I have, in that I didn't do anything necessarily proactive in the investigation.

8

1 Everything was given to me from the AUSAs that were working the case.

2 That's how the case was opened. It came from Thomas Windom and Timothy Duree -- had
3 called up to the agency that they had information on Jeffrey Clark. They provided the predicate
4 information that was used to open the case, and then the case was opened based upon that.

5 A normal investigation would be, I would do the investigation, become familiar with
6 everything, you know, do grand jury subpoenas, do the normal investigative process, follow the
7 normal investigative steps.

8 But, in this case, those steps were given to us by the prosecution team. So, basically, I

9 would serve subpoenas upon request, receive the emails of Jeffrey Clark, and we went through those
10 emails -- those types of things.

11 . At any other point at your tenure at OIG, did this occur, where prosecutors were
12 the ones that were dictating the investigation?

13 Mr. Burnett. Not in my entire 30 years of law enforcement.

14

15 Q And where were you at before the DOJ OIG? Sorry --

16 A I was a -- that's okay -- a U.S. postal inspector from August of 2004 to August of 2009.

17 And, prior to that, I was a senior narcotics detective with the Chesterfield County, Virginia, Police

18 Department for 9 years, from October 1995 until August of '04.

19 Q And you said you liaised most often with Mr. Windom and Mr. Duree. Is that correct?

20 A Correct. In the beginning, it was both of them, but as the case progressed and when
21 the special prosecutor took over, then I mostly -- we were divided into teams, and mine was -- most
22 of my contact primarily was with Mr. Duree.

23 Q Okay.

24 And when Mr. Duree would have something that he needed you, maybe a subpoena to serve,
25 can you tell us how that worked in practice? Would he email you and say, "Agent Burnett, we need

9

1 this served"?

2 A He would usually, if it was a phone number, he would email me the phone number. I
3 would look up the subscriber -- Verizon, AT&T, T-Mobile, whoever that is -- let him know who that
4 was. He would generate the grand jury subpoena, and then I would serve it on the entity.

5 Once the records came back, I would be notified. Sometimes the entity would require you
6 to upload it in a law enforcement portal. Sometimes you could serve the subpoena via email and
7 you get the results back via email. Once I received those records via either process, then I would
8 give those records back to Timothy Duree to give to an analyst to put in a spreadsheet.

9 Q And were there FBI agents that were also assigned to help in this investigation that you
10 were aware of?

11 A Yes.

12 Q And who were those agents that you worked most closely with?

13 A Honestly, if you said their names, I would know. The one I --

14 Q Okay.

15 That's okay.

16 Mr. Burnett. Honestly, I don't remember. It's been years. It's sad to say. I could -- I
17 don't know.

18 Okay.

19 And you said this was an unusual investigation, how it was working, with the prosecutors
20 reaching out to you with the steps to take. And this had never occurred in your 30-year tenure; is
21 that correct?

22 Mr. Burnett. Correct.

23

24 Q And so you said it opened up in sometime early 2021, this investigation. How long
25 were you involved in the investigation into --

10

1 A Until I retired.

2 Q Okay. And when you retired, was the investigation still ongoing?

3 A I believe it was, yes.

4 Q And did the team change over time, who was involved in the investigation into
5 Mr. Clark?

6 A "The team" as in with --

7 Q Like --

8 A -- DOJ OIG?

9 Q Yeah.

10 A Well, it was just me. There was --

11 Q Right.

12 A -- another agent that worked in our forensics that was helping out also, but the case
13 number was assigned to the investigation side, even though we have a separate section, forensics
14 unit, that had their own supervision, but there was an agent over there that was assisting with it also.

15 Q Okay. So the forensics agent, when you would receive the results of a subpoena, it
16 would go to that individual to review? Or would it --

17 A No.

18 Q -- go to someone else?

19 A It would go back to the AUSA --

20 Q Okay.

21 A The return results, right?

22 Q Uh-huh.

23 A It would go back to the AUSA and then for an analyst to input to a spreadsheet.

24 Q Okay. Is that the standard procedure, where it would be someone from the AUSA's
25 office that was reviewing the return?

11

1 A No. Normally, the case agent, if I subpoena something on an investigation, then I
2 would review those documents.

3 Q Uh-huh.

4 A If I need assistance, then I can obviously use an investigative analyst. That's their job,
5 you know, to help import stuff in and help find some trends for me, to assist in my investigation, to
6 help me. But it wouldn't go back to the AUSA.

7 The only time -- maybe, if it looks like it's going to go to trial or something, then the AUSA, in
8 my experience, would maybe say, all right, I'd like to tidy up some things, go interview these
9 particular witnesses again or something.

10 Q Uh-huh.

11 A But as far as reviewing the documents, no.

12 Q Okay.

13 And did you have any say in the investigatory process and who you sought subpoenas for?

14 Or was that all from top-down -- or from --

15 A Top-down.

16 Q Okay.

17 . And that's not how it typically worked, in your experience?

18 Mr. Burnett. No.

19

20 Q Were you involved at all in the subpoena -- or the AUSA's office seeking a subpoena for
21 the Willard Hotel in the fall of 2021? Do you have any knowledge --

22 A No.

23 Q -- of that?

24 And, then, the OIG's office was working with the AUSAs, with Tim Duree and

25 Thomas Windom. Were you also working with other OIG agencies? The Archives or Postal

12

1 Service?

2 A There was the first meeting, kind of like a meet-and-greet. The only time I ever met

3 Thomas Windom and Timothy Duree in person was at the FBI resident office in Manassas, Virginia,

4 and, at the time, there was a postal inspector there, and then I believe there was two agents from
5 National Archives.

6 But, after that, I know they'd maybe been on some phone calls, but I did not have any, like,
7 direct interaction with them as far as any investigative steps or anything like that.

8 Q Okay.

9

10 Q And when was that meeting?

11 A Oh --

12 Q Was it in 2021?

13 A I believe so.

14 Q Okay.

15 A It's just speculation. I don't know.

16 Q Okay. Was it -- was it --

17 A It would also be in the case file, like, in the case details. You know, any, you know,
18 meetings or team meetings were documented in that.

19 Q Uh-huh. Do you remember it being towards the beginning of the investigation?

20 A It was the beginning, yes.

21 Q Okay.

22 :

23 Q And was this a briefing-style meeting where they were telling you what they were
24 planning to investigate? Do you remember the content at all of the meeting? It's a long time ago.

25 A I would just be speculating.

13

1 Q Yeah.

2 A It was obviously just about the case, what we were going to look at --

3 Q Uh-huh.

4 A -- as far as -- and basically an introduction for everybody to kind of put a face with a
5 name.

6 Q Uh-huh. And, at that point, they introduced the investigation into Jeffrey Clark. Did
7 they discuss other investigatory threads at that point, do you recall?

8 A I believe they were talking about other stuff besides -- the sole purpose was not
9 Jeffrey Clark.

10 Q Uh-huh. Okay.

11 :

12 Q So you retired in November of 2024, correct?

13 A Yes.

14 Q And you were working the investigation until November 2024, correct?

15 A Yes.

16 Q And so, at some point -- I think it was November 18th, 2022 -- Jack Smith comes on the
17 scene as the special counsel. Did you ever meet Jack Smith?

18 A No.

19 Q Did you work the investigation with the special counsel's team after it was stood up?

20 A Yes.

21 Q And your contacts stayed the same, with that being Tad Duree and Thomas Windom.

22 Is that correct?

23 A Yes.

24 Q Okay.

25 And were there any changes to any processes or procedures, or did it kind of work the same

14

1 way? They'd send you subpoenas to serve?

2 A The process stayed the same.

3 Q Okay.

4 . And, then, as part of the investigation into Mr. Clark, our understanding is that

5 there were several Representatives that were subpoenaed or that search warrants were issued for
6 them.

7 Were you involved in any discussions about a search warrant for Representative Scott Perry's
8 cell phone?

9 Mr. Burnett. No.

10 :

11 Q There was an OIG agent that went to a beach house that Mr. Perry was at to retrieve his
12 cell phone. Were you aware that the OIG was involved in getting Mr. Perry's cell phone?

13 A Now that you mention something, I do remember something about -- but I don't

14 know -- if you said who the agent was, then maybe it's the same thing I'm thinking about, but --

15 Q I think it may have been Agent Higley, from a different interview that we conducted. It

16 may have been Agent Higley, but we're not for sure --

17 A Okay.

18 Q -- which OIG agent it was. But --

19 A Higley was the forensics agent that I was working with.

20 Q Okay. But you did not go --

21 A No.

22 Q -- to --

23 A I only remember conversation -- and with who I cannot say, as I don't recall, but I

24 believe my supervisor -- as far as that the team, prosecution team, wanted us to go and seize

25 Representative Perry's cell phone. And then it came down from the IG, you know, absolutely not,

15

1 we were not going to do that. That was not a DOJ employee or former DOJ employee, so we were
2 not going to assist in that.

3 Q Uh-huh. And that was Inspector General Horowitz that said, no --

4 A Yes.

5 Q -- you're not going to --

6 A Well, it came through my supervisor, so that's -- I know it went up. I can't say for -- I

7 was not part of that conversation with the IG. But from my assistant special agent in charge, that
8 was what was told.

9 Q And who was the assistant special agent in charge that conveyed that info to you?

10 A Timothy Edmiston, E-d-m-i-s-t-o-n.

11 Q Okay.

12 And were there multiple conversations that were had about IG Horowitz's decision that the IG

13 wouldn't be involved in taking Mr. Perry's cell phone, or did you just have that one discussion with
14 your ASAC?

15 A Can you say that again? I'm sorry.

16 Q Yeah. Were there multiple discussions that you were involved in regarding

17 Inspector General Horowitz's decision the IG wouldn't seize Mr. Perry's cell phone? Were there

18 multiple discussions?

19 A No, I don't think so. It was pretty much that was the decision, and, you know, that's
20 what we relayed.

21 I know that the prosecution team was not happy with us not being able to assist, you know,
22 because they were looking at it as it was a joint investigation when the case is merged with the FBI,
23 so that, since it was a joint investigation, we should be able to help out; it didn't have to be a DOJ
24 employee or former DOJ employee. But that was the line that the Inspector General drew.

25 Q And why did the prosecutors need the IG's office to assist?

16

1 A I don't know if it was manpower or just to help out because everybody was busy with
2 something. Their reasoning I don't know. It was just ask and then told "no."

3 Q Okay.

4 And we've been told that, you know, the agents went, took Mr. Perry's phone, and it was
5 imaged, like, a complete image of the phone was taken, and that the Inspector General's office may
6 have had involvement with imaging the phone. Do you have any knowledge of that?

7 A No.

8 Q Did you ever review the contents of Mr. Perry's cell phone?

9 A No.

10 Q And the only discussion you had about Mr. Perry's cell phone, to your recollection, is
11 when you learned that the Inspector General had said that the IG would not seize his cell phone?

12 A Well, when they requested for us to do that --

13 Q Okay.

14 A -- then that request was routed up through the chain.

15 Q Okay.

16 . So it was your ASAIC that said, we don't want to do that, and it went up the
17 chain?

18 Mr. Burnett. Well, I guess he asked, and it came back down. I don't recall if he said no
19 himself or just let the question go up.

20 . Okay.

21 . That was your only involvement in the Scott Perry matter, if you will?

22 Mr. Burnett. Yes.

23

24 Q And, then, we'll switch over to the subpoenas for the Congressmembers' phone records.

25 So were you involved in executing the grand jury subpoenas to service providers for

17

1 congressional Members?

2 A I don't know.

3 Q Okay.

4 So, on April 25th, 2022, the DOJ issued a subpoena for Chairman Jordan's phone records, with
5 an associated non-disclosure order. And, on May 1st, it appears you sent an email to Verizon
6 informing them of the subpoena and the non-disclosure order.

7 Do you have any recollection of this?

8 A Yes, only because -- I would've subpoenaed the number, but I did not know who the
9 phone number belonged to, who the actual subscriber was.

10 Q Okay.

11 A It was not until I had been retired and this was on the news and there was conversation
12 about Mr. Jordan's toll records being subpoenaed and then there was a subpoena that came up on
13 the internet.

14 Q Uh-huh.

15 A So I was only assuming -- that had my name on it -- that that was his number. But I do
16 not know, as we sit here today, if that was his number or not.

17 Q Okay.

18 :

19 Q So prosecutors never told you that you were going to be serving a subpoena for, at the
20 time, the ranking member of the Judiciary Committee's phone records?

21 A No. I don't have any recollection of that.

22 Q Would it have given you pause if you had known that it was going for the ranking
23 member's --

24 A It would've been something I would've brought up to my supervisor, if there was a
25 different process or something we needed to be doing if we were going to do that. But I was not

18

1 aware.

2 Q And in your role as an OIG agent, had you ever served a subpoena for a Member's
3 phone records?

4 A No.

5 Q Did you ever take part in any discussions about subpoenaing Mr. Jordan's phone
6 records?

7 A No.

8 What about any other Members of Congress? Were you aware that the AUSAs
9 were seeking those subpoenas? Or, when it came to you, were they just phone numbers?

10 Mr. Burnett. Just phone numbers.

11 . Okay. So you had no awareness that the phone numbers that you were issuing
12 subpoenas for were for Members of Congress?

13 Mr. Burnett. Correct.

14 . Okay.

15 . We'll mark the Jordan subpoena as exhibit No. 1.

16 [Burnett Exhibit No. 1.

17 was marked for identification.]

18 Mr. Cook. Thank you, sir.

19 :

20 Q And please take your time to review.

21 A Okay.

22 Q And, just for the record, this is the subpoena that was served on Verizon on May 1st,
23 2022.

24 So is this the document you were referring to that you saw on the news?

25 A I believe it was part -- it was -- had my name -- I don't recall which part, but it

19

1 was -- yeah, it was, I believe, this.

2 Q Okay.

3 And can you walk us through the process of how you served the subpoena? It can be just a

4 general -- I don't expect you to remember serving this specific subpoena. But how did that work in
5 practice for you?

6 A In practice, if the entity has a law enforcement portal that we can upload the subpoena
7 in for service or whether it's just served via email -- there's usually a site that we have that lists all the
8 entities and how they accept service for subpoenas -- I would just follow that directions on how they
9 want it served --

10 Q Uh-huh.

11 A -- and then just issue the subpoena via email or upload it to the portal.

12 Q Okay. And did this full package come to you to serve, with the NDO as well?

13 A It would've, yes.

14 Q Okay.

15 And, on the document, the subpoena attachment, it gives the time period for the records

16 being from January 1st, 2020, to present, which would've been the April 25th, 2022, timeframe.

17 Were you ever given a reason for why it was such a broad timeframe for these -- there were
18 four numbers?

19 A I don't recall.

20 Q Okay.

21 And did you receive or review any of the returns for this specific subpoena?

22 A No.

23 Q Did you ever have any discussions with Mr. Duree about this specific subpoena?

24 A No.

25 Q When he came before the committee, he told us that he wanted such a large timeframe

20

1 of Mr. Jordan's records in order to build the network of communications that Mr. Jordan was having.

2 Did you know that that's what prosecutors were trying to do?

3 A Not particularly, no.

4 Q Okay.

5 And were you told what prosecutors wanted to do with this information?

6 A My understanding, in general, generalized, is that basically the information would be, as

7 far as I knew, put into a spreadsheet, and they were just looking at phone calls with -- who had calls

8 with Jeffrey Clark around certain times, I believe, maybe a meeting that he had at the White House.

9 So they were looking for who he was talking to in and around certain meetings, was my

10 understanding.

11 Q And were you ever told why you were the one that they wanted to serve the subpoena?

12 A Since Jeffrey Clark was a former DOJ employee.

13 Q Do you know, was Special Agent Higley involved in this subpoena at all, to your

14 knowledge?

15 A I don't know if this one, but sometimes he would assist. If I was out of the office for

16 some reason, sometimes they would send the subpoena to him for service. Most of the time, it was

17 me, but he did assist.

18 Sometimes, ones that he had served, if he was off or doing some other work on other cases

19 and couldn't get in to download the return, then I would go in and download it for him, or vice
versa,

20 and then send those to the AUSA.

21 Q And did you ever have any conversations with or present for any conversations with

22 Inspector General Horowitz regarding subpoenaing Members' records?

23 A No.

24 Q Do you know if he was ever aware that his agents were serving subpoenas for records of
25 Members of Congress?

21

1 A Not to my knowledge.

2 Q Okay.

3 Were you ever involved in any conversations with prosecutors regarding the Speech or
4 Debate Clause?

5 A I don't recall.

6 Q Okay.

7 :

8 Q Were you involved at all in subpoenaing Representative Chip Roy's toll records, if you're
9 aware?

10 A Not that I know of.

11 Q Yeah.

12 And then, on January 24th, 2023, Special Counsel Jack Smith's office subpoenaed Speaker
13 Kevin McCarthy's phone records. Did you have any involvement in this subpoena?

14 A Not to my knowledge.

15 Q Okay.

16 And was there ever any pushback from the telecommunication companies on the subpoenas
17 that you served?

18 A Not that I recall.

19 Q We have a letter from AT&T pushing back to a May 2023 subpoena for two Members'
20 phone records, raising concerns that this might implicate Speech or Debate Clause issues.

21 Did you ever receive any emails like that or correspondence from telecommunication
22 companies to that?

23 A I do not recall.

24 Q Okay.

25 A Did I serve those?

22

1 Q Not that we're aware. We're not sure.

2 A Okay.

3 Q You could've.

4 . There were also -- there was a May 2023 subpoena to 10 Senators and an
5 additional Representative for their toll records. You know, Senator Graham was on the list,
6 Representative Mike Kelly was on the list, just to name a few.

7 Did you ever have any discussions about subpoenaing records for Senators or --

8 Mr. Burnett. No.

9 We'll shift gears a little bit.

10 So I know you were primarily involved in the Jeffrey Clark investigation. Did you have any
11 involvement in the Presidential records investigation into the classified documents?

12 Mr. Burnett. No.

13 Okay. Was anyone in the OIG's office involved with that?

14 Mr. Burnett. No, not to my knowledge.

15 . Okay.

16 . Have any involvement or involvement in discussions with the raid on

17 Mar-a-Lago?

18 Mr. Burnett. No.

19 :

20 Q Okay. And then while you were conducting the Jeffrey Clark investigation, did you
21 have any interactions with the January 6th Select Committee?

22 A No.

23 Q Did you ever receive materials from the select committee?

24 A No.

25 Q What about any contact or communications with attorney general offices, like, State

23

1 attorneys general offices?

2 A No.

3 Q Okay. Any communication with Fani Willis or anyone in the Fulton County district
4 attorney's office?

5 A I did not.

6 Q Okay. What about Alvin Bragg from the New York district attorney's office or anyone
7 from his staff?

8 A No.

9 Q And then were you involved in a phone call with representatives from different State
10 attorney generals' offices early on in the investigation about the 2020 election at all?

11 A No.

12 Q And then did you ever have any interactions with the Biden White House?

13 A No.

14 Q Were you ever made aware of confidential human sources present at the Capitol on
15 January 6th?

16 A No.

17 Q Okay.

18 We have some emails between two of Special Counsel Smith's prosecutors and an FBI special
19 agent, that the Special Counsel's Office paid \$20,000 to a confidential human source for providing
20 information in support of the election-interference investigation.

21 Do you have any awareness of this payment?

22 A No.

23 Q Are you generally aware of the Special Counsel's Office paying people for information at
24 all?

25 A No.

24

1 Q And then, according to Jack Smith, the confidential human source assisted in reviewing
2 video and photographic evidence of people at the Capitol.

3 Do you know why you would have a CHS conduct this review instead of an FBI agent or a DOJ
4 OIG agent?

5 A I'm assuming just to help identify --

6 Mr. Cook. Don't assume.

7 Mr. Burnett. Okay.

8 I don't know why they did it.

9 . That's okay.

10 :

11 Q And how much of your time did this investigation take up? Were you working on other
12 investigations?

13 A Yes. I had a full caseload working other active investigations during this case.

14 Q Was this investigation a heavy burden, if you will? Did you spend a lot of time working
15 on it? Can you help us quantify that?

16 A Not a lot of time. You know, the FBI had resources, so it was only just me as far as,
17 like, reviewing-emails part of it. So the FBI helped assist review emails because of the time,
18 because it was just me.

19 Q And those emails were for -- were those internal DOJ emails?

20 A Yes. Yes.

21 Q And so you reviewed emails; we know you served a subpoena. What else did you do
22 for the investigation?

23 A That's really it. I mean --

24 Q Okay.

25 A Yeah.

25

1 Q And do you remember -- you discussed a meeting, an initial meeting, that you had with
2 Mr. Windom and Mr. Duree. There was a Postal Service agent there and a couple of NARA OIG
3 agents there.

4 Do you remember any other meetings you had, whether it be in person, over the phone,
5 Zoom, with the prosecutors in this case?

6 A Yeah, there was weekly, if not biweekly, meetings during that timeframe -- like, case
7 updates.

8 Q And what would typically be shared on those case updates?

9 A I guess just how the investigation's going. A lot of it didn't pertain to me, so I didn't
10 necessarily retain that information as far as what was said during those calls. There would be so
11 many. I don't know.

12 Q This was a broader investigation, right? You were just involved with the Jeffrey Clark --

13 A Right. There was --

14 Q -- investigation?

15 A Right. When they divided up when the special prosecutor took over, there was a Jeff
16 Clark team, which was me, an FBI agent, and Timothy Duree, and then there was, like, six or seven
17 other teams. I don't remember what the names were, but they were just divided into teams with
18 FBI agents, prosecutors, to work whatever aspect of the case they were working. So --

19 Q Okay. And so it was just -- the weekly, biweekly calls, was that just with the
20 Jeffrey Clark team, or was it the whole six or seven teams?

21 A It was the whole six or seven.

22 Q Okay. And --

23 A But after a while, I stopped -- there came a point where the team had wanted us to do
24 stuff that didn't relate to DOJ OIG employees or former employees. So we really didn't do a lot
25 after a certain point, and I really stopped listening in on the calls, because there was no point. They

26

1 didn't have anything for us to do at that point. They had shifted.

2 Q Okay. And so I think, if I heard you right, you said that the team wanted you to do

3 things that didn't relate to the Jeffrey Clark matter? Is that correct?

4 A Right.

5 Q And who was asking you to do things other than --

6 A Timothy Duree.

7 Q Okay. And what was Mr. Duree wanting you to work on other than Jeffrey Clark?

8 A They wanted us to assist on interviews -- in particular, interviews of the alleged State

9 fraud electors, to assist on doing those interviews with the FBI.

10 But, you know, the IG had stated -- or it came from my supervisor; where he got that from, I

11 don't know -- but, basically, we would not be assisting. They were not -- again, we told them, if it

12 did not relate to Jeffrey Clark as a former DOJ employee or current DOJ employee, then we would

13 not be assisting.

14 And so -- because they needed the resources, like, the people from our team to go and help.

15 So, basically, after that, like, they may have pulled the FBI agent and he would've gone and helped

16 assist on other aspects of the case, and we were just kind of out of it at that point.

17 Q Okay. And do you remember about what the date range or year was?

18 A I don't.

19 Q Okay.

20 And once, you know, the indictment came down against the President in this case, what was

21 your involvement like?

22 A We were -- nothing.

23 Q Okay. So it wrapped prior to the --

24 A Yes.

25 Q -- indictment coming down?

27

1 A Yes.

2 Q Okay.

3 Did you have regular discussions with your supervisor regarding the investigation?

4 A Weekly.

5 Q Weekly.

6 And how often did you discuss this investigation with the Inspector General?

7 A I didn't discuss with him any. There may have been one or two occasions where there

8 was a Teams call with the IG and the Deputy IG, but that was it. My chain -- I would follow the

9 chain of command. It would just be with my direct supervision.

10 Q Okay.

11 And how did you leave the investigation? When you finished your work on it, what stage of

12 the investigation was it in?

13 A Sorry. I'm trying to think.

14 Q Yeah. Did you ever --

15 A I mean, we were --

16 Q Go ahead.

17 A Basically, the Jeffrey Clark part, for us, was just -- in my eyes, was just put on pause.

18 And whether or not they were going to try to use him as a witness for something, I don't know, but

19 they just shifted focus, you know, and wanted us to help with other things, because it was a joint

20 investigation in their eyes. And then we were told -- you know, told them we cannot do that.

21 Q Uh-huh.

22 A So we just kind of kept the case open.

23 Q Okay.

24 And the only other agent or OIG individual that you remember being involved in the
25 investigation is Mr. Higley? Is that correct? Or were there others?

28

1 A Mr. Higley.

2 :

3 Q And I know you mentioned that they wanted you to assist in interviews of the alternate
4 electors. Were there any other tasks that they requested the OIG's help on?

5 A There were some other interviews, but I don't remember specifically the names of the
6 individuals. But we would not help.

7 Q Okay.

8 And do you recall about the time when the prosecutor shifted focus away from Mr. Clark?

9 A I can't say.

10 Q Okay.

11 A Sorry.

12 Q No, that's okay.

13 I think we can go off the record.

14 [Recess.]

15 . We'll go back on the record. The time is 11:17.

16 Mr. Burnett, thank you again for being here. My name is I am senior counsel

17 with the House Judiciary minority. I'll be asking you many of the questions today, along with my
18 colleague

19 And, at this time, I'll turn it over to .

20 . Yeah.

21 EXAMINATION

22 :

23 Q Thank you very much for being here, Mr. Burnett.

24 We're going to just very quickly hit a couple points about your background and walk through
25 how we got here today.

29

1 Where did you go to school?

2 A I went to -- college?

3 Q Yes, sir.

4 A Bluefield College.

5 Q Got it. And what did you study?

6 A Business administration.

7 Q Got it. And did you only go to Bluefield?

8 A Well, I went to Radford for a little while, but then that led me to the United States

9 Marine Corps.

10 Q Okay.

11 A And after serving in the Marine Corps, I got out. When I was a police officer, I went
12 back to night school when I worked narcotics and finished my degree so that I could go Federal.

13 Q Great.

14 And when did you join the DOJ?

15 A August of 2009.

16 Q And did you join the OIG directly, or did you do anything else in the DOJ?

17 A Just straight to DOJ, for 15 years.

18 Q Straight to OIG?

19 A Yes.

20 Q Could you walk us through the various roles that you held at OIG?

21 A Roles? Just special agent and then promoted to senior special agent.

22 Q Are there divisions within OIG that you worked within?

23 A No. Just investigations.

24 Q Okay.

25 BY :

30

1 Q What kind of cases were you typically working on as a DOJ OIG agent?

2 A Public corruption, bribery were the two main big ones.

3 Q And that would be public corruption and bribery of DOJ officials?

4 A Employees, yes, all the components -- FBI, DEA, ATF, U.S. Marshals, U.S. Attorney's
5 Office, and Bureau of Prisons.

6 Q Okay. Were a lot of those criminal investigations, or administrative, or a mix?

7 A A mix.

8 BY

9 Q You said that you worked on some other investigations concurrently when you were
10 working on the January-6th-related investigations. Could you describe, at a high level, what other
11 cases you were working on at the same time?

12 A I don't recall. I wouldn't remember what I was working on at the time.

13 Q Okay. No worries.

14 And, now, this is not a time to be humble, but during your time at DOJ, did you ever receive
15 any sort of awards or recognitions for your work?

16 A Yes. Almost yearly, an outstanding performance award.

17 Q Great.

18 And I'm sure this is self-evident, but could you describe what OIG's role is within the
19 Department of Justice?

20 A Simply put, fraud, waste, and abuse within the components of DOJ.

21 Q And what was your role or your relationship with DOJ staff or the attorneys at the DOJ?

22 A None, unless I was working a case. You mean, like, the line AUSAs? Is that what
23 you're speaking of? Or at Main Justice?

24 Q Let me rephrase that. When you were conducting an investigation in your capacity as
25 an Inspector General agent, what role would you play in relation to the staff or the attorneys at DOJ?

31

1 A Nothing, unless I was presenting a case to them.

2 Q Got it. But you would also conduct your own investigations of them as well, right?

3 A Yes.

4 Q Could you walk us through how you would go about conducting an investigation of a
5 member of DOJ staff, including attorneys?

6 A I guess it depends on what the allegation is, how I would direct my investigation.

7 Maybe start out with OIG subpoenas versus grand jury subpoenas. But it really depends on the
8 cases, how I'm going to take my investigative steps.

9 Q Uh-huh.

10 BY

11 Q And so I think, when you said, you know, "waste, fraud, and abuse," you pretty much
12 read what was on DOJ OIG's website. But there's also another part of that mission statement that
13 says DOJ OIG, quote, "investigates alleged violations of criminal and civil laws by DOJ
employees."

14 So I asked you a little bit earlier, did you mostly work on criminal or administrative cases. Do
15 you have a sense of how that breakdown occurred during your tenure?

16 A As far as a percentage for each?

17 Q Uh-huh.

18 A Maybe 60 percent criminal, 40 percent administrative. Some of the time, the case
19 would start out criminally --

20 Q Uh-huh.

21 A -- but if it got declined or something, then, obviously, it would turn administrative, to go
22 to the component, decide on any type of discipline.

23 Q And would it sometimes be the inverse? It'd start out administrative and then you
24 found something that made it criminal?

25 A It could, yes.

32

1 Q So what would justify elevating an administrative investigation to a criminal
2 investigation?

3 A If I found something criminal, a violation of a criminal statute, while doing my review of,
4 say, OIG subpoenas or something else that led me to that.

5 Q Okay.

6 A Interviews.

7 It wouldn't necessarily change. Like, there's no button, necessarily, to push. But if I found,
8 you know, something that was criminal and I thought it would meet the criminal statute level, then
9 maybe I would get with an AUSA and present my findings so far to see if he was interested.

10 Because, at that point, I may want to turn to grand jury subpoenas, and so, at that point, I would
11 need a prosecutor to do that.

12 Q So, when, you know, you found potential evidence of criminal wrongdoing, it sounds like
13 you would bring that to an AUSA in the district where the wrongdoing occurred. Is that right?

14 A Correct.

15 Q Okay. And would you go to your supervisor before you, sort of, brought that to an
16 AUSA, or would you just do that yourself?

17 A I just worked my case, yes.

18 Q Okay.

19 Would it ever be the case that an AUSA would find some sort of wrongdoing and
20 realize, oh, there's involvement by DOJ personnel, and come to you as an OIG agent and say, hey,
we

21 need to work on this case together?

22 Mr. Burnett. No. He may make a formal complaint or something put in, and then it would,
23 you know, come over -- and they would decide who would get the case, if it was something worth
24 opening. But I wouldn't necessarily receive a phone call.

25

1 Q And so what's the process here? You potentially find criminal wrongdoing, you want
2 to investigate further, you bring it to an AUSA. How does the investigation progress from that
3 scope forward? Is it considered a joint investigation?

4 A Well, a lot of times, I'd like to work my case up as far as I could take it without an AUSA.

5 So, you know, we would do OIG subpoenas in some cases, but you can only go so far. You can't do
6 bank records. If I needed those, I would have to have a grand jury subpoena, so then I would have
7 to ask for the involvement.

8 A lot of times, I would go and try to interview witnesses, potentially interview the subject,
9 lock them into a statement, see if I can get a confession beforehand. And then I like to take the
10 total package, completed, a sworn --

11 Q Yeah.

12 A -- confession, along with records to corroborate whatever the suspect said, you know,
13 to the AUSA.

14 Q So you like to bring them a finished piece rather than, you know --

15 A It makes it harder for them to say no.

16 Q Makes sense.

17 Say you didn't have that finished piece and you have to bring it to the AUSA, how does that,
18 sort of, investigation progress from that point? Are you still you investigating under the supervision
19 of the AUSA? Or are you just investigating your case and continuing to update them?

20 A I'm just using him as a conduit for grand jury subpoenas or any search warrants that I
21 may need in the investigation. I'm not -- I didn't ask them for advice, necessarily.

22 I may say, if he wants to look at a particular charge, "Hey, do you think I've met all the
23 elements of this particular statute?" But, you know, I didn't take, necessarily, direction from them.

24 Q Understood.

25 And you alluded to, sort of, presenting the case to an AUSA. What does -- first of all, what is

34

1 that, and what does that process look like?

2 A Depends. When I worked at Postal Inspection Service, well, it was a written-up formal
3 document you would present to the AUSA with all your findings up to date so they could make a
4 decision on whether they wanted to prosecute or not.

5 With DOJ, most of the time, it was just a phone call to an AUSA. We covered a certain

6 AOR -- Virginia, North Carolina, West Virginia, D.C., Maryland. So you got to know the AUSAs in
the

7 districts. Some of the districts are pretty small, so you could just call the AUSA up and just basically
8 tell them over the phone what I had so far.

9 Just, usually, 9 times out of 10, it was a phone call, "This is what I have. Are you interested?"

10 . So, separate from working up your own cases and then bringing it to the AUSA,

11 were there circumstances where you participated affirmatively in a joint criminal investigation with
12 Main Justice? A case that you wouldn't have necessarily worked up yourself, or from an early stage
13 maybe you worked it up, but then you were also working with someone at Main Justice from an
early

14 stage?

15 Mr. Burnett. No.

16 . Is there a process for merging investigations from OIG and Main Justice into a
17 single investigation?

18 Mr. Burnett. Not that I know of.

19 :

20 Q So, again, apologies, we're going to cover some of the same ground. We're gonna try
21 and do it quickly.
22 When did you start working on January-6th-related investigations?
23 A I was working on Jeffrey Clark, which was fraud.
24 Q Yeah. And when did that investigation start?
25 A I don't recall the exact date. I know -- I believe it was 2021. But you would have to

35

1 go back to DOJ OIG, and they could obviously get you the exact date the case was opened up and
2 assigned to me.

3 Q And were you on that investigation from the outset?

4 A Yes.

5 Q And, at the outset, was it a criminal investigation or was it an administrative
6 investigation?

7 A It was both.

8 Q It was both from the outset?

9 A In my eyes.

10 Q Okay. And why was it both, in your eyes? What was the potential criminal
11 wrongdoing?

12 A The potential criminal would've been obstruction of justice. And then there was an
13 administrative side as far as Mr. Clark not following DOJ policy, going out of his chain of
command,

14 direct with the White House, instead of through supervision or through the Attorney General.

15 Q And just for those that aren't familiar with the potential obstruction of justice in relation
16 to Jeffrey Clark, could you expand on that a little bit? What was the obstruction of justice there?

17 A The obstruction of justice, whether or not -- it was just an allegation -- whether or not it
18 was true or not, was that Mr. Clark -- the allegation, Mr. Clark was going to attempt to send a letter
19 to the State of Georgia stating that DOJ had found fraud in the election.

20 Q And so, as you said, there's a DOJ OIG investigation into this. Was it your
21 understanding when that investigation started that there was a parallel investigation, run by either
22 U.S. Attorney's Office in D.C. -- or did that come later?

23 A That came later. I had no knowledge.

24 Q Okay. And when did you first begin to have knowledge of a parallel investigation?

25 A My recollection, my first knowledge would've been when Timothy Duree had told me

36

1 that FBI's investigation and our investigation, I guess they were assisting on it.

2 Q Uh-huh.

3 A They were sort of running parallel, and we were subpoenaing a lot of the same people,
4 so they were going to merge our cases.

5 Q Okay.

6 And I think that's a good time to enter for the record what's going to be marked as exhibit 2,
7 which is the merger memo for the Arctic Frost investigation.

8 [Burnett Exhibit No. 2.

9 was marked for identification.]

10

11 Q I'll give you a second to review. I'm going to direct your attention to different pages,

12 but, for now, if you could just review the, sort of, first page, the introduction.

13 So do you recognize this document?

14 A No.

15 Q Okay. Do you recognize what this document is, from your experience as a DOJ OIG
16 agent?

17 A No. I mean -- no.

18 Q Okay.

19 So, in the synopsis here, it states that the purpose of this memo is to, quote, "document
20 additional predication regarding this investigation and to document merging overlapping
21 investigations with DOJ-OIG."

22 Is that the process that you were referring to, where Mr. Duree said to you that you needed
23 to merge the investigations that the FBI and DOJ OIG was conducting?

24 A I don't know if it was the exact process, but I -- I would've -- I can't say what he was
25 referring to, if he was referring to this particular document; only what he told me, that we were

37

1 merging because the cases were running parallel and subpoenaed a lot of the same people.

2 Q And so, apart from the document, what were the practical reasons, if there were any,
3 for merging the two investigations?

4 A I would assume merging a case working with --

5 Mr. Cook. Don't assume.

6 Mr. Burnett. Say the question again.

7

8 Q So what were the practical reasons for merging the investigation between DOJ OIG and
9 FBI that were running on parallel tracks?

10 A Not doing dual work, as far as subpoenas.

11 Q And you stated a second ago that Mr. Duree was informing you that the DOJ OIG
12 investigations and the FBI investigation were issuing subpoenas for similar people. Is that right?

13 A Yes.

14 Q And, you know, it may be somewhat of an obvious question, but why is that bad?

15 A I don't know if it's bad. It'd just be a duplicate of work.

16 Q So it would waste resources?

17 A Yes.

18 Q Okay.

19 And so I'll direct you to the second-to-the-last page of this document. It's page 9, I believe.

20 And under the title, or header, it says, "Merging Investigations," and I'll just read a portion of that
21 really quickly.

22 It states, quote, "On or about January 12, 2022, Department of Justice, Office of
23 Inspector General, Investigations Division, opened a criminal investigation, case number" -- which
is

24 redacted -- "which has focused on the conduct of Jeffrey Clark detailed" -- redacted. "Prior to
25 opening the criminal case, various documents relevant to an administrative inquiry had been

38

1 collected and were later released to the investigative team."

2 So this makes reference to what you spoke to earlier, which is both an administrative and a
3 criminal investigation into Jeffrey Clark. Is that right?

4 A Yes.

5 Q And I know you said it sort of generally: Why did the administrative investigation of
6 Jeffrey Clark also have the criminal component?

7 A I don't understand the question. I'm sorry.

8 Q So why was there a criminal component to the investigation of Jeffrey Clark?

9 A Usually there's always both. You know, whether or not the administrative, you know,
10 is also criminal -- it can be both.

11 Q Okay. And what's the standard for opening a criminal investigation that you, sort of,
12 dealt with in your time at DOJ OIG?

13 A I don't know if there's a standard. It's just -- I'm not part of that process, as far as
14 making a decision what cases are open and which ones are not. Just assigned them to work.

15 Q Got it. And who would be in charge of making that decision?

16 A Ultimately, the special agent in charge of the field office.

17 Q So would that be your direct supervisor that you were referring to earlier?

18 A The one above him.

19 Q The one above him. Okay.

20 And, from this point on, did you work hand-in-hand with FBI agents, or were you running
21 parallel investigations as well?

22 A I don't know if we were working hand-in-hand. I mean, we would be on Teams calls
23 together and stuff, but, like, I wasn't calling and talking to them on a daily basis about the
24 investigation.

25 Q Was there a noted difference in responsibilities from the DOJ OIG agents and the FBI

39

1 agents assigned to the case?

2 A Yes. I mean, we were limited in our -- what we could do as far as, you know, the scope
3 of DOJ -- DOJ employees or former employees.

4 Q And, then, so would it be fair to say that your investigative actions related to the strands
5 specifically involving Jeffrey Clark? Is that right?

6 A Yes.

7 Q And who set that boundary? Who said, only DOJ OIG employees will be -- DOJ OIG
8 employees will be investigating Jeffrey Clark, but, sort of, not beyond that?

9 A My direct supervisor, the assistant special agent in charge. Any direction would come
10 from him. Where he gets it --

11 Q And I think we might've asked this in a slightly different way before, but had you
12 experienced a merged investigation such as this before, where there was FBI agents and DOJ OIG
13 agents working together on the same case?

14 A Not by the means of the AUSA merging the case.

15 If I had an investigation that I thought another agency maybe could help me on, I would call
16 that agency direct and say, "Hey, this is what I got. Do you want to work it together?"

17 Q Uh-huh.

18 A Because sometimes it's easier to work a case with somebody from another agency to
19 help do the investigative steps when everybody else in your office has their own cases to deal with.

40

1 [11:37 a.m.]

2

3 Q That makes sense. What were some of those agencies? Was one of those agencies
4 FBI?

5 A Yes.

6 Q What were some other ones?

7 A The BOP. They had special investigative agents that we would rely on and use a lot
8 within the Bureau of Prisons, was a big one.

9 Q So it wasn't uncommon for you to work with other components in the Department of
10 Justice on a criminal investigation?

11 A No.

12 Q And I want to talk a little more about your background and specifically how it related to
13 this case.

14 You stated that you were working on public corruption cases generally related to DOJ
15 employees. Is that right?

16 A Yes.

17 Q And could you give an example or two of the types of cases that you worked on over the
18 years? You don't need to give specifics, but --

19 A An ATF agent that was stealing money and guns. A DEA task force officer that was
20 extorting drug dealers' significant others for sex. Bureau of Prisons employees for introduction of
21 contraband or sex with inmates. Mortgage fraud for a DOJ employee.

22 Q And, if I could ask, what was the, sort of, highest-profile investigation that you worked
23 on during your time that was getting the most news coverage?

24 A I don't know if any of them got news coverage, really, unless they did a press release,
25 the U.S. Attorney's Office, but --

41

1 Q Did the Jack Smith Arctic Frost investigation that you were working on get a significant
2 amount of news coverage?

3 A Yes.

4 Q Okay.

5 And in those prior investigations that you mentioned, was there ever a time where a Member
6 of Congress was a witness to any of the misconduct that you had been investigating?

7 A No.

8 Q Okay. So this would've been the first investigation where a Member of Congress was a
9 potential witness to criminal wrongdoing?

10 A Yes.

11 Q And I'm not going to, you know, go all the way through the subpoena for Mr. Jordan's
12 phone records again, just because I think we've covered most of that. I just sort of want to know
13 the normal process that you and Mr. Duree were following.

14 Would he normally tell you who -- the identity of the phone number that you were
15 subpoenaing?

16 A Not that I recall. I would just get the phone number, because we didn't know who -- to
17 my knowledge, because I was looking up who the carrier was, we didn't know who the phone
18 belonged to. So I would look up who the carrier was for a particular phone number, let him know,
19 AT&T, Verizon, T-Mobile, whoever the carrier was. And then he would do the subpoena up for that
20 carrier and then the phone number.

21 Q So it wasn't -- and I know you don't necessarily have specific recollection of this
22 subpoena. Is that right?

23 A Correct.

24 Q But it wouldn't have been out of the ordinary for Mr. Duree to send you a phone
25 number and just say, "Hey, can you get the records associated with this phone number?"

42

1 A Right.

2 Q Okay.

3 And then I just want to establish, make sure I understand the extent of this investigation.

4 You said there was about six teams. Is that right?

5 A Six or seven, I believe.

6 Q Okay. If you could guess, how many prosecutors were working on this?

7 Understanding it may have changed over time.

8 A I'd say at least 10 or 12, I would assume.

9 Q And how many agents are supporting those prosecutors that you know of?

10 A At least six, if not more.

11 Q Understood. And during your time previously in DOJ OIG, had you worked on an
12 investigation of that size?

13 A No.

14 Q Previously, what was the largest investigation, involving, you know, how many assistant
15 U.S. attorneys and agents, had you worked on?

16 A Maybe two prosecutors and another agent.

17 Q Okay. So it's fair to say that this was probably four to five times as large as any of the
18 previous investigations you had ever worked on?

19 A Yes.

20 Q Okay.

21 That is it for our questions for the moment.

22 I did want to note just something that was brought up during the last hour with Timothy
23 Duree and his transcript before the committee.

24 As I understand it, the majority staff stated that he explained his subpoena for Mr. Jordan's

25 phone records by saying that he wanted to have a broader sense of the networks and the people that

43

1 Mr. Jordan was contacting. And I want to just make a slight addendum and maybe a very slight
2 correction to that.

3 Looking at the Duree transcript, he states fairly clearly that he doesn't specifically remember
4 the Jordan subpoena.

5 And I'll just read his answer, which is on page 66. Quote, "Okay. So I'm not remembering.

6 Like, I see the words on the email, right? I remember being part of the process to get the subpoena
7 for Mr. Jordan's phone. I don't remember the exact timeframe, as I sit here talking to you today,
8 the start and end dates of those records, so it's a little hard for me speak to that, but I will say we did
9 subpoena a period of, I guess, some breadth. And you're asking me the reason why," end quote.

10 We can go off the record.

11 [Discussion off the record.]

12 . I think we're good. We can be done.

13 [Whereupon, at 11:37 a.m., the interview was concluded.]

44

1 Certificate of Deponent/Interviewee

2

3

4 I have read the foregoing ____ pages, which contain the correct transcript of the answers made
5 by me to the questions therein recorded.

6

7

8

9 _____

10 Witness Name

11

12

13 _____

14 Date

15

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5 COMMITTEE ON THE JUDICIARY,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

8

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13 INTERVIEW OF: TIMOTHY DUREE

14

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16

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18 Thursday, March 5, 2026

19

20 Washington, D.C.

21

22

23 The interview in the above matter was held in room 2237, Rayburn House Office Building,
24 commencing at 10:00 a.m.

2

1 Appearances:

2

3 For the COMMITTEE ON THE JUDICIARY:

4

5 , DEPUTY DIGITAL DIRECTOR

6 , GENERAL COUNSEL

7 , PROFESSIONAL STAFF MEMBER

8 , LAW CLERK

9 , CHIEF COUNSEL FOR OVERSIGHT

10 , COUNSEL

11 , RESEARCH ASSISTANT

12 , MINORITY SPECIAL COUNSEL FOR INVESTIGATIONS AND SENIOR ADVISOR

13 , MINORITY GENERAL COUNSEL

14 , MINORITY FELLOW

15 , MINORITY LEGAL INTERN

16 , MINORITY STAFF ASSISTANT

17 , MINORITY SENIOR COUNSEL

18 , MINORITY LEGAL INTERN

19

20 For TIMOTHY DUREE:

21

22 ANDREW F. DAWSON

23 ELIZABETH A. HECKMANN

24 Keker, Van Nest & Peters LLP

25 We'll go on the record.

3

1 Good morning. This is a transcribed interview of Mr. Timothy Duree. Chairman Jordan has
2 requested this interview as part of the committee's oversight of Special Counsel Jack Smith and his
3 team.

4 Would the witness please state your name for the record?

5 Mr. Duree. My name is Timothy Duree.

6 . We encourage witnesses who appear before the committee to freely consult

7 with counsel if they so choose. And it is my understanding that you are appearing today with

8 personal counsel. Is that correct?

9 Mr. Duree. Yes, ma'am.

10 Would counsel please state your name for the record?

11 Mr. Dawson. Andrew Dawson and Elizabeth Heckmann of Keker, Van Nest & Peters.

12 Thank you.

13 On behalf of the committee, I want to thank you for appearing here today to answer our
14 questions. The chairman also appreciates your willingness to appear voluntarily.

15 My name is , and I'm with Chairman Jordan's staff. I'll now have everyone

16 else from the committee who is here in the room introduce themselves as well.

17 . .

18 with Ranking Member Raskin's staff.

19 with Ranking Member Raskin's staff.

20 with Ranking Member Raskin's staff.

21 with Ranking Member Raskin's staff.

22 with Chairman Jordan's staff.

23 with Chairman Jordan.

24 with Chairman Jordan's staff.

25 with Chairman Jordan's staff.

4

1 , Chairman Jordan's office.

2 I'd like to now go over the ground rules and guidelines that we'll follow during

3 today's interview. Our questioning will proceed in rounds. The majority will ask questions first for

4 1 hour, and then the minority will have an opportunity to ask questions for an equal period of time if

5 they choose. We will alternate back and forth until there are no more questions, and the interview

6 is over. Typically, we take a break at the end of each hour, but if you would like to take a break

7 apart from that, just let us know.

8 As you can see, there's an official court reporter taking down everything we say to make a

9 written record, so we ask that you give verbal responses to all questions. Do you understand?

10 Mr. Duree. Yes, ma'am.

11 . In addition, there is a committee videographer making a video record of this

12 proceeding.

13 So the court reporter can take down a clear record, we'll do our best to limit the number of

14 people directing questions at you during any given hour to just those people on the staff whose turn

15 it is. Please try and speak clearly so the court reporter can understand and so the folks down at the

16 end of table can hear you as well. It's important that we don't talk over one another or interrupt

17 each other, if we can help it, and that goes for everybody present at today's interview.

18 We want you to answer our questions in the most complete and truthful manner as possible,

19 so we will take our time. If you have any questions or if you do not understand one of our

20 questions, please just let us know. Our questions will cover a wide range of topics. So if you need

21 clarification at any point, just say so. If you honestly don't know the answer to a question or do not

22 remember, it is best not to guess. Please give us your best recollection, and it is okay to tell us if

23 you learned information from someone else; just indicate how you came to know the information.

24 If there are things you don't know or can't remember, just say so and please inform us who, to the

25 best of your knowledge, might be able to provide a more complete answer to the question.

5

1 You should also understand that by law you are required to answer questions from Congress

2 truthfully. Do you understand that?

3 Mr. Duree. Yes, ma'am, I do.

4 . This also applies to questions posed by congressional staff in an interview. Do

5 you understand this?

6 Mr. Duree. Yes, ma'am.

7 . Witnesses that knowingly provide false testimony could be subject to criminal

8 prosecution for making false statements under 18 U.S.C. Section 1001. Do you understand this?

9 Mr. Duree. I do.

10 Is there any reason you are unable to provide truthful answers to today's

11 questions?

12 Mr. Duree. No, ma'am. I intend to.

13 . Finally, I'd like to make note that the content of what we discuss here today is

14 confidential. We ask that you not speak about what we discuss in this interview to any outside

15 individuals to preserve the integrity of this investigation.

16 For the same reason, the marked exhibits that we will use today will remain with the court

17 reporter so that they can go in the official transcript, and any copies of those exhibits will be returned

18 to us when we wrap up.

19 That's the end of my preamble. Is there anything my colleagues from the minority would like to add?

21 . Just thank you for being here voluntarily. We look forward to hearing your testimony today.

23 Mr. Duree. My pleasure to be here.

24 Mr. Dawson, I understand you have some words to say.

25 Mr. Dawson. Just very briefly, I sent a letter last night, apologies for the late hour, regarding

6

1 our understanding of the authorization from the Department of Justice and flagging a few issues just
2 to be aware of. The two I would just mention now in terms of the 6(e) restrictions under the
3 Federal Rules of Criminal Procedure, I don't anticipate those being an impediment to talk about what
4 I understand the committee intends to ask, but I may interject from time to time just to rephrase a
5 question to ensure that we protect Mr. Duree given some inconsistencies in the circuits in terms of
6 what those rules are. But, again, I don't anticipate those will prevent fruitful questioning.

7 And so I would like to kind of enter this into the record just so I don't go through it and chew
8 up time on the clock. So with your permission, I'd just put our letter into the record.

9 We'll mark that as exhibit No. 1.

10 And we can make more copies at the end of the hour if you need it.

11 . It's okay.

12 [Duree Majority Exhibit No. 1.

13 was marked for identification.]

14 . Okay. The clock now reads 10:04 a.m. We'll start our first hour of
15 questioning.

16 EXAMINATION

17 BY :

18 Q Mr. Duree, when you did you join the Department of Justice?

19 A June of 2012.

20 Q June of 2012. And can you walk us through the positions you held there?

21 A Yes, ma'am. can you tell me your last name one more time? I'm sorry.

22 Q

23 A Okay. Thank you, ma'am.

24 Q Of course.

25 A The positions I held. And I'll give you as much detail as you want. If you want to

7

1 speed me along, speed me along.

2 Q Okay.

3 A I joined -- I graduated law school in 2008, spent 4 years doing other things, and

4 then -- roughly 4 years. In 2012, I joined the Department of Justice as an assistant United States
5 attorney in beautiful Del Rio, Texas. It's in the western district of Texas. It's where I was already
6 living at the time and had the opportunity to be an AUSA there. Texas is where I grew up.

7 I was in Del Rio for roughly 4 years, I'll call it, prosecuting all manner of crimes that one

8 prosecutes on the border. So a lot of immigration crimes, alien smuggling, drug crimes, guns, that

9 kind of thing.

10 After those 4 years, I was interested in working white collar investigations, corporate crime,
11 that kind of thing, and was lucky enough to get an opportunity here in D.C. at the Fraud Section of
12 the Criminal Division. So I did white collar prosecutions, you know, bank fraud, corporate stuff, that
13 kind of thing. Some public corruption work as well that was assigned to me, even though it wasn't
14 strictly within the normal purview of the Fraud Section. And I did that for a while as a line attorney.
15 In, I want to say, 2020, I became the supervisor of a healthcare fraud strike force and then a
16 second one. So for a while, I supervised two teams of attorneys working healthcare fraud
17 cases and -- attorneys and paralegals working those healthcare fraud cases -- in Brooklyn and
18 Newark. So I was up and back to New York every week working those cases, and had a couple
19 spectacular teams there.

20 Then I was asked -- I can give you more details if you want -- I was asked in January 2022 to
21 join an investigation that ultimately evolved into and became part of the Special Counsel's Office.
22 So, functionally, from January '22 until beginning of January '25, I was working either in the Special
23 Counsel's Office or on similar investigative streams that preceded the Special Counsel's Office.
24 Q And when you left Del Rio, Texas, and started your work in the Fraud Section, was that
25 at Main Justice?

8

1 A It was. In Main Justice -- well, yes. I'll just stop there, yes.

2 Q And then when you supervised the two teams, you mentioned Brooklyn and Newark,
3 were you working out of one of the U.S. Attorney's office in New York?

4 A I was, technically, still -- this whole time I was technically still an employee of the Fraud
5 Section of the Criminal Division at Main Justice. The Fraud Section has a healthcare fraud unit, a
6 securities and financial fraud unit that has a different name now, but that's what it was, and a
7 Foreign Corrupt Practices Act unit. So both of those jobs were within the Fraud Section. I just
8 moved from the financial fraud unit to the healthcare fraud unit.

9 We did work closely with the U.S. Attorney's offices. So like when I went to Newark, I would
10 go sit in the office -- in the U.S. Attorney's Office on Broad Street; Brooklyn, same thing. But I was
a

11 Criminal Division Fraud Section employee the whole time.

12 Q Okay. And while you were at Main Justice, were you ever a political appointee?

13 A No.

14 Q So you were always a line attorney or a supervising attorney?

15 A Yes, ma'am, that's correct.

16 Q Okay. And you mentioned being asked to join an investigative team in January 2022.

17 What can you tell us about that investigative team?

18 A About the work that we did or about joining the team?

19 Q Let's start with joining the team.

20 A Okay. So I'm at home one evening, and I'm going to call it the back side of January --

21 Q Okay.

22 A -- and I get an email in the evening and then have a call with Nick McQuaid, who was the
23 principal deputy assistant attorney general of the Criminal Division. Basically the second in
24 command in Crim.

25 You know, I'd met Nick before, but getting a call from Nick was unusual because he was my

1 boss's boss's boss's boss, or maybe one more above that, right. So I knew him but, you know, we
2 didn't have a lot of day-to-day interaction.
3 He calls me -- and at that time I'm just prosecuting my cases and managing my teams in
4 Newark and Brooklyn. I'll paraphrase because it's been, you know, 4 years plus. But as best I can
5 remember, he says that the Criminal Division needs to look into whether there may have been some
6 misconduct within the Department of Justice relating to the transition of power after the 2020
7 election, and asked me if I would be willing, interested, in joining that team. And I said I would.
8 You know, I didn't for a second seek it out. In fact, if I'm completely candid with you, around
9 this period of time, I was kind of sort of considering maybe leaving the Department of Justice,
10 because it'd been years and years -- I have a family at home -- it'd been years of travel every week,
11 long hours, all that.
12 But when Nick presented the opportunity, right, your -- the boss asks you to do something,
13 you do it. I felt duty bound and honored to be asked. So I joined the team, and that was in
14 January of '22. My focus at that point was, as I mentioned, trying to determine whether there had
15 been misconduct within the Department of Justice relating to the transition of power.
16 Q And when Mr. McQuaid asked you to join this team, did he give -- it was going to be a
17 definite period of time, and then you would come back to your normal work, or were you going to
be
18 there indefinitely?
19 A It was unknown. It seemed real hazy and uncertain. I think -- and again, Nick maybe
20 has -- Mr. McQuaid might have a better recollection of this. But as I remember, as I -- we need to
21 look and see if there was any misconduct there. We don't know if there is anything or if there isn't.
22 So it could be that you kick the tires and a couple months you're back to your old job. It could be
23 that there are investigative leads that need to be followed, in which case you'll follow them.
24 So I didn't have a sense of timing at the -- I knew nothing other than, you know, the general
25 sort of impressions I was given from the call. And so I thought -- and I think Nick probably

10

1 thought -- could be a couple months and there's nothing there, could be a long time if the case
2 materializes, but I had no real idea.

3 Q And what was your understanding -- I know you said he had asked you about joining a
4 team. So was it your understanding that there was an investigation that was already underway in
5 terms of looking into alleged misconduct within the DOJ?

6 A I don't know if that was my impression on the call or if I developed that impression
7 shortly thereafter. But the impression that I had around that time --

8 Q Okay.

9 A -- was that there were maybe a couple of people already looking at either this issue or
10 sort of adjacent issues, right, but that the team was small. And so I was under the impression that
11 there had been a -- there was a workstream that was just beginning but was in its kind of embryonic
12 stages.

13 And if I remember precisely, I think that -- actually, I'm pretty confident that there were PIN
14 attorneys -- PIN is the Public Integrity Section of the Department of Justice. If it's all right with you
15 all, I'll just call it PIN, that's what we called it.

16 Q Of course.

17 A There were PIN attorneys originally assigned to this for about a cup of coffee, like couple
18 of weeks or something. I can't tell you the time. It seemed very short. But my understanding is
19 that PIN felt that it might want to recuse itself sort of proactively, and so they needed someone in
20 the Criminal Division to investigate these things. And there were two of us from Crim originally

21 assigned to do that. I was one of those two.

22 Q Okay. And when you joined the team, how many people were working on this specific
23 investigative stream?

24 A Once I joined -- I and my colleague joined, and I believe we doubled the size of the team
25 to four. I think there were two.

11

1 Q Okay. So who was the colleague that joined with you?

2 A That joined with me from the Criminal Division?

3 Q Yes, uh-huh.

4 A The brilliant and lovely Teresa McHenry --

5 Q Okay.

6 A -- who is a great attorney and has the benefit of being an all-around wonderful person.

7 Q And then who were the two people who were already there working on this?

8 A Other really great people as well. Alex Bogle, who at the time was -- she was
9 employed by the National Security Division. And Thomas Windom, who was technically, I
10 think -- was technically employed by the U.S. Attorney's Office for the District of Maryland but had
11 been detailed over to the D.C. U.S. Attorney's Office.

12 Q Okay. And did you ever work with the PIN attorneys on this investigation before they
13 recused themselves?

14 A No, not really. When Nick called me and I realized that there was going to be a PIN
15 recusal, and so -- sometime around there I realized -- and so I started working the case. I think -- I
16 couldn't remember their names.

17 Q Okay.

18 A I think that we had one or two phone calls just to kind of pass the time, learn what they
19 had done, so that we could, you know, pick up where they left off. But as I remember, that was, like
20 I said, only one, maybe two calls. And because the case was still new, there hadn't really been a lot
21 done yet. So I didn't work with those people necessarily.

22 Q And why did the PIN attorneys recuse themselves, if you know?

23 A I will tell you -- I'll tell you what I know.

24 Q Okay.

25 A Understanding that my information comes secondhand on this, and you might want to

12

1 go to sources if you want to get, you know, their stories as well. But PIN recused itself. So Corey
2 Amundson was the head of PIN at the time. And during the, what I'll call the post-election
3 period -- it'll probably come up during the day, and I don't know if, like, y'all have been using that
4 term -- but I generally refer to the post-election period as that period between election day and the
5 transition of power. In our case, it'd be 2020 and early 2021, right.

6 But everyone in this room, everyone who was in America probably remembers that there
7 were a lot of allegations of election misconduct being made by the President and people allied with
8 him.

9 Attorney General Barr, as I understand it, felt that it may be beneficial to look into some of
10 these allegations, you know, immediately in the post-election period. This was maybe either
11 dissonant with or at least uncommon under the election interference memos and other PIN
12 precedent. Essentially, you don't really bring -- I'm not a PIN attorney, but my understanding is that
13 you don't really investigate election issues like this during the pendency of, you know, the event

14 giving rise to the issue, I suppose, so as not to be seen as interfering with the election.
15 Anyway, I say all that to say, there was, I think, some back-and-forth between PIN, people in
16 higher levels in the Department of Justice, and maybe the U.S. Attorney's Office or FBI in Atlanta,
17 maybe. Like, I'm just trying to tell you what I remember as best I remember it. And because
18 Mr. Amundson had been involved in those emails and communications about whether or not it was
19 appropriate to investigate these cases in the short term, I think he felt that his office should recuse
20 itself. There was no mandate that they do it. But the idea was that PIN would be investigating a
21 case that hypothetically, conceptually could involve inquiry into PIN's own decision-making, I
guess.
22 But, again, I say all that with the caveat of I'm trying to be as transparent as I can, but I don't
23 mean to speak the gospel on this. Corey would be able to tell you more precisely.
24 Q And the four individuals that you worked with, did that team ever grow to more than
25 four individuals?

13

1 A Sure did.

2 Q And who else was added to that team, before Jack Smith was appointed? What kind of
3 end point is there? So he was appointed November 18th, 2022.

4 A That is correct. So, again -- and if you want me to stop, you know, giving this reminder,
5 I will. I just want to make sure it's clear. My memory might not be perfectly precise. It's been
6 4 years, but I'm going to try to tell you as best I can.

7 Q Okay.

8 A It was Teresa, Thomas, Alex, and I --

9 Q Okay.

10 A -- for a while. January into April, May?

11 Q Okay.

12 A Then we added, as I remember it, one more person from the D.C. U.S. Attorney's Office.

13 That was Ahmed Baset.

14 Q Okay.

15 A Then we were a slightly larger team for a period of time into the summer. And I guess
16 around Labor Day maybe, the team really grew in size. There was -- I can give you more detail on
17 this if you want it, but there was a point at which decisions were made by folks much higher up in
18 DOJ than me that it would be wise to grow this team into something bigger than just the five of us.
19 And so at that point, several other attorneys were added. Our size grew greatly. I mean, I would
20 guess -- I'm ballparking it now, but if we were five, we might have ended up 10, a dozen, something
21 like then -- something like that.

22 Q Okay. And this team, when it was just the four of you, was there anyone supervising
23 your work, or what was the chain of command there?

24 A Yes, it was a little -- there was a chain of command. It was a little bit fluid. We were
25 kind of a bit of a confederacy, right.

14

1 Q Okay.

2 A So I was in the criminal -- we had multiple chains of oversight, but we all worked
3 together. I was in the Criminal Division, Ms. Bogle was in NSD, Thomas was in the U.S. Attorney's
4 Office, Ahmed was in the U.S. Attorney's Office, Teresa was in Crim. So we had three different
5 offices supervising us. Functionally, Teresa and I reported up to folks in the front office of the

6 Criminal Division.

7 Q Okay.

8 A Alex -- Ms. Bogle reported to whoever was in the front office of the National Security
9 Division. Thomas and Ahmed reported to the top folks in the U.S. Attorney's Office. At the time,
10 the U.S. Attorney's Office was -- the U.S. Attorney was Matt Graves.

11 So each of us -- we -- the four of us worked, and then five of us worked closely together. We
12 were, you know, a team day to day. We would each report up our chains of command, but we
13 would also sort of harmonize back and forth. So there might be occasion where all of us would
14 meet to make sure we were eye to eye. There might be points where Crim took the lead or where
15 the U.S. Attorney's Office took the lead on different things. So we had sort of three different chains
16 of command all connecting together and talking to each other --

17 Q Okay.

18 A -- on case decisions.

19 Q And I know that Mr. Windom was working out of the D.C. U.S. Attorney's Office.

20 A He was.

21 Q Were you also stationed there or were you still at Main Justice?

22 A Real brief I was at the U.S. Attorney's Office. The way it worked was I was a Crim
23 Division employee -- I mean, I -- I was technically a Crim Division employee until the day I got
fired.

24 Q Okay.

25 A I was on detail from Crim to different places. But from January until ballpark maybe

15

1 again in August, I was a -- I worked as a Criminal Division employee. If you look at my documents
2 from that time, I probably signed them on behalf of the Fraud Section, Criminal Division.
3 There was a period of maybe a couple of months before Mr. Smith came in where -- this is
4 that same time period where the team grew, right.

5 Q Yep.

6 A Because the growth of the team also coincided with the consolidation of the team under
7 one supervisory chain. So when the team -- the team both simultaneously grew and was then
8 placed under the supervision of the U.S. Attorney's Office.

9 Q Okay.

10 A When that happened, my day-to-day work didn't really change, but I then, for a brief
11 period of time, was detailed over to the D.C. U.S. Attorney's Office.

12 Q Okay.

13 A That was probably -- again, there's records that would show you precise dates, but I'm
14 going to say it feels Labor Day-ish up until Mr. Smith took over, and during that period of time, I
and

15 my colleagues worked out of the U.S. Attorney's Office. Like, I had an office there for like 2
months.

16 And before that, I had my whole office at the Criminal Division.

17 Q And were you reporting to J.P. Cooney at that point in time?

18 A That's a good question. Like, the reason that I'm hesitating, I don't know if I -- you
19 should ask J.P. I don't know if I was reporting to him at that time or not. I can tell you this: I
20 think I was. I probably was.

21 Q Okay. Was he leading the investigation at that point in time, or who was leading the
22 investigation?

23 A These are all real good questions. J.P., I -- again, you'll hear this refrain from many of

24 my colleagues. J.P. is a spectacular guy, someone I am proud to know. I did not know J.P. before
25 that summer. And when we first got to the D.C. U.S. Attorney's Office, I'm not -- I'm not sure one

16

1 way or the other whether J.P. was a person with whom I interacted at the U.S. Attorney's Office in
2 that very first period or if he was my supervisor from the start. I just don't really remember.

3 It was sort of a fluid period of sort of supervisory transition. I can tell you that most
4 definitely J.P. was a supervisor above me in the Special Counsel's Office. But I just don't remember
5 if like on day one in the U.S. Attorney's Office he was the guy or if it evolved to that.

6 Q Okay. And you had mentioned earlier that there were people who were, you know,
7 looking at the specific issue about misconduct within the DOJ and then adjacent issues. So who
8 worked on the misconduct within DOJ? Who worked on that issue with you?

9 A , you'll need to specify the time periods because it did change.

10 Q Okay. So when it was just the four of you in the beginning between January and April
11 and May, who was working on the misconduct within DOJ?

12 A Well, Teresa and I principally, but --

13 Q Okay.

14 A -- all of us to a lesser degree. In those early days, the workstreams were still
15 developing. So we didn't have ossified streams of work and teams particularly dedicated to one
16 thing to the exclusion of another. But functionally the way it worked is I understood my mandate to
17 be to investigate the work within -- the work related to misconduct from DOJ. So I took the lead on
18 that along with Teresa. We were sort of co-leads on it. But as needed, you know, if there was
19 work to do, Thomas or Alex would also participate in that workstream, just as, once we developed
20 additional workstreams, Teresa and I may participate in those.

21 But I would say the rough division in those previous U.S. Attorney's Office days was that it was
22 Teresa and I heading the DOJ stuff.

23 Q Okay. And did you ever get an understanding of what workstream Thomas Windom
24 was working on?

25 A Yeah, yeah. I mean --

17

1 Q What was his workstream?

2 A -- I knew what workstream he was working on; we worked together. We had -- they
3 evolved. It's not that I didn't know the workstream. I certainly did. It's that the investigation
4 was very new at the beginning, and as it matured, our investigative focus sharpened. So the
5 workstreams became more clearly defined.

6 But early on, I'd say -- you know, Thomas and I worked, you know, side by side on whole lot of
7 things. He maybe took more of a leading role on the fraudulent electors issue at the beginning as
8 that came up. You know, that is a workstream that changed personnel a lot over time. But he
9 maybe took lead on that. There were issues related to John Eastman and legal theories presented
10 to Mike Pence and all that. That wasn't a specific workstream, but that was the thing that came up.
11 In those early days, I wasn't really looking at the White House. Like, the President and the
12 White House were of interest to me only in that the President was a person like several others who
13 had interacted with Jeff Clark with DOJ. But as White House stuff came more into focus, Thomas
14 spent a good deal of time on that.

15 Q Okay. And when you say when the White House stuff came into focus, what White
16 House stuff came into focus, if you will?

17 A Well, again, this was a focus that developed over a long period of time. But what came
18 into focus over time was that President Trump may need to become a subject into which we inquired
19 in our investigation. And I'll pause right there before I go any further and say, when I say subject, I
20 mean -- like, I'm not a prosecutor anymore, I got fired, but I -- when I was, we would use the term
21 "subject" to basically mean anyone within the scope of an investigation who wasn't, you know,
22 essentially just like a witness, like an eyewitness, anyone who wasn't a target. So it's a whole lot of
23 people, right.

24 Q Okay.

25 A As we investigated the Jeff Clark components, the DOJ component that is, the

18

1 fraudulent elector stuff and that kind of thing, I felt like -- and this is sort of subjective. You know, if
2 you ask Thomas his opinion of how it evolved, might be a little different. But we kept seeing, you
3 know, investigative avenues that would lead us back toward President Trump and to the White
4 House.

5 Q Okay.

6 A And so naturally, this investigation, while it was, you know, kind of high profile, was no
7 different than any other that I'd ever -- that I had done in that you just -- you refine your investigation
8 and you follow the investigative leads where they go. And so when the investigative work started
9 to point us in the direction of the White House, we felt compelled to follow it in that way.

10 And so workstreams that developed from that were sort of generally, I guess ultimately, the
11 workstreams that people might associate with our election fraud case, the work that caused us to
12 inquire into whether President Trump and those allied with him had taken steps to corruptly impede
13 the transition of power through use of the fraudulent electors, through misstatements about, you
14 know, these completely unfounded allegations of fraud, through trying to unduly pressure Mike
15 Pence to change the outcome of the election, and to also, you know, cajole State and local leaders
16 and officials to do what they could to adjust electoral votes. I mean, that's -- so that's where the
17 White House work had developed.

18 I mean, the way I kind of describe it real simply is this: The DOJ case, you look up at the sky
19 and you see a star, and over time we backed out a little bit and saw it wasn't just one star, there was
20 a whole constellation, and they fit together. And seeing how all those stars sort of lined up with
21 each other took a lot of -- that was something that became clear as we investigated independently
22 our workstreams and sort of saw how things ran into each other, lined up with each other, and
23 realized that there might be -- and indeed to my belief and opinion based on the evidence was unity
24 to these workstreams that had not been immediately apparent to me and perhaps to anyone on the
25 team when we started the investigation.

19

1 Q And so did your work on specifically looking into misconduct at the DOJ, did that ever
2 end or did you continue to work on that between -- I'm talking in the timeframe January 2022 to
3 November of 2022?

4 A I worked on that throughout that time period. Wasn't the only thing I worked on, but
5 it was a main thing I worked on, yeah.

6 Q Okay. And can you just kind of list off what various investigative streams you worked
7 on? I know we have the misconduct at DOJ and then the White House streams. Were there
8 other --

9 A Do you mean -- do you mean during that early 2022 period or throughout my time as

10 special counsel?

11 Q I just mean in the 2022 period, the January to November.

12 A Okay. Yeah, yeah. You know, we -- I principally did the DOJ workstream. That

13 was --

14 Q Okay.

15 A That was my main focus. But like I said, we were a small team and we weren't siloed

16 off from each other. So if there was investigative work to do related to any other workstream, I

17 would -- there was a decent chance that I could be pulled into that. You know, we just -- we

18 all -- Thomas, Ahmed, Teresa, Alex, and I -- we would talk, you know, regularly. We knew what each

19 other were do -- we each knew what the other was doing, mostly. And when one of our sort of

20 areas of focus needed more manpower or someone just, you know, we would jump onto the thing.

21 So I principally did the DOJ stuff, but I also helped broadly with just about anything during

22 that time period. You know, maybe we had subpoenas out to fraudulent electors; I could have had

23 some role in that. You know, issues related to the lawyers and stuff in the -- the Trump legal team,

24 stuff like that. It was a little bit of everything we did.

25 BY :

20

1 Q Can I ask you, the term "fraudulent electors," when did that come into focus as opposed

2 to alternative electors?

3 A You asking me?

4 Q Yes.

5 A I call them alternative electors to be diplomatic and nice. To me, they were fake

6 electors.

7 Q Okay.

8 A And we call them fake electors -- I mean, just like, as we're talking to each other, you

9 know, the team, we think they're fake electors, but we chose -- I think we -- you know, we use

10 different terminology -- fraudulent electors, alternative electors. There was nothing particularly,

11 like, intentional about it. It's just we realized -- we realized that an investigative piece we were

12 going to get a look at was these slates of electors that had, in fact, not been chosen by the voters

13 and -- by the voters in their respective States. And so we just had different ways to shorthand and

14 call them that.

15 Q Okay. But if, you know, President Trump had won one of those States, those electors

16 would have been the electors, correct?

17 A Probably. I mean --

18 Q So isn't it more, you know, precise to refer to them as the Trump electors or alternative

19 electors rather than fraudulent electors, because --

20 A Because?

21 Q Because, you know, there were a lot of -- a lot of very serious issues with a number of

22 States -- Georgia, Pennsylvania, Arizona, Michigan. And at the time, you know, during times

23 relevant, the President and his allies believed that they had won some of those States. And had

24 they won some of those States, wouldn't those electors have served as the official electors?

25 A A few points to try to respond to everything. I understand your question but disagree

21

1 substantially with the -- with some of the facts that you put in there as to whether there really were

2 problems in these States and what people might have believed. I said that --

3 Q Let me back up. Let me back up. I didn't say there were problems. What I said was

4 President Trump and his allies believed there were problems.

5 A Okay. I understand your question. I take the question. I am not addressing

6 whether I agree with that factual assertion, but what I will tell you is this. First, as we look through

7 today, the electors, I mean, is shorthand to me. You want to call them the Trump electors, you're

8 welcome to call them the Trump electors. I mean no offense to anybody in the nomenclature that

9 we choose.

10 There was certainly a theory that was, you know, that was something that we investigated in

11 our case that if the electoral votes had been sent back to the various States and, you know, through

12 litigation, President Trump was determined to have won the States and President Biden had not,

13 there was certainly a theory that these electors would then have become the duly appointed electors

14 from those States. That was a theme that was part of the case, yes.

15 Q Okay. So referring to them as fraudulent electors or fake electors is just -- I mean, it

16 just seems to me that, you know, it reveals a state of mind that the Justice Department, you know,

17 had concluded very, very early on that these were not the Trump electors, these were somehow

18 electors that were procured in a fraudulent manner.

19 A Is that a question to me?

20 Q Yes.

21 A What is the question?

22 Q The question is, don't you see that as an issue? You know, the investigators, especially

23 Justice Department criminal prosecutors, you're supposed to enter into these matters with an open

24 mind. And if right away at the outset your state of mind is that these electors are fraudulent

25 electors or fake electors, doesn't that cloud the whole investigation?

22

1 A No. And I disagree wholeheartedly and completely with the suggestion that we had

2 any predetermined ideas. When I got on this case -- and I'm going to speak for myself, but I also

3 think this is true of all my colleagues -- I was stunned to be asked to participate in the DOJ

4 investigation, stunned that I would be entrusted with something of that magnitude.

5 And from the day I started, I took seriously, deadly seriously, my obligation to be neutral and

6 fair and impartial. I recognized from the start, even before the investigation grew into the thing it

7 grew into, that this was a unique and potentially prominent and potentially very serious

8 investigation. The gravity of that humbled me and was never lost on me. And I made it my duty

9 throughout, as I did in every case, to have no preconceived notions, allow no personal feelings to

10 enter into decision-making but just, rather, proceed dispassionately and neutrally in the

11 investigation. And so that is what I did and what I saw every member of my team do.

12 If for the sake of today's conversation you want to refer to the electors as Trump electors,

13 alternate electors, that's fine. I consider it no value judgment, just shorthand to describe something

14 that would take a package of words to describe otherwise, but we had no preconceived notions.

15 In my mind, the fakeness wasn't a democratic -- or Democrat or Republican thing. Fake or

16 fraudulent or whatever was just simply, by the time we're investigating, the election had long been

17 over, the election had long been certified. And in each State certain electors had been identified as

18 legitimate ones and certain had not. It was as simple as that.

19 Q Okay.

20 BY :

21 Q While you were investigating the alleged misconduct within the DOJ, did you ever

22 interact with anyone from the DOJ'S Office of Inspector General?

23 A I did.

24 Q And what was their role in that specific piece of the investigation?

25 A So for sometime in those early days, we worked with DOJ OIG agents. It was a natural

23

1 fit early on because we were investigating potential misconduct within the Department of Justice.

2 And so the Inspector General's Office was a sort of normal landing spot for -- that took that case.

3 Q And how many DOJ OIG agents did you work with?

4 A There may have been other people sort of on the fringes adjacent to the case, you

5 know, analysts or back office people or someone else. But the ones I remember most prominently,

6 there were two agents with whom I worked, one named Brian Burnett --

7 Q Okay.

8 A -- and one named Jake Higley.

9 Q And what was Special Agent Burnett's role in the investigation?

10 A Well, over time in my interactions with the OIG, Mr. Higley, Jake, played a larger role --

11 Q Okay.

12 A -- and was -- to my mind, he was the agent with whom I ended up doing more work.

13 Q Okay.

14 A But early on, Mr. Burnett was the OIG agent assigned to our case. And so he would do

15 normal agent work -- investigating things, dealing with subpoenas, I mean, that kind of stuff.

16 Q And did the OIG ever stop helping with the investigation?

17 A In '22?

18 Q In '22.

19 A No. No. The OIG was -- I don't know if OIG ever formally separated from the

20 investigation, but by the end of the Special Counsel's Office, we weren't really working, you know,

21 with OIG on a day-to-day at all. In '22, before we were the Special Counsel's Office, I feel like -- I

22 feel like OIG stayed involved to some degree.

23 Q Okay. And were Agents Higley and Agents Burnett the primary agents that you worked

24 with or did you work with anyone else?

25 A If I worked with anyone else, and they ever read this transcript, I apologize if I'm not

24

1 remembering you. But Agent Higley and Agent Burnett were the two agents I remember working
2 with.

3 Q Okay. And did you ever interact or speak with Inspector General Michael Horowitz?

4 A I don't recall. I don't recall. I had some calls with -- maybe a couple call or two with

5 management-type people at OIG. I can't remember who they are. It's possible that I was on a call

6 with Mr. Horowitz, but I don't remember specifically.

7 Q Okay. And beyond --

8 A I'm going to say I doubt it, but I don't know for sure.

9 Q Okay. Did you ever work with -- just think of outside entities right now. Did you ever

10 work with the National Archives Inspector General?

11 A Our team did.

12 Q Okay.

13 A Our team did. I can't remember the NARA OIG agents' names.

14 Q Waleska McLellan, is she --

15 A That is a name that I remember.

16 Q Okay.

17 A Yeah. And I think we might have met once or twice. If you've got other names -- it's
18 been so long. There were maybe a couple other people, I was trying to remember their names.

19 But the bottom line is NARA OIG was, you know, attached to our team in some way at some point.

20 Q Okay.

21 A But to my recollection, if I -- while I'm sure I did interact with those folks some, I don't
22 remember specific interactions or agents really. That wasn't --

23 Q Okay.

24 A -- my thing.

25 Q They weren't part of the investigative stream for misconduct at DOJ?

25

1 A That's not to say they weren't, right.

2 Q Right.

3 A Because, again, one thing that I do want to convey is it was kind of fluid. If we
4 needed -- we were all -- it wasn't like -- you know, we're not running, playing football, and Thomas is
5 the wide receiver out this way, and I'm the wide receiver over here, and, you know, Alex, the
6 quarterback or something. We all would sort of shift on to doing things together. We were a
7 team more than like a group of siloed individuals.

8 So I can't tell you for certain that NARA OIG didn't help in some way. NARA OIG may
9 have -- may have -- done something ancillary to the DOJ stuff, but I do not remember that happening.
10 I don't have any recollection that they did.

11 Q Okay. What about the United States Postal Inspection Service?

12 A I think we did have a guy from Postal, but I don't remember who it was, and I don't
13 remember what his role was on the case, and I don't think he was on the -- I don't think Postal
14 participated very much in the case.

15 Q Okay.

16 A Just -- again, I don't recall. I can tell you that most of the work that I did from '22
17 through '25 was with the FBI and in the early stages with Jake and Brian at DOJ OIG.
18 Okay. I'm going to mark this as exhibit No. 2. It's a DAG briefing document.

19 [Duree Majority Exhibit No. 2.

20 was marked for identification.]

21 BY

22 Q And this is a seven-page document with bullet points. You should take your time to
23 review, but I'll point and refer to specific pages and bullets.

24 A Do you want me to sit and read the whole thing for a few minutes or you want to just
25 ask me?

26

1 Q It's up to you what you want to do. I'm going to refer you to specific bullets, so
2 whatever you'd like to do.

3 A Okay. Give me a second just to familiarize myself with it.

4 Q Yep.

5 A Okay.

6 Q Okay, great. Have you seen this document before we gave it to you today?

7 A I don't know.

8 Q Okay.

9 A This reminds me that there was a -- called DAG briefing. There was a briefing of
10 Deputy Attorney General Monaco --
11 Q Okay.
12 A -- in the U.S. Attorney's Office, and it would have been sometime in the fall-ish of '22.
13 Q Okay.
14 A I believe -- I know we did put papers together for that. So I feel like this is something
15 that I've seen, and I feel like this is probably that, but I can't tell you for sure.
16 Q Okay. And the DAG briefing that you're remembering in the fall of '22, did you
17 participate in that briefing?
18 A I did.
19 Q And who else went along to the briefing? Was it the whole team?
20 A Yeah, I think. I mean, I don't know if there was one person -- I don't know if someone
21 might have been absent that day or what. But, yeah, roughly. The team as constituted at that
22 time and the names on this -- this includes a lot of names that I didn't mention from those early
23 days -- this includes the people who have joined onto the team in that like post-Labor Day, around
24 Labor Day-type period when we grew.
25 But, yeah, as I remember it, most or all of us were there. We sat in the room in the U.S.

27

1 Attorney's Office and we briefed the DAG on the case.
2 Q And your name is down next to the -- on page 4, it's down next to the Jeffrey Clark
3 workstream. Did you present at the briefing on the status of the investigation?
4 A I did. I did. I don't think -- I don't know that I wrote this. There are parts of this
5 that made me think I didn't write it or someone else might have finalized it. But, yes, I did present
6 to Deputy Attorney General Monaco on the Jeff Clark/DOJ workstream.
7 Q Okay. And as part of the Jeff Clark workstream, it was Representative Scott Perry was
8 kind of involved in that area. And on here, on page 4, there's a bullet point that says, "The key
9 individuals in this investigation, including witnesses are" -- then it mentions several individuals --
and
10 it says, "Perry, subject light/intermediary." We had had a discussion about the use of "subject".
11 What can you tell us, what does subject light mean?
12 A I don't know. I don't think -- I say I don't know, but I'll tell you my best.
13 Q Okay.
14 A I don't think that I -- this is one of the things I was saying that made me think I didn't
15 probably write this exactly. I may have. I may have. But "subject light" isn't terminology I think I
16 would normally use.
17 But as I understand it, you know, as I described, there are three categories, right: witness,
18 target, and subject. But subject is the big one. Subject is like most people, right. You're
19 either -- anyone who might be within the scope of the investigation can be a subject. So it can be
20 useful at times, whether it's subject light or something else to denominate the same thing, can be
21 terminology to suggest that this person is a subject but is trending investigatively in one direction.
22 Q Okay.
23 A So I would say, you know, you could be a subject trending towards becoming a target if
24 the investigation's turning up a lot of evidence of your criminal culpability. You could be a subject
25 trending towards witness if the investigation is revealing that while you are within the scope of the

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1 investigation, you perhaps are not someone on whom we at that point are thinking we're going to
2 develop evidence to charge, but we don't know yet.

3 So I think subject light is just an effort to try to situate, if Perry is referring to Congressman
4 Perry, an effort to situate Congressman Perry within the broad spectrum of subject to understand
5 kind of, you know, how we viewed him at that point in the investigation.

6 Q Okay. So would subject light have been on subject trending toward target or subject
7 trending toward witness?

8 A I mean, I don't generally call people subject light. It seems like a diet drink. It's an
9 odd way to put it. But I would guess that subject to me, subject light means as we -- if we took a
10 snapshot of this day in time, we think that you are probably moving roughly in the direction towards
11 witness, but you are certainly not a witness. We don't know. We have a lot of investigation left to
12 do, but at this point what we are seeing is suggestive of you're basically sort of being downgraded
13 through the, you know, tiers of subject-dom.

14 Q Okay. And a few months before this, August 9th, 2022, the Justice Department seized
15 Representative Perry's cell phone. Were you involved in seeking the search warrant for Mr. Perry's
16 cell phone?

17 A I would -- yes. I was not involved in seizing the phone, like physically seizing it.

18 Q Okay.

19 A That's what the agents would do. I was involved in building the evidence for that
20 search warrant.

21 Q Okay. And who else was involved in building the evidence for the search warrant?

22 A I was. I mean, me.

23 Q Okay. Were you the --

24 A No, I would -- there's no universe in which I'm going to put together, no matter how
25 strong the evidence is, there's no universe in which I am going to put together and get a search

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1 warrant on a Congressman's cell phone without the input of others.

2 I would think that -- you know, Teresa was working -- Teresa was working the DOJ stuff with
3 me. Teresa would have been involved. But Thomas probably would have had some involvement.
4 And, you know, whether Alex or Ahmed did, I would think they certainly would know about it
5 because we were a small team, we talked about it. I would have, of course, run it through
6 supervisory chains and all that kind of thing.

7 But I would -- I would say that I was the person who did -- I would say -- I will say, I am saying,
8 I was the person who did the -- I was the person who did the most work to prepare that search
9 warrant.

10 Q Okay. And when did the idea come about that you thought you needed Mr. Perry's
11 cell phone?

12 A It came about as we were investigating the DOJ misconduct. I can't tell you when the
13 seed first planted in my head and then, you know, blossomed. But in that period from January till
14 beginning of August -- or probably -- I guess we probably wrote the warrant before August. So
15 January till, you know, prior -- before the search warrant, sometime in that range, as we developed
16 the evidence of what had happened within DOJ and the effort to elevate Jeff Clark to the attorney
17 general's role, Scott Perry featured significantly in that effort.

18 And so at some point -- and I can tell you more about how the investigation went if you want
19 to, but at some point in that period, I probably came to think that Scott Perry's phone would have
20 evidence that would be beneficial to that case and evidence of a crime.

21 Q And what evidence were you looking for? I mean, when they took the phone, they

22 took, as we understand it, like a full copy of the phone. They got like the photos of him and his
23 children and all of that. So, obviously, I didn't think you probably needed the photos of him and his
24 children, but what contents were you specifically looking for?

25 A Well, I mean, technically, you're looking for information that might exist on that phone

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1 that provides evidence of the criminal conduct you are investigating. So that could be text
2 messages, Signal, WhatsApp, you know, photos, in some cases, emails, whatever's on a phone. I'm
3 not saying that just specific to Scott Perry, when you seize a phone, you're looking for evidence that's
4 on that phone.

5 Congressman Perry was very -- again, you are testing my memory because this has been some
6 years. But what I came to understand about the DOJ scheme essentially is -- what I'm calling the
7 DOJ scheme right now -- was this effort to elevate Assistant Attorney General Jeff Clark, who had
8 previously been the Assistant Attorney General over the Environment and Natural Resources
9 Division, and then was the Acting Assistant Attorney General over the Civil Division -- it was an
effort

10 in late December and early January to elevate him to the Acting Attorney General role so that he
11 could -- and one result of that would have been, had he obtained the role, that he would have been
12 able to send a letter falsely telling State legislatures, including the legislature in Georgia, that there
13 was -- I forget the exact wording -- but evidence of -- significant evidence of fraud or misconduct,
or

14 something like that, that might warrant pulling back the electoral votes. And the whole, you know,
15 outcome of this, if all that would have happened, could have been to destabilize the elections in
16 those States to which he sent the letter and maybe even others where he didn't, with the end result
17 of potentially causing the electoral votes to be pulled back, I guess, hypothetically.

18 I say all that to say, Scott Perry was connected to that throughout. What we found was that
19 Congressman Perry had, it appeared, introduced Mr. Clark to President Trump around the 20th, 21st
20 of December, and that Congressman Perry was in close contact with Jeff Clark throughout the
period

21 of, like, that December 20th or 21st through January 3rd when the scheme climax had ended, more
22 or less.

23 So he was in close contact with Mr. Clark. He was in close contact with other -- a lot of other
24 people that were connected to both the DOJ scheme and the sort of overall effort to overturn the
25 election. We knew that he had text messages, Signal messages, other communications with Jeff

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1 Clark. We knew that he had been involved in, you know, looking at election fraud-type stuff in
2 Pennsylvania in December. We knew that -- so I guess I'll stop there --

3 Q Okay.

4 A -- and just end by saying, there were many factors, many points of contact, many pieces
5 of evidence indicating that Scott Perry was closely connected to the effort to install Jeff Clark as the
6 Acting Attorney General, which -- and we believed that we had probable cause to find evidence on
7 that phone related to that criminal scheme.

32

1 [10:58 a.m.]

2 BY

3 Q And I think we can agree that seizing the phone of a sitting Member of Congress is a
4 pretty serious investigative step. Would you agree?

5 A I think seizing anyone's phone is a significant investigative step, and I recognize it as
6 such and take it seriously, yeah.

7 Q And you had mentioned your supervisory chain was involved. So what sign-offs did
8 you have to get in order to go after a search warrant for a -- or seek a search warrant for a sitting
9 Member of Congress' cell phone?

10 A I cannot remember the specific approval chain.

11 Q Uh-huh.

12 A I -- you know, I haven't seen those emails in years, and don't remember exactly emails
13 and calls we had.

14 That approval chain would have involved PIN, the Public Integrity Section. That would have
15 been important. That would have probably involved at least the knowledge and buy-in of my
16 supervisory chain, which at the time would have been Crim. Potentially, you know, the others, the
17 U.S. Attorney's Office might have known about it and buy-in as well. I just don't -- I don't
18 remember.

19 In some things -- I'm not saying that this was or wasn't -- but some things that were
20 particularly prominent required us to give notice to the Deputy Attorney General's Office as well.

21 Q Okay.

22 A So I know that's not a particularly precise answer, but it's just because it's been a long
23 time. I don't remember specifically, but I know that PIN, my supervisory chain, and Crim would
24 have definitely been involved and potentially those others as well.

25 Q And what conversations can you tell us about that took place regarding seeking consent

33

1 to obtain his cell phone prior to obtaining a warrant?

2 A Seeking consent from whom?

3 Q From Mr. Perry or Mr. Perry's attorneys to search the cell phone.

4 A It would -- I don't remember doing that. It would be extremely abnormal in any
5 criminal case for -- for me to seek consent to just have someone hand their phone over when we
6 believe there is probable cause of a crime and they were a subject of the case and all that.

7 So I don't -- I don't remember having any conversations like that, and I don't think that I
8 would have.

9 Q And what conversations do you remember regarding the Speech or Debate Clause?

10 A A lot.

11 Q What can you tell us --

12 A A lot.

13 Q What conversations took place prior to seeking the warrant?

14 A I mean, we're getting on to the hour. Do you -- this could take me a little while.

15 Q Let's get started, yeah.

16 A Okay. The Speech or Debate Clause is something that we took incredibly seriously.

17 The Speech or Debate Clause protects from -- protects Congress -- Members of Congress from
18 prosecution for, you know, legislative acts within the scope of their job, roughly, for the sake of this
19 conversation.

20 In D.C. -- in D.C., there is specific case law named after this beautiful office building in which
21 we sit, called Rayburn that provides that in the D.C. Circuit not only are Speech or Debate protected
22 materials, things that can't be used in prosecution, but also that prosecutors can't take those

23 materials, can't have them, right?

24 Q Uh-huh.

25 A So --

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1 Q Were prosecutors concerned that there were Speech or Debate covered materials --

2 A Oh, yeah.

3 Q -- on Mr. Perry's cell phone?

4 A For sure. I mean, I was not concerned thinking, Oh, my goodness, there's Speech or

5 Debate materials or anything like that.

6 When I say concerned, I mean there is a recognition that when I'm dealing with a Member of

7 Congress, there is a possibility that that Member of Congress could have Speech or Debate protected

8 materials on their phone, and it is absolutely the best practice and the only practice I would endorse

9 to think that through on the front end and take steps to protect those materials from disclosure to

10 you for the sake of, you know, the Congressman and the legislative process, but also for the sake of

11 the prosecution and the team, just to keep everything as it should be under the law, right?

12 So yeah, we definitely -- we definitely knew that we had to be thoughtful about that, and we

13 implemented protocols that I can try to remember and describe to you, very thoughtful protocols to

14 ensure that there was a review process in place that made certain to the very best of our ability that

15 we would obtain relevant evidence that was not Speech or Debate protected and not accidentally

16 stumble into Speech or Debate materials.

17 Q And what can you tell us about the -- there was a DOJ OIG agent who went along to

18 serve the search warrant.

19 Do you remember if that was Mr. Higley or Mr. Burnett?

20 A I think it was Jake.

21 Q Okay.

22 A I think it was Mr. Higley, I should say.

23 Q And what was his involvement in seizing the cell phone? I know we have a minute left,

24 but --

25 A They had to get the phone. The physical location was somewhere on the Jersey Shore.

35

1 Because that's -- I guess Congressman Perry was in Jersey at the beach on vacation, and I was not

2 there. I did not go.

3 But my understanding is that Mr. Higley imaged the phone, that is, took the forensic copy of

4 it. And one thing that I remember being particularly careful about, right, is when you seize a phone,

5 you seize a phone.

6 It's -- you have -- I say you. I'm talking in the second person. The Federal Government,

7 having seized the phone, has the right to possess and extract the information from it.

8 In this particular case, I know I sure wanted, and I think the whole team wanted to image the

9 phone and get it back to Congressman Perry as quickly as possible. We were trying real hard to do

10 this in a way that was minimally disruptive, it was as respectful as it could be, and it didn't put

11 Congressman Perry in an awkward spot where we're seizing a phone right out on Independence in

12 front of the Rayburn Building or it's some big hubbub. So we tried to be very discreet, very

13 cautious, very careful.

14 And that goes to your question about Mr. Higley. My recollection is that Mr. Higley, upon

15 seizing the phone, that Mr. Higley and the other agent that was with him imaged that phone as

16 quickly as the data could be transmitted over, as quickly they could find a spot to do it and do it,
17 couple of hours, and then went and gave it -- gave the phone back to Congressman Perry.
18 So Mr. Higley's role was -- you can ask Mr. Higley -- but as I remember it, it was to image the
19 phone and get it back to the Congressman.
20 We're at the end of our hour, so we'll go off the record.
21 [Recess.]
22 We'll go back on the record at 11:12 a.m.
23 BY :
24 Q Just to reintroduce myself, I'm . I'm joined by . We're with
25 Mr. Raskin's staff. We'll take this hour to ask you questions just like the majority did last hour.

36

1 A Yes, sir.
2 Q But I do want to touch a little bit on your background just a little bit more.
3 Where did you go to undergrad? Where did you go to law school?
4 A I went to undergrad and law school at the University of Texas.
5 Q Okay. That describes the football analogy from the last hour.
6 And you started at DOJ, again, at 2012. Is that about right?
7 A Yes, sir.
8 Q And you stated about 4 years before graduating from law school and then starting at
9 DOJ. Is that about right?
10 A It was about -- are you asking me where I was for that 4 years?
11 Q The time -- yeah, I was about to. Sure. Can you let us know where you worked
12 before joining DOJ?
13 A Sure. I graduated from -- I grew up in Texas. I was in Austin for college and law
14 school. I graduated law school in 2008 and worked at a firm here in D.C. until 2010.
15 In the fall of 2010, I moved to Del Rio to clerk for a district judge on the Western District of
16 Texas. And I clerked for Judge Moses, the same judge, for, I guess, a little under 2 years, year and a
17 half --
18 Q Okay.
19 A -- until I joined DOJ.
20 Q So about the DOJ, I guess, what was your motivation in wanting to be a prosecutor and
21 wanting to work at DOJ? And this might be, like, an obvious question, but I just want to hear from
22 you what your motivation was.
23 A It's -- I believed it would be and it proved to be a job where I every day was able to go in
24 and do work of purpose, work of meaning where I felt like I got to do something that was good for
25 the world. You're helping to uphold the ideals of justice and equality and all those good principles.

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1 And there are few jobs out there where you're entrusted with the responsibility to ensure
2 that our legal system operates fairly, transparently, and equally for everybody. So it's -- it was a fun
3 job and a meaningful job, and that's why I did it.
4 Q Do you feel like you're able to live out those ideals you just described during your about
5 12 years at DOJ?
6 A Yeah. I mean, I outkicked my coverage. I certainly did. I was thrilled to get
7 the job in Del Rio, and I never expected that I would get to do anything -- I was honored and
8 surprised to get that job.

9 I never expected that I'd get to do the kind of work that I got to do at the Criminal Division. I
10 never expected that I would be able to supervise really talented prosecutors like I did in New Jersey
11 and New York, and I certainly never expected to be entrusted with a case as -- with a role on a case
12 as important as this one and to work with such brilliant and decent and good people as I was able to.
13 So yeah, like, I got -- getting -- having it end with getting fired is no fun, but I got to -- I feel
14 blessed and honored that I got to work at DOJ for a long time and do the things I did.
15 Q And thank you for your service. And despite how it ended, overall, looking back, are
16 you proud of the work even up to the last day? Are you proud of what you were able to do at DOJ?
17 A 100 percent. And that includes -- and I'll emphasize while we're talking about
18 everything -- at the special counsel's office, most definitely. Very proud of it.
19 Q So I'm familiar -- I am familiar with Del Rio and the Western District of Texas.
20 A Awesome.
21 Q So I do want to ask a few questions. I have a feeling it might be quite a few numbers.
22 But looking back all the way to the Western District to your time at Main Justice and Crim,
23 approximately how many investigations were you involved with or that you led? Just give us like an
24 approximate number over that time period.
25 A At least hundreds, if I include management and personal, you know, work on the line as

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1 well, yeah.

2 Q And going back again, similarly, about how many cases, going all the way back to your
3 days in the Western District of Texas do you imagine you might have tried in court? Every
4 prosecutor knows this answer, by the way.

5 A I wish I did. More than a dozen. I can't tell you specifically.

6 Q Okay. But more than a dozen. Is that a fair estimate?

7 A Yeah. I'd say at least around a dozen is right, yeah.

8 Q During your tenure in the Western District of Texas and at DOJ, did you receive any
9 awards for your work?

10 A I did. I did.

11 Q Can you describe some of those, and please do not be humble here. Can you share
12 some of the awards that you're most proud of?

13 A I don't know that I know the names of them.

14 Q You can just describe them, too.

15 A I mean, I did get -- I did get a few. A line of thinking is that you stick around DOJ long
16 enough, they'll give you an award for something, right? But I got -- I remember getting an award
17 from -- distinguished service award or something like that. That might be the wrong name. I don't
18 mean to act like I wasn't honored by getting the award. I just don't remember the exact name at
19 this point.

20 I got an award from the Attorney General for one case that we built. I got an award from
21 the Assistant Attorney General of Crim Division for some COVID-related cases; an award from, I
think,
22 the Inspector General's Office of -- at some point, or a group of Inspector General's Offices, yeah,
23 anyway.

24 Q And, look, I know you touched on this in the last hour, and so I just want to make sure
25 we understand the timeline. It sounds like you got the call from Mr. McQuaide to start working on

1 the Jan. 6 cases on the back end of January of 2022. Is that correct?

2 A That's correct.

3 Q And which investigations were you working on when you were assigned in January
4 2022?

5 And the way we've broken it out in our head is there's the rioter cases and then there's the
6 election conspiracy cases. I guess, which bucket were you working on?

7 A I worked on what became the election conspiracy cases. I did not work on the rioter
8 cases.

9 Q And what was your direction or your marching orders, per se, when you were assigned
10 to these January 6th cases -- or I think it was a DOJ-related case?

11 A So I wouldn't -- I'd be careful not to call them the January 6th cases --

12 Q Right.

13 A -- because I roughly consider those to be more rioter-related.

14 But the marching orders, as I described and can describe in more detail if you want, was to
15 look into whether there had been misconduct within the Department of Justice related to the
16 transfer of power after the 2020 election.

17 Q And can you describe in general what this conspiracy was or what the criminal acts you
18 were investigating related to the Department of Justice and misconduct within it?

19 A Yes. I mean, I guess, to put a statute on it, there are several that it could have been.

20 But I was thinking of this at times through a lens of 18 U.S.C. 1512.

21 The -- one theory that I had was that -- and that I think the evidence supported as to -- as to,
22 you know, the Jeff Clark and Department of Justice is that the attempt to install Jeff Clark as Acting
23 Attorney General was intended to destabilize the election results and cajole certain States into
24 reconsidering and maybe changing their electoral votes.

25 And so one criminal charge that that could lead to is a charge for corruptly interfering with a

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1 Federal proceeding.

2 Q Thank you. And we'll get into this a little bit more a little bit later.

3 I'm going to introduce an exhibit. I think it will be exhibit 3. It's going to be document 1,
4 which is the letter that this committee sent to you for those transcribed interviews.

5 [Duree Exhibit No. 3.

6 was marked for identification.]

7 BY

8 Q I'll give you a second to look over this. And, again, this is exhibit 3. It's a December
9 16, 2025, letter from this committee to Mr. Timothy Duree.

10 A Yes, sir. I've looked it over.

11 Q Okay. I'm going to read a few quotes from this, and then I want to get your impression
12 from it.

13 But in this letter to you for this interview, the chairman said that the committee has
14 been -- and this is a quote -- "investigating former Special Counsel Jack Smith's partisan
investigations

15 into President Trump and his associates following the 2020 election."

16 The letter continues by stating that your testimony is, quote, "vital to our investigation into
17 how the Biden-Harris administration weaponized the Justice Department for political purposes and
18 misused Federal law enforcement resources," end quote.

19 Now, just to make sure the record is clear, you were on the special counsel's team, correct?

20 A Yes, sir.

21 Q Was your investigation partisan, as the chairman's letter suggests?

22 A No, never.

23 Q Did you engage in partisan politics while investigating the crimes associated with the
24 conspiracy leading up to the January 6th certification?

25 A No, never.

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1 Q Did you take investigative steps simply because the target of the investigation was
2 associated with a certain political party?

3 A Absolutely not.

4 Q Did you investigate President Trump or any of his associates because they were
5 members of the Republican Party?

6 A Absolutely not.

7 Q Did you take investigative steps and request records because the subjects of those
8 requests were members of the Republican Party?

9 A No, I did not.

10 Q If a Democratic member would have been involved in the conspiracy to overturn the
11 2020 election, would you have taken the same investigative steps with them, too?

12 A Definitely.

13 Q In general, what is your response to this committee's assertion that you were part of a
14 DOJ that was weaponized for political purposes?

15 A That is entirely false. Our -- our team adhered to the highest principles of the
16 Department of Justice throughout. We took it as our mandate to be transparent, thoughtful,
17 honest, and evenhanded in everything that we did. There was not a single instance in which
18 partisan favoritism ever factored into any of our decision-making.

19 Q I'm going to take -- build upon your single instance language there.

20 It sounded like from the last hour, you know or worked with Mr. J.P. Cooney. Is that
21 correct?

22 A I did. I think highly of J.P.

23 Q And very high level, what was his role overall in this investigation?

24 A He was Mr. Smith's deputy.

25 Q And did you ever encounter or witness Mr. Cooney taking an investigative step in a

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1 partisan manner?

2 A Absolutely not. J.P. is a straight arrow, and one of the best prosecutors I've ever
3 known. He would not and did not do that.

4 Q And are you familiar with Molly Gaston?

5 A Yes.

6 Q How do you know Ms. Gaston?

7 A Ms. Gaston was also on the special counsel's team. She was a supervisor of our
8 election fraud case.

9 Q And did you ever encounter Ms. Gaston taking investigative steps or speaking in a
10 partisan manner while in the investigation?

11 A Never. Again, Ms. Gaston is a spectacular prosecutor and a spectacular person. And
12 I have never seen her do anything except act with the greatest respect for the traditions and norms
13 of the Department of Justice.

14 Q And what about Mr. Thomas Windom? You mentioned him in the last hour as well.
15 A The answer will sound familiar. I think Thomas is an amazing prosecutor and an
16 amazing person with an ethical compass that points to true north. I have never seen -- never seen
17 Thomas do anything other than act with the greatest integrity. He was -- he never acted with
18 partisan favoritism.
19 Q Okay. And last but certainly not least, Special Counsel Jack Smith, I'm assuming you
20 know Jack -- Mr. Smith?
21 A I do. I do.
22 Q And did you ever witness Mr. Smith taking investigative steps, or directing investigative
23 steps in a partisan manner?
24 A Absolutely not. It is my impression of Jack that he is one of the most unfailingly ethical
25 and disciplined people I ever have known, and I think he would be disgusted if anyone in our office

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1 ever considered for a second doing something like that. Jack would not permit it.
2 Q Did you ever encounter the special counsel targeting or directing an investigation
3 directly at President Trump because of Mr. Trump's affiliation with the Republican Party?
4 A Absolutely not.
5 Q So going back to the overall premise of the special counsel's indictments, of your team's
6 indictments, do you believe there was sufficient evidence to justify bringing charges -- the charges
7 that were brought against President Trump?
8 A Absolutely.
9 Q I'm going to actually -- I'm going to go a little off track. I want to go to the
10 Congressman Perry's cell phone discussion.
11 A Okay.
12 Q It sounds like you were involved in the investigation into Mr. Jeffrey Clark. Is that
13 correct?
14 A Yes, sir.
15 Q And through that investigation, is that what led you -- the facts led you to Congressman
16 Perry. Is that correct as well?
17 A They did.
18 Q Can you walk us through -- because I've heard a lot of prosecutors say you follow the
19 facts and the law. Is that what you did in this investigation?
20 A Yes, sir, it is.
21 Q So how did we get from investigating misconduct within the Department of Justice with
22 Mr. Jeffrey Clark to, you know, a court-authorized seizure of Mr. Perry's phone? And summarizing
23 is fine.
24 A Because the evidence indicated that Mr. Perry was involved with Mr. Clark and others to
25 advance the effort to have Jeff Clark installed as the Acting Attorney General. And we sought a

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1 search warrant for Congressman Perry's phone because the evidence we had developed to date led
2 us to believe that there was probable cause that on Congressman Perry's phone would be evidence
3 of the criminal conduct we were investigating.
4 Q And I guess, let's take a step back. What is a search warrant? We've used the term
5 frequently. I think all of us probably know what it is, but what is a search warrant?
6 A A search warrant is an investigative tool and legal process that allows -- allows

7 prosecutors and agents, upon a showing of probable cause, to access things to which they might
8 otherwise -- to which they would otherwise be unentitled to access, things like a cell phone in this
9 case. But a search warrant can also be used to permit access to a house, a locked car, all types of
10 things.

11 Q In layman's terms, what is probable cause? Sorry for the law school exam here, by the
12 way.

13 A Probable cause, I'll ask my attorneys to chime in if my criminal procedure is a little bit
14 messy.

15 But probable cause is, roughly, evidence more likely than not of the crime.

16 Q And it sounds like you were involved in seeking this court authorization to search
17 Congressman Perry's cell phone?

18 A I'm sorry. I spoke over you. Yes, sir, I was.

19 Q And you mentioned earlier that you would have never sought this step without, you
20 know, input from your teammates or even going to your superiors.

21 Can you just -- from what you remember, can you walk us through what that process would
22 have looked like before seeking this court authorization for Congressman Perry's cell phone?

23 A Well, I would have -- a lot of things would have happened. I would have pored over
24 the evidence that we had developed to date over those several months of the investigation to
25 determine whether it appeared there was probable cause, and in this case, satisfied myself that

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1 there was.

2 I would have needed to decide not only that there was probable cause, but that making that
3 showing of probable cause and getting the phone was something that I thought was going to be
4 investigatively productive and useful to the advancement of our cases.

5 I would have spent -- and believe I did spend -- a lot of time looking through evidence, looking
6 through records, tying the pieces together to, in the first instance, satisfy myself that the probable
7 cause was there and that this tool, which is powerful but also invasive and needs to be, you know,
8 wielded with caution, was one worth using.

9 After looking through the phone records, the -- you know, whatever else we may have had,
10 which was a lot, and convincing myself of that, I would have then written a draft of the affidavit.

11 I would have built this affidavit, along with the other members of my team, who were each
12 very smart, very seasoned, very ethical, and very thoughtful prosecutors. And I would have
13 solicited their input on whether we met the necessary standards, whether this was a good
14 investigative step, whether the evidence was articulated clearly, whether there were other things we
15 wanted to add and all that.

16 We would have all chimed in to create the best product possible.

17 Q You said -- it sounded like you had quite a bit of evidence even before requesting
18 Congressman Perry's cell phone or search of it. Is that correct?

19 A I believe so yeah.

20 Q So why then -- and I think I know why, but just for the sake of the record, why then
21 would you seek then to search Congressman Perry's cell phone if you already had a lot of evidence?

22 A Having a lot of evidence doesn't mean that you have all the evidence you want or all the
23 evidence you need. Investigations tend to proceed in phases.

24 And we, as investigators and as prosecutors, are constantly -- are building towards a
25 determination of whether we're able to get proof beyond a reasonable doubt. But more than just

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1 that, we want to be comprehensive and inclusive so we know that we have thoroughly considered
2 the evidence that may exist and the charges that we want to bring.
3 And so we had some evidence, but that doesn't mean we had all the evidence. And
4 moreover, just because we have some evidence against some people doesn't mean we have all the
5 evidence against all the people or even that we knew everybody that may have been involved.
6 And so obtaining all the evidence that you can in an investigation like this, I believe, is
7 necessary to being thorough, being comprehensive, ensuring that you understand the criminal
8 conduct correct, ensuring that you've included the right people in the case and excluded the right
9 people. It is -- it's the way that you are supposed to do your job diligently.
10 It is also, you know, fair to the defendants that you are -- the people being investigated
11 before they were defendants, that you are considering everything as diligently and thoroughly as you
12 can.
13 Q Is this a common investigative step in white collar investigations?
14 A A search warrant?
15 Q Search warrant for cell phone records, for -- to search a phone for communications?
16 A Yes, sir. I would say that it is.
17 Q Okay. And you mentioned beyond a reasonable doubt when you were talking about
18 the evidentiary standard and kind of describing why you would seek this type of evidence.
19 What is beyond a reasonable doubt?
20 A Beyond a reasonable doubt is evidence sufficient to satisfy you in the most serious of
21 your own personal affairs. Beyond a reasonable doubt is the standard you need to prove someone
22 guilty at trial, and it doesn't mean that there isn't some teeny tiny shred of possible doubt, but it
23 means, yeah, that you are satisfied to a degree that you would be in the most important of your
24 personal affairs.
25 Q Also in the last hour with the majority, they started on the discussion of Speech or

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1 Debate Clause issues. Do you recall that discussion?
2 A I do.
3 Q And it sounded like Speech or Debate issues were something that your team thought
4 about before going through Congressman Perry's cell phone materials. Is that correct?
5 A Yes, sir.
6 Q Can you walk us through just what that consideration looked like, and I think you even
7 mentioned that there were some thoughtful protocols, I think, is the term you used last hour.
8 Can you just walk us through what those protocols were? Like, what was your team trying
9 to figure out before going through with this investigative step with Congressman Perry?
10 A So we were fundamentally trying to ensure that we did not obtain evidence of
11 legislative acts to which we were not entitled and that we did not want to get. It can be challenging
12 to determine both what is -- it can be difficult to determine what a legislative act actually is, and it is
13 impossible to know what you are going to find on the phone before you find it.
14 So we implemented -- and if you ask me to tell you exactly what it is, I'm going to struggle on
15 the bit by bit. But we implemented filter processes that I believe involved Congressman Perry and
16 his lawyers, ultimately, that enabled us to have the assurance that we were going to properly exclude
17 evidence of legislative acts from things that we obtained.
18 Q So just to make sure I understand this, it sounds like Congressman Perry and his
19 attorneys were involved in this review prior to you all looking at the -- or using the materials?
20 A Yes. As I remember it -- this is to the best of my recollection -- our filter process did

21 involve, after we seized the phone, allowing them, his attorneys to look through the records, identify
22 things that they believed to be privileged, and then provided a mechanism by which disputes over
23 those privileged materials could be presented to the court for resolution.
24 Q And it actually -- these issues actually were presented to the court for resolution. Is
25 that correct?

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1 A They were.

2 Q Before I get to that, one thing that has come up in other instances of this investigation is
3 why didn't you all simply ask Congressman Perry to give over relevant materials from his cell phone?
4 Can you explain to us why you wouldn't have taken that step?

5 A That is not a step that I would -- that is not an approach I would take in any criminal
6 investigation. And it would -- I think that I am par for the course amongst prosecutors in that.
7 There are a lot of reasons why you wouldn't want to just ask someone for their phone.

8 Principally --

9 Q Sorry. Can I ask you to give us a few of those reasons?

10 A Yeah. Principally, it is because you want to obtain that evidence in unadulterated
11 form. And if I were to just ask someone to turn over their phone and give me evidence, they could
12 say no, they could delete things, they could modify things, they could add things, they could change
13 things. I would not have a clear and unvarnished picture of what was on that phone.

14 So there are a lot of reasons related to the preservation of evidence why you wouldn't want
15 to do that.

16 Q Would you say it's fair to say that by seeking a court authorization to search someone's
17 phone, it helps preserve the integrity of the investigation?

18 A I think that's fair, yes.

19 Q Okay. I'm going to introduce another exhibit. It will actually be a court opinion about
20 the Speech or Debate Clause issues.

21 [Duree Exhibit No. 4.

22 was marked for identification.]

23 BY :

24 Q So this will be exhibit 4. It is a December 19th, 2023, opinion out of the District Court
25 of D.C. I'll give you a second to look over that.

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1 A I'm familiar with this. Do you need me to read the whole thing?

2 Q Oh, no. I'll direct you to some pages as well as we go through this. Now, just to give
3 a little bit of procedural posture before this, please correct me if I misstate anything.

4 I believe there was a district court opinion that was initially entered over specific
5 communication by Judge Boasberg that went up to the circuit court, which then sent it back down to
6 Judge Boasberg to do a -- almost a document-by-document analysis under Gravel v. United States.

7 Is that what you recall as a summary of the procedural posture of this?

8 A One change. I think that the chief judge at the time this initially came before her was
9 Judge Howell. So it went from Judge Howell to the D.C. Circuit, and then to Judge Boasberg, who in
10 the time in between, had become the chief.

11 Q Thank you for that clarification. I appreciate that.

12 So let's start on page 1 on the bottom of the first paragraph. And just to add on to the
13 summary that I just kind of gave, specifically in your words, or in your opinion, why did the circuit

14 court or what was the reason for the circuit court remanding this case back down to district court?
15 I believe they talk about it at the end of the first paragraph.
16 A Yeah. I mean, it's -- the opinion sort of speaks for itself. And I would be hesitant to
17 say more about the circuit than I have to.
18 But essentially, yes, the D.C. Circuit wanted the district court to apply a fact-specific inquiry
19 that it believed the district court had not fully done the first time around.
20 Q Thank you. We'll go to page 11. So in general, I kind of just want to get a sense of
21 what the court ruled when it came to the actual records related to Congressman Perry and what he
22 had to disclose. Feel free to reference any part of this opinion.
23 I know that 11 and 12 talk about this. But can you give us a summary of what the court
24 ordered Congressman Perry to disclose?
25 A In summary, the court ordered Congressman Perry to disclose the vast majority of

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1 documents that were in dispute on the phone.
2 As I remember it, the court determined that many of the things that Congressman Perry was
3 claiming to be legislative act, materials were not, and so Congressman Perry was required to turn
4 over to us everything except certain, like, maybe legislative newsletters, things like that, that were
5 legislative acts.
6 Q Okay. And just to make sure it's clear for the record, from this opinion on the bottom
7 of page 11, it says that Congressman Perry must disclose to the Government 1,659 of the 2,055
8 records still at issue.
9 A Uh-huh.
10 Q Is that accurate with the opinion?
11 A I don't remember the exact -- that is what the opinion states, yes.
12 Q Okay. So additionally, the court said that Congressman Perry was only permitted to
13 withhold 396 documents under Speech or Debate Clause. Is that correct?
14 A That is what the opinion says.
15 Q So I guess taking a step back, would you say it was -- would you say or would you agree
16 with the assertion that Congressman Perry had the opportunity to litigate Speech or Debate Clause
17 issues before the Department of Justice was able to consider those messages or communications as
18 part of your investigation?
19 A He did, as evidenced by the fact that the litigation happened.
20 Q I think you also mentioned earlier when discussing investigative actions dealing with
21 Members of Congress or political leaders that you sought to, I guess, image the phone as quickly as
22 possible, I think, is the term you used. Do you recall saying that?
23 A I do.
24 Q I guess, why were you trying to image the phone as quickly as possible? You touched
25 on it a little bit, but I would love to hear why you were trying to image it as quickly as possible for

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1 Congressman Perry.
2 A To minimize the disruption to Congressman Perry, fundamentally.
3 Q And why was it important to minimize the disruption for Congressman Perry?
4 A We basically did not want to impede Congressman Perry's ability to use his phone and
5 live his life any more than we absolutely had to. We believed that we -- the court agreed that we
6 were entitled to the evidence on that phone.

7 We believed that we needed that phone -- that that evidence would be useful to advance our
8 case, but we also recognized that a search warrant is a powerful tool and invasive tool, so we wanted
9 to minimize the disruption.

10 Q Is this something, I guess -- and by "something," I mean, minimizing the disruption,
11 moving as quickly as possible when you image somebody's phone.

12 Did you do that with every subject of investigations during your career?

13 A I -- I tried to be as cautious as I could, and I always tried to remember not to allow
14 the -- I did my best not to allow the tools of criminal investigation to disrupt the lives of those who
15 were within the scope of the investigation any more than we had to.

16 This was probably quicker than a quicker-than-normal turnaround, but circumstances of cases
17 and facts of cases differ. I can't say that I turned many phones -- that I was on teams that turned
18 many phones around quite this quickly, but we tried to be fast and efficient when we could.

19 Q I'm going to introduce another exhibit. This will be exhibit 5, I believe, and it will be
20 the Volume 1 of the special counsel report.

21 A Okay.

22 [Duree Exhibit No. 5.

23 was marked for identification.]

24 BY :

25 Q Do you have a copy of volume -- are you familiar with this?

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1 A I should probably look at a copy.

2 Q Please take a second to refresh your recollection. We're going to start on page 53, just
3 because I want to continue a line of questioning from the last hour, but then we'll go back to the
4 beginning after that.

5 A I'll tell you this. I'm not -- it's a long document. I'm not going to sit and read
6 150-something pages.

7 Q Great.

8 A But if, like, this -- from the few seconds I've looked at it, this appears to be the report of
9 the election investigation that we prepared at the end of the special counsel's office. And if that is
10 this report, I'm familiar with it.

11 Q So to carry on what you just said -- and thank you for that summary -- did you assist in
12 the preparation of volume 1 of the special counsel's report related to the election interference?

13 A I believe that I did.

14 Q And so I believe you just said also you're familiar generally with the contents of this
15 report?

16 A Yes, sir.

17 Q Actually, let's go right to page 53. During the last hour there was a discussion about
18 fake or fraudulent electors.

19 And I guess what the President Trump might have believed to be outcome-determinative
20 fraud or issues in certain States. Do you recall that conversation last hour?

21 A Yes. Yes, sir.

22 Q Would you -- I guess, the notion of President Trump believing an
23 outcome-determinative fraud, did you all seek evidence to see whether that was a reasonable
24 conclusion for the President to come to during this relevant time period?

25 A Yes.

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1 Q And what evidence -- just give us an example -- and I think page 53 actually outlines
2 some of the evidence you found that should have made it or President Trump should have known or
3 a reasonable person would have known that there was no outcome-determinative fraud for the
4 election integrity that caused him to lose?

5 A I cannot in the time we have identify all the evidence on that point because there was a
6 lot.

7 But in broad summary, the President's advisers, people that were in positions close to him,
8 positions that appeared to be positions of trust, told him at various points throughout the
9 election -- the post-election period that the allegations he was making were not substantiated by the
10 evidence. That was people, you know, at high levels within the Federal Government, like the
11 Attorney General, people, as I recollect, within the White House counsel's office.

12 Then that was -- those same statements were made by State and -- by State and local leaders
13 on the ground in the various States. So a few that come to mind, among many others, Brad
14 Raffensperger in Georgia, prominently, let the President know that allegations of fraud being made
in

15 Georgia were false.

16 The Attorney General of Georgia, Chris Carr, told the President that they weren't seeing
17 evidence of what he was -- what he was saying -- what the President was saying had happened.

18 In Michigan, State -- a State legislative leader that I'm thinking of right now also conveyed that
19 they were not seeing what the President was saying.

20 And I'll pause there for just a second to say, in each instance, these were -- these State and
21 local leaders were Republicans, people of the same party as the President. And a theme that
22 developed throughout the case is that it appeared that President Trump may have been preying on
23 party loyalty and presuming that people within his party would bend their ethics and their morals
24 and their sense of truth based on their party affiliation.

25 And we found out, reassuringly, happily, that there were a good many people who would not

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1 do that. So those were parts of it, and I'll continue just a little bit longer to say, there was also
2 significant evidence that we developed about the overall structure of how the elections worked in
3 each contested State, Michigan, Georgia, Pennsylvania, all six or seven of them.

4 And the evidence we developed made it clear that not only had the fraud being alleged not
5 happened, but that in many, many, many instances, the allegations that were made would have been
6 virtually impossible to have happened, that the structures and redundancies set up in these systems
7 would not permit such things.

8 So that's a relatively broad overview of some of the evidence.

9 Q Thank you. And just taking what you said, that thread of, quote, "virtually impossible,"
10 is it fair to say that the office -- the Special Counsel's Office developed strong proof that Mr. Trump
11 should have known that his election fraud claims were false?

12 A Yes.

13 Q Thank you. Going back to just the special counsel's report in general -- and special
14 counsels' reports in general, not just the one led by Mr. Jack Smith but led by others, do you think
it's

15 important for the public to be aware of special counsel's investigative findings?

16 A I hesitate to answer that question because I -- I do think that, yes, the public should be
17 aware. I also think that the rights of the criminally accused are paramount, and I wouldn't want to,
18 you know, accuse people of things that -- for which they've not been convicted.

19 But generally, yes, I know that prior special counsels have spoken about their work, and I
20 think that is a worthwhile thing.
21 Q And so going through what you just said of past special counsels speaking about their
22 work, to the best of your knowledge, was Special Counsel Mueller's report or parts of it made public
23 when -- at the conclusion of his investigation?
24 A I think so. I'm probably the wrong person to ask. I don't know -- I don't much
25 anything about any special counsel's office other than Mr. Smith's.

55

1 Q Okay. I'm just going to go through a few, and if you don't recall, that's fine.
2 Do you recall whether Special Counsel Hur's report was made public at the conclusion of his
3 investigation?
4 A Might have been.
5 Q And are you aware of whether Special Counsel Weiss's report was made public at the
6 conclusion of his investigation?
7 A I don't know.
8 Q Okay. In this report that you all drafted, volume 1 of Special Counsel Jack Smith's
9 report, it documents Donald Trump's crimes attempting to overturn the election results. So I want
10 to direct you to page 2 specifically here.
11 A Page 2 of the report?
12 Q Page 2 of the report. Not the cover letter, but actual page 2.
13 And on page 2, the special counsel writes -- and this is a quote -- "When it became clear that
14 Trump had lost the election and that lawful means of challenging the election results had failed, he
15 resorted to a series of criminal efforts to retain power." Do you see that quote?
16 A Yes, sir.
17 Q Do you agree and stand by this summary of Donald Trump's criminal conduct in general?
18 A Yes, sir.
19 Q On the next page -- so page 3 of the report -- it outlines some of those criminal acts that
20 President Trump engaged in after he lost the election and after President Trump had exhausted
21 lawful means.
22 Can you summarize what some of these acts were that your report details?
23 A Well, it lists them right here. I'll just read from it because this is a good summary.
24 It included attempts to induce State officials to ignore true vote counts, to manufacture
25 fraudulent slates of presidential electors in seven States that President Trump had lost, to force

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1 Department of Justice officials and his own Vice President, Mike Pence, to act in contravention of
2 their oaths, and to instead advance President Trump's personal interest. And on January 6, 2021, to
3 direct an angry mob to the U.S. Capitol to obstruct the congressional certification of the presidential
4 election and then leverage rioters' violence to further delay those --
5 Mr. Dawson. I'll just caution the witness, for the court reporter's benefiting, if you're
6 reading, to read slowly.
7 Mr. Duree. I'm sorry. My apologies. But, yes, I am only reading verbatim -- virtually
8 verbatim from the report.
9 BY
10 Q Thank you. And eventually, the Special Counsel's Office indicted Mr. Trump for his
11 actions leading up to the -- leading up to the certification of the 2020 election. Is that correct?

12 A That's correct.

13 Q For these charges stemming from Mr. Trump's efforts to overturn the 2020 election, do
14 you believe that you had sufficient evidence to prove the charges beyond a reasonable doubt?

15 A Yes.

16 Q And do you believe there were multiple -- or do you believe there was a Federal interest
17 in proceeding with prosecuting Mr. Trump after he attempted to overturn the 2020 election?

18 A Absolutely.

19 Q Page 3 of the special counsel's report writes -- and this is a quote -- "Indeed,
20 Mr. Trump's cases represented ones in which the offenses was the most flagrant and the public harm
21 the greatest and the proof most certain."

22 Do you agree with this statement?

23 A Yes.

24 Q And can you just summarize for us, what was the public harm that was so significant
25 with this criminal conduct?

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1 A It remains hard for me to articulate. Smarter people can do better.

2 But the public harm is that President Trump -- we developed -- I believe that we developed
3 proof beyond a reasonable doubt that President Trump had tried to undermine the results of the
4 2020 election, and to do so is to undermine the very foundation of our democratic system.

5 If the sanctity of our elections is called into question, every single piece of this government
6 crumbles right behind it. Our safety, our peace, our well-being, our faith in our institutions,
7 everything.

8 It is hard for me to imagine a crime that has a more significant Federal interest than using the
9 highest office in the land to try to undermine the results of a proper election.

10 Q Thank you. All right. We'll end our hour there. Thank you.

11 [Recess.]

12 We'll go back on the record. The time is now 12:01 p.m.

13 BY

14 Q Mr. Duree, when we ended our last hour, we were discussing procedure of
15 Congressman Perry's cell phone. I want to jump back to that topic.

16 Did you ever become aware that the FBI surveilled Mr. Perry for a week prior to executing the
17 search warrant?

18 A I may have been aware. I'm not exactly sure what you mean by surveillance, but I may
19 have been aware of that.

20 Q And what were you aware of in terms of surveillance?

21 A Now, did you say before executing the search warrant?

22 Q Correct.

23 A Or before we obtained the search warrant?

24 Q It was before executing the search warrant. This occurred in the late July 2022 time
25 frame.

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1 A Oh, I'm not sure I can speak to that. I don't know.

2 What I remember is that we did need to identify where Congressman Perry was to actually
3 take the phone from him --

4 Q Okay.

5 A -- and wanted to do that, ideally, in a discreet way. But to answer your question, I'm
6 not remembering offhand. Show me documents, maybe you can refresh me.
7 I'm not remembering offhand whether the FBI looked at Mr. Perry's locations before we
8 obtained the search warrant.
9 Q Okay. Okay. So are you aware of whether -- you said there was some surveillance
10 that occurred before executing the search warrant to identify daily patterns, where he worked, his
11 associates. That occurred in the late July 2022 time frame.
12 Was there other surveillance of Mr. Perry that you are aware of?
13 A No. I mean, it's been years, so my memory might be a little hazy. Everything -- I
14 don't have great specific memories of that.
15 But everything you're describing to me seems like something that we would normally do in
16 the course of any investigation when trying to execute a search warrant. So it doesn't surprise me.
17 I just don't have a lot of specific memories to offer you.
18 BY
19 Q Was Mr. Perry a target at this point?
20 A Again, using the subject target witness sort of categories, I would not have called
21 Mr. Perry a target at this point. A target --
22 Q So there's no evidence that he did anything wrong?
23 A I didn't say that. I said a target is essentially -- you can look to the justice manual for
24 the exact wording. A target is someone that is a presumptive defendant, basically. I believe
25 Mr. Perry, at this point, was a subject.

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1 Q Okay. And when you obtained his phone, you had to litigate with his team over the
2 Speech or Debate issues, correct?
3 A Yes, sir.
4 Q And how long did that last?
5 A A long time. We -- I mean, the litigation -- the records of litigation, which are public,
6 speak for themselves. I don't have those dates --
7 Q Right.
8 A -- at hand. But roughly from, you know, August or September of '22 until the case
9 went up to the D.C. Circuit and back and Judge Boasberg's opinion came down in December of '23.
10 So it would have been entangled in litigation over a year and a few months.
11 Q So wouldn't it have been easier if you simply asked Representative Perry's lawyers for
12 the communications you were looking for?
13 A I don't believe so no.
14 Q And why is that?
15 A Well, the number one -- a few things here. One, I can't really speculate. The fact is
16 we didn't do that. And to do that would have been an extraordinarily unusual prosecutorial step in
17 this case or any other. But I don't believe it would have been easier. For all the reasons that I
18 described in the last hour that I'm sure you were listening to, if you seek to obtain something
19 voluntarily, people can just choose not to give it to you. That's one obvious thing. But there are
20 myriad opportunities for evidence to be altered, tampered with, deleted, added to. And in this
21 search warrant, same as any others, as I just explained in the last hour, it was important to me and
22 our team to obtain the evidence in a way that was unadulterated.
23 Q Okay. So you had concerns that Congressman Perry would alter, tamper, delete,
24 otherwise obstruct your investigation?
25 A I didn't say that.

60

1 Q Then what did you say?

2 A I answered your questions as to what the concerns are that motivate a person.

3 Q Well, when you're dealing with a Member of Congress, you're obviously dealing with a
4 different -- a different type of individual.

5 I mean, this is somebody that has constitutionally been elected by his 800,000 people, or
6 whatever it is, in the State of Pennsylvania, and so he's obviously a person presumed to have honesty
7 and integrity.

8 A It is that line of thinking that is so perniciously dangerous. I do not mean for a second
9 to impugn Congressman Perry's integrity. But I will say, I am never going to look at a Congressman,
10 a janitor, a President, or a person on the street and presume that one person is more likely to be
11 honest, more likely to have integrity, more likely to be truthful than the others. To believe that
12 would be to corrupt my role as a prosecutor.

13 My role as a prosecutor is not to make value judgments about whether one person seems
14 more honest based on their status in life. My role is to follow the facts dispassionately where they
15 may lead, irrespective of the power or money or status or title a person might hold.

16 So I endeavored throughout this process to treat Congressman Perry exactly as I would treat
17 every other individual who was in possession of a phone that we needed to search. The only
18 wrinkle that was added is that, because of his status as a Congressman, we needed to consider
19 Rayburn and Speech or Debate considerations, which we did.

20 Q What were you seeking on his phone?

21 A Evidence.

22 Q But specifically, what were you seeking? I mean, did you want pictures of him and his
23 family?

24 A I don't believe that pictures of him and his family would have been particularly valuable
25 to our investigation.

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1 Q But you took them anyway?

2 A That is the nature of how a search warrant works, yes.

3 Q So what were you looking for on his phone? Did you want call records of who he was
4 calling while he was considering his legislative duties?

5 A As I believe I have explained, if you're intimating that those calls would have been
6 Speech or Debate protected in some way -- I'm not agreeing that records of calls would be -- we were
7 not at any point attempting to get Speech or Debate materials.

8 Q But you did anyway?

9 A No. In fact, as I have explained at great length, probably in a way that's kind of
10 tiresome to everyone in this room, we implemented strict and rigorous protocols to ensure that we
11 did not obtain Speech or Debate-protected materials and that our actions --

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1 [12:10 p.m.]

2 BY

3 Q Well, you did take it. It's whether you looked at it or not, whether you looked at it, but
4 somebody in DOJ did. There had to be a filter team.

5 A I don't think that that is true. Again, if -- I'd encourage you to familiarize yourself with
6 our protocols, which did not permit -- for which we're very careful in the way that, you know, Speech
7 or Debate material, should they exist, were handled.
8 I can answer your question by saying, yeah, we did take his phone. And whatever was on
9 that phone is something that was imaged.
10 Q And, again, what exactly were you looking for on the phone? If you weren't looking for
11 pictures of his family, if you weren't looking for phone call records, what were you looking for?
12 A Evidence. And to be a little more specific --
13 Q So what was the evidence you were looking for?
14 A To be a little more specific, we were looking for evidence of criminal conduct by any
15 party, and more specifically than that, evidence related to the effort to install Jeff Clark as the Acting
16 Attorney General, which was an investigative stream in which I had a significant part.
17 Q Okay. But specifically, were you looking for telephone records or content of his emails
18 or text messages with -- with who?
19 A You, naturally, when you execute a search warrant on a phone, are going to be looking
20 for content, right? Like phone tolls, call logs. Those are things that can be obtained in a less
21 burdensome way through subpoenas and that sort of thing.
22 But yes, we did seek content, content of text messages with individuals with whom Mr. Perry
23 was communicating and, again, more specifically, text messages relevant to the effort to utilize the
24 Department of Justice potentially to help overturn the 2020 election.
25 Q Okay. And how long was Mr. Perry without the use of his telephone, do you know?

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1 A Few hours. Couldn't tell you exactly how many.
2 Q Would it surprise you if it was all day, 9 to 5?
3 A No. I mean, could have been, yeah.
4 Q Okay. So for one day, Mr. Perry was out -- was without the ability to have
5 communications with his chief of staff?
6 A Again, if you --
7 Q Members of Congress?
8 A Are you -- are you asking me a question or should I wait for you?
9 Q I'm asking you, did you understand that Mr. Perry, while his phone was in DOJ's
10 possession, he was unable to have communications with his chief of staff, with Members of
11 Congress,
12 and with other key people that he needed to do his constitutionally elected responsibilities?
12 A I understood that while we took Mr. Perry's -- while we were in possession of Mr.
13 Perry's personal phone, Mr. Perry was not able to access that personal phone.
14 Q Okay. Did you understand, for example, he didn't know his chief of staff's telephone
15 number? I mean, a lot of people nowadays don't know the numbers. You know, it's programmed
16 in your phone under a contact card.
17 A Did I know that Congressman Perry didn't know his chief of staff's phone number?
18 Q And was unable to contact his chief of staff during that time period.
19 A I don't -- I don't recall if that was anything I knew. I don't know why I would know that.
20 Q Okay.
21 BY
22 Q Were there any conversations that were had about depriving Mr. Perry of his ability to
23 conduct his legislative duties while you all had his cell phone?
24 A As I've said, we worked to return the cell phone to Congressman Perry as quickly as we

25 could. It is understood when you take someone's phone that they are going to be deprived of use

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1 of that phone for a while. That's Congressman Perry, that's you, that's me, that's anyone else's cell
2 phone.

3 We consider that deprivation of the use of a cell phone is a thing that can be burdensome,
4 and so we tried to get it back to him as quick as we could.

5 Q When did the idea that the team needed toll records for Members of Congress, when
6 did that idea first come about?

7 We know there are subpoenas for Members of Congress in 2022 and 2023. So when did
8 that first come about that you thought you needed Members' phone logs?

9 A I understand what you're asking me. I think there might be a couple of things
10 conflated. At no point were we out to just, you know, we want to get Members of Congress' phone.
11 This wasn't a thing, right.

12 We -- there were Members' phones that I -- there were toll records for certain Members'
13 phones that I believe were obtained at different times in the course of the investigation. And those
14 tolls, along with tolls for dozens of -- dozens and dozens of other people, were obtained when they
15 were investigatively necessary.

16 And so those points came about -- and I can address whatever specific you'd like. Those
17 points came about at different times.

18 Q Okay. We can take each Member individually.

19 Let's have -- this will be exhibit No. 6.

20 [Duree Majority Exhibit No. 6.

21 was marked for identification.]

22 BY

23 Q And this is an email between you and Ms. Jennifer Clarke from PIN discussing toll
24 records for Chairman Jordan, who was the ranking member at the time, the relevant time period
25 here.

65

1 A Okay.

2 I'm going to enter as exhibit No. 7 too the actual subpoena that was issued for

3 Mr. Jordan.

4 Mr. Duree. Okay.

5 [Duree Majority Exhibit No. 7.

6 was marked for identification.]

7 Mr. Dawson. And based on that description of the next exhibit, I just want to caution that
8 for grand jury subpoenas, I'm hoping we can keep the questions at a certain level of abstraction,
9 which I think will still allow you to get all the answers you need. But I don't want Mr. Duree to be
10 confirming that a particular document is a legitimate grand jury subpoena or not. But email
11 records, contemplations of what was in one's mind at a certain phase of the investigation, I think
12 that's all fine. And I'm hoping that that's a guardrail that will work for you.

13 Has it been released publicly?

14 This has been released publicly, correct.

15 It's been publicly released.

16 Mr. Dawson. It has. The rules governing a government attorney remain even if, you know,
17 the subpoena recipient can disclose it. They can talk about what they say in the grand jury. And

18 there are still restrictions. And, again, I think we can get you what you need, but 6(e) is a
19 notoriously tricky, inconsistently interpreted provision. And so my job is, of course, to keep Mr.
20 Duree safe.

21 Mr. Duree. , what would you like to ask me?

22

23 Q Yes. So if we can look at exhibit No. 6 first, which is the email exchange. I thought it
24 would just be helpful to have both the email and the subpoena itself.

25 A Okay.

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1 Q So we'll start with the email from Ms. Clarke to you on April 26, 2022, at 11:29 a.m., just
2 so the record's clear. I'll read the first sentence. It says, "PIN concurs with the proposed covert
3 investigative step of issuing a grand jury subpoena for toll records for the personal telephone number
4 of Rep. Jim Jordan for the time period of August 1st, 2020 through January 30th, 2021, based on the
5 fact that you have evidence that this phone number was in communication with Perry and others
6 suspected to be involved in alleged obstruction of the congressional certification proceeding on
7 January 6, 2021, related to the 2020 election for President of the United States."

8 So first, I want to talk about the timeframe of August 1st, 2020 through January 30th, 2021.

9 Why was there such a broad timeframe at this point?

10 A Okay. So I'm not remembering -- like, I see the words on the email, right. I

11 remember being part of the process to get the subpoena for Mr. Jordan's phone. I don't remember
12 the exact timeframe as I sit here talking to you today, the start and end dates of those records. So
13 it's a little hard for me to speak to that, but I will say we did subpoena a period of, I guess, some
14 breadth. And the -- you're asking me the reason why.

15 Q That's correct.

16 A Okay. I can tell you that.

17 Q And just -- sorry. Just before you start, I just want to point out that there's a
18 discrepancy with the email and then what's actually in the subpoena is -- you are correct that it was
19 some breadth. It was 2-and-a-half years. It was January 1st, 2020 to April 25th, 2022, was
20 when -- was the timeframe for the subpoena. So there's quite a change between what PIN signed
21 off on and what was in the subpoena.

22 A Okay.

23 Q So first, if you want to touch on why 2-and-a-half years was requested, and then if you
24 want to touch on the discrepancy.

25 A Yeah. Maybe because it relates to the timeframe, I'll touch on the discrepancy first --

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1 Q Okay.

2 A -- as you've identified it.

3 I don't -- I remember being part of the process of getting Mr. Jordan's toll records. And I
4 don't remember right now whether the records that we actually have were for August 1st or January
5 30th, whether they were for a 2-and-a-half-year period or whether they were from -- whether they
6 were from some other period.

7 I don't know that this is a genuine copy of the subpoena. I'm just not sure. But I do
8 remember being part of that process.

9 I don't know that there is a discrepancy, and I'll tell you what I mean. If you're telling me
10 that there are dates on these -- the date on this email that is different than the date on the

11 subpoena, I can give you a few possibilities as to why. But I'll start with sort of the unspoken
12 implication, just to clear that one out of the room.
13 There is absolutely no chance that I would ever have sought to circumvent PIN or go against
14 the order -- the direction they gave me. I saw, as a prosecutor, and continue to see, the adherence
15 and fidelity to process as sacrosanct. If a prosecutor does not follow the processes and instead, you
16 know, does what she or he wants to do, then the integrity of the system is undercut. I did not do
17 that in this case. I would not do that. That just plain old did not happen, period.
18 Now, as to why there's a discrepancy, there are a few possibilities. I had -- I haven't been
19 able to go back and look at my old emails from this time period, and my memory is hazy anyway,
but
20 I do know that I had lots of communications with PIN in this timeframe, with Ms. Clarke and others.
21 We had several phone calls. We had emails. We might have had like a video meeting or
22 something from time to time. So I talked to these people fairly regularly in this time period and
23 kept them informed about what we were doing.
24 I do not know if there is additional communication that expands or extends this timeframe.
25 Maybe Ms. Clarke got it wrong and she corrected it in a future one -- a future email. I don't know.

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1 There are probably other communications out there that would shed light on this.
2 Another -- I mean, another possibility is that there was a mistake. You know, if this was the
3 subpoena that was sent out -- I see Special Agent Burnett -- I see an email indicating to me, as this
4 email reads, that Special Agent Burnett sent a subpoena for a longer time period to -- to Verizon.
5 And if that happened, it would have been a mistake. He could have been using an old copy of the
6 subpoena, a different thing. I'm not sure.
7 I'd like to think that if there was a mistake, we would have caught it because, again, my
8 commitment to doing what PIN asked was strong and certain. So we would have -- I would like to
9 think that if there was a mistake, which is a possibility, we would have corrected it, sought additional
10 guidance from PIN, whatever.
11 But the bottom line is, I can't tell you exactly what the discrepancy was or if there was a
12 discrepancy at all, because I do not have the benefit of the full records.
13 Q But, I mean, that's a pretty big mistake. You went from wanting records for 6 months
14 to 2-and-a-half years. So can you just help explain how could it have gone from 6 months to
15 2-and-a-half years?
16 A And I'll tell you again, I'm not saying that we made a mistake. I offered the possibilities
17 to you. One that I think is less likely is that there was a mistake. And if we would have made a
18 mistake because, you know, the wrong dates were on the subpoena we sent or something, I would
19 like to think we would have corrected that. I don't know if there was a mistake.
20 Another possibility is that, amongst all the many phone calls, emails, video meetings,
21 everything else I had with PIN, that PIN authorized a longer time period. I just -- I just don't know.
22 I don't know that there was a mistake.
23 Q So if the criminal conduct that you were investigating at the time was the Clark matter
24 and trying to have him installed at the Justice Department, that was happening in the November
25 2020 timeframe -- is that correct? -- or in the post-election I know you described earlier?

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1 A December. The DOJ scheme was principally in December 2020 into early January
2 2021.

3 BY

4 Q So what did you need August, September, October phone records for?

5 A I'll tell you. What we knew -- so toll records are one way to build out -- one tool you
6 can use to build out an investigation and understand the people communicating with each other in
7 the timeframe of relevance.

8 All toll records tell me is that some certain number communicated with some other certain
9 number, right. But it's use -- they are useful to establish contact between people so that you can
10 understand who the individuals who appear to be part of your investigation were talking with. You
11 can understand their networks. You can understand who might otherwise be involved. You can
12 often exclude people who are not involved.

13 So I'm coming to a more comprehensive answer for you but, basically, that is why you need
14 toll records. Something that you have to be careful of, particularly in a case like Mr. Clark's, where
15 we're investigating really a 2-week period more than anything else for the DOJ scheme, is that all
you

16 get is a relatively tiny snapshot of the communication patterns of a person. And so you want to
17 extend the scope of the subpoena long enough so that you can see if the communications that were
18 occurring within that time period are abnormal or are exactly consistent with what that person
19 always otherwise does.

20 So for instance, right, if you looked at a 2-week snapshot of my phone, you'd probably see a
21 lot of calls with my wife. You could pull out from that and take a larger snapshot of my phone to
22 see is this person someone with whom Tad regularly communicates or is this a sudden abnormal,
you

23 know, party with whom you never communicated before or after. Those things can help you
24 identify the nature of the relationship, the frequency and duration of the communications.

25 And, as I said, understanding better whether the frequency with which people talk over a

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1 slightly longer term can help you both include and exclude people from the scope of your
2 investigation. So that's why we need a longer period, to contextualize and better understand if the
3 frequency of the calls in this period was abnormal or not.

4 Q But it becomes a problem when some of the phone -- the toll records you're seeking are
5 the President's political adversaries, in terms of Speaker McCarthy and Chairman Jordan.

6 A Are you telling me --

7 Q Like, developing a pattern of who Speaker McCarthy or, you know, soon-to-be Speaker
8 McCarthy and Chairman Jordan, develop -- you know, developing a record of who their network is
9 and how frequently they call, I mean, that is a real big problem.

10 A Is that a question to me?

11 Q Yeah. How can you do that?

12 A How can I -- I'm sorry, how can I do what?

13 Q So how does the Justice Department justify collecting all of this data and information
14 about the President's political adversaries?

15 A I don't -- I'm not trying to be dense. I don't think -- I don't think Chairman Jordan is
16 President Trump's political adversary.

17 Q President Biden.

18 A Oh, okay. I will tell you what we did and why we did it. We subpoenaed phone
19 numbers, including of instance -- of relevance to this immediate conversation, a 937 number that I
20 know pertains to Congressman Jordan. We subpoenaed that number because that number was in
21 contact with other individuals who were within the scope of our investigation. And we were trying

22 to develop evidence of that investigation to include, you know, whether -- to include building out an
23 understanding of the people involved, potentially, in the effort to overturn the election and to
24 elevate Jeff Clark within DOJ.

25 So we sought those records just to build out the network, and that is a completely normal,

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1 standard step in any criminal investigation. It has nothing to do with Mr. Jordan's status as a
2 Congressman or anything else and everything to do with this 937 number was contacting other
3 people of interest to me, and that's what we wanted to figure out.

4 Q So it didn't matter to you that he was the top Republican on the House Judiciary
5 Committee with oversight of the Justice Department?

6 A It mattered to me in that that meant that that 9 -- to get the subpoena for that 937
7 number, I was going to need to go through PIN and add some additional process. It mattered to me
8 because --

9 Q Those were speed bumps for you, right?

10 A I'm not going to classify them that way. I think that the policies that DOJ has are
11 thoughtfully made, and I understand why they have them. Whether I agree or disagree with them,
12 I'm a line prosecutor. I was a line prosecutor. I didn't make the policies.

13 What I'm telling you is that this 937 number was different from some of the other numbers I
14 subpoenaed only in that understanding, as I came to understand, that it was a Congressman's phone
15 number, we had to go through PIN to get approval.

16 Q Did you tell Mr. Burnett that the phone numbers included a Member of Congress when
17 you sought the subpoena?

18 A I would -- I don't recall what I specifically said to Mr. Burnett.

19 Q Would Mr. Burnett know that, know who the telephone numbers belonged to?

20 A Mr. Burnett was part of the investigative team at the time. I would have kept him, like
21 other members of the investigative team, apprised of investigative steps, of parties involved, and of
22 other things. So it is totally reasonable that I might have told Mr. Burnett who these phone
23 numbers were for, but I don't have a specific recollection of discussing this 937 number with
24 Mr. Burnett one way or the other.

25 Q So in the ordinary course, you think you probably would let him know whose numbers

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1 are involved?

2 A I'm -- I mean, I'm not saying that, right. Like, I certainly -- there would certainly be
3 nothing abnormal about letting my agents know the numbers we were subpoenaing. And given
4 that they are investigators, I think it would make sense.

5 Q Okay. And did he raise any issues that, you know, the Justice Department Inspector
6 General's Office has a special relationship with Congress, a special relationship with the Judiciary
7 Committee, that there presents a conflict there?

8 A I don't recall that.

9 Q Was that discussed?

10 A Again, I don't -- as I've told you, I don't recall discussing specifically this 937 number with
11 Special Agent Burnett, whether I did or whether I didn't. I don't recall a discussion on the point you
12 are describing.

13 Q Okay. And when you seek a nondisclosure order before the judge, you didn't let the
14 court know that you were seeking a nondisclosure order for a congressional telephone number. Is

15 that correct? A Member of Congress' phone?

16 A The NDOs would speak for themselves. I don't remember the specific wording of the
17 NDOs, but I do not think in 2022 that we were required to provide that information. We just did as
18 policy and law required us to do.

19 Q Do you understand that DOJ is required to do that now under their policy?

20 A I mean, you're telling me that. I don't -- I don't -- I don't dispute what you're telling
21 me. I don't work at DOJ anymore, and I haven't been keeping up to speed with developments on
22 the justice manual recently as much as I should.

23 At the time I was there, I was certainly cognizant of policies that affected the work I was
24 doing. I take your word. I don't know.

25 BY

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1 Q And looking back at the email here, the second full paragraph says, "PIN also concurs
2 with sending a preservation request to Google for the account -- redacted -- which is the personal
3 email account used by Jordan. There are numerous emails between this account and Perry's
4 personal account in December 2020 and early January 2021." Are you aware of whether you sent a
5 preservation request to Google for Mr. Jordan's email?

6 A I am not aware of if I did or I didn't, but if PIN concurred with it, I can see why you would
7 think that I did.

8 Q And with the preservation request, were you looking for the content of the emails, or
9 what were you --

10 A We don't get --

11 Q -- looking for there?

12 A I'm sorry, You don't get the content of an email with a preservation request.

13 A preservation request does just exactly what it says to do and basically nothing more. It causes the
14 email provider, in this case Google, to preserve it, to just not delete it.

15 So we didn't get anything. You don't -- you don't get anything from a provider through a
16 preservation request. You just have a request that they not destroy it or delete it.

17 Q And do you know if you ever got records from Google for Mr. Jordan's personal
18 account?

19 A You asking me if I got a subpoena for Jim Jordan's email?

20 Q Yes. Are you aware of --

21 A I'm sorry, a search warrant for Jim Jordan's email? I don't remember doing that. No,
22 I don't think so.

23 Q What about just a subpoena?

24 A I don't recall.

25 Q I want to turn to Ms. Clarke's Speech or Debate analysis here in the email.

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1 Can I just back up one second? I'm sorry.

2

3 Q If you had obtained a subpoena for the content of Mr. Jordan's emails -- the content,
4 not toll records, the content -- don't you think you would have remembered that?

5 A Yes, because that would be a terribly strange and procedurally -- like, it never happened.

6 You can't get a subpoena for content.

7 Q Okay.

8 A So I would --

9 Q So we're only talking about metadata here?

10 A No. I would -- I would never have sought a subpoena for content because the Fourth Amendment and all the rules that apply do not allow you to get content through a subpoena, period.

12 Q Okay. So what you don't remember about Mr. Jordan's email account is whether you sought metadata?

14 A Can you -- I don't know that I'm following the question exactly. I did not -- I guess I don't know.

16 Q So you do remember getting a subpoena for Mr. Jordan's toll records, for his --

17 A I do, yes.

18 Q -- his Verizon telephone number?

19 A That's the 937 number. Yes, sir, I do.

20 Q Okay. But you don't remember if you did anything with respect to Google?

21 A I -- correct. I do not. I have no specific recollection that I took any action as to

22 Congressman Jordan's, you know, Google accounts beyond potentially this preservation request, but I just don't remember. It was a long time ago.

24 Q Okay.

25 Looking to Ms. Clarke's Speech or Debate analysis, just reading the last

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1 paragraph on the page there, it says, "As we've previously discussed, obtaining these types of records from a third-party provider for the personal email address of a Member of Congress arguably does not violate the Speech or Debate Clause, even under an interpretation that the clause provides a privilege against disclosure, as the disclosure of the records is not compelled from the Member directly and the records are for the Member's personal email account rather than a congressional email account. That position is not without litigation risk as the D.C. Circuit does not interpret the privilege as one of nondisclosure."

8 Mr. Dawson. I'll just -- I guess, "the D.C. Circuit does interpret."

9 "Does," excuse me.

10 Mr. Dawson. Just for clarity on the record.

11 "Does interpret" -- thank you -- "the privilege as one of nondisclosure."

12 The paragraph --

13 I would just add that it's never been litigated whether the toll -- to the extent

14 the toll records are implicated in the Speech or Debate realm.

15 Mr. Dawson. I don't dispute that.

16 So I don't think it would surprise you that the House lawyers and Members of

17 Congress and their staff believe that the toll record content is protected by Speech or Debate.

18 Mr. Dawson. I have no doubt.

19

20 Q The paragraph mentions "previously discussed." Do you remember having any

21 conversations with Ms. Clarke prior to her memorializing all of this concurrence and analysis in the email?

23 A Like I said, I do remember having phone calls with Ms. Clarke. The exact timing of them I can't tell you.

25 Q And did you understand -- she mentions a lot in here the personal email account. Did

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1 you understand that this analysis also applied to the toll records as well?

2 A Where she writes about an email account, I presume that to apply to an email account.

3 Q Okay. So you didn't know if this applied to the toll records as well?

4 A Whether her statements about an email account applied to toll records?

5 Q Correct.

6 A I guess I don't.

7 Q And did it concern you that there was some litigation risk in issuing the subpoena for toll
8 records?

9 A It did not.

10 Q It did not. So you did not think that any of the toll records would be covered by the
11 Speech or Debate Clause?

12 A I do not and did not, but I will tell you a little more. We throughout this case did take
13 seriously and spend a lot of time thinking about the Speech or Debate Clause. There is the Rayburn
14 decision in the D.C. Circuit, which prohibits the disclosure of legislative materials, as those are
15 defined. There is no case law, that I'm aware of, supporting the idea that toll records, basically
16 records of one phone communicating with another, are themselves legislative acts.

17 So I understood that the Speech or Debate Clause was a thing that we need to consider.

18 And I understood that the exact question of whether toll records were legislative acts maybe had not
19 been squarely and decisively addressed, but I believed that this subpoena was appropriate and the
20 Speech or Debate concerns attendant thereto did not dissuade me from taking this investigative step.
21 I did not think then and do not think now that toll records are protected by the Speech or
22 Debate Clause, but I'm not a Supreme Court Justice or a D.C. Circuit judge.

23 And one of the huge upsides of this is that Mr. Jordan would never know and
24 the Members of Congress who you're seeking the toll records who have standing to bring this type
of

25 litigation would never know. Isn't that one of the upsides when calculating litigation risk?

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1 Mr. Duree. No. I'm not -- as is evidenced by our protocols and our work with Scott Perry's
2 phone and generally the way we approached and -- we approach litigation generally, I am not at all
3 afraid and I don't think anyone on my team was afraid of standing behind our legal arguments and
4 legal principles and allowing a judge to adjudicate the issues. We believed that what we were doing
5 was right under the law. And I would welcome the opportunity to, you know, have any sort of
6 clarity on any issue that existed.

7 But, you know -- yeah, a nondisclosure order does prohibit someone from, you know, having
8 the opportunity to intervene, I guess. I take your point on that.

9 Mr. Dawson. Did you have authority to draw your own Speech or Debate lines within the
10 Department?

11 Mr. Duree. No. No, I did not. I was doing what I was told.

12 BY

13 Q And when you all received the records of Mr. Jordan's phone calls for the
14 2-and-a-half-year timeframe, were those received by the DOJ OIG or did those get delivered to the
15 Justice Department?

16 A So again, I don't know that we got toll records for a 2-and-a-half-year timeframe. I
17 know that you've got the subpoena right here. I'm not sure what was actually returned or if this
18 was the operative subpoena. But I -- I'm not sure where those toll records would have first gone.
19 I presume, normally, the agent would -- an agent will download toll records from a law enforcement
20 internet site that Verizon has, something like that, but I don't -- I don't remember in this instance.

21 Q And how were those toll records that you did receive from Mr. Jordan's phone, how
22 were those used in the investigation?
23 A The same -- the same way that we use the dozens and dozens and dozens of other toll
24 records that we received, which is we looked at those toll records to determine parties with
25 whom -- people with whom parties, you know, we were looking at were talking, the frequency of

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1 those communications, the duration of those communications, the timing of those communications.

2 Q And wouldn't, if -- you know, before a big vote, who's calling a Representative, before
3 the big vote or after the big vote, what can you tell us of what was the analysis of the Justice
4 Department?

5 I understand we have different analyses of what's covered under Speech or Debate Clause.

6 What was the Justice Department's analysis of how that was not a legislative act of who a
7 Congressman is calling before and after a vote?

8 A My understanding of the Justice Department's position is what's encapsulated in this
9 email, that I as a line prosecutor had to seek approval for the search warrant -- not search warrant,
10 I'm sorry. I had to seek approval for this subpoena from PIN. I did seek approval from PIN. PIN
11 authorized the subpoena. And so I participated in obtaining that subpoena. That's it.

12 Q Was there ever a discussion that if you were able to map out who a Member was
13 calling -- who the Member was calling or who was calling a Member before and after a big vote,
how

14 that could be considered part of their legislative duty?

15 A I don't remember conversations on that, but I'll say that would have been of absolutely
16 zero interest to me or anyone on my team to map out people's congressional activities. We were
17 looking at the effort to overturn the 2020 election and specifically the DOJ scheme I described.

18 BY

19 Q Before we move on, the last two sentences of the Clarke email, she indicates, "You
20 should also notify ODAG via urgent report about legal process related to Jordan."

21 A Okay.

22 Q Did you need ODAG to okay or was this just simply a notification to ODAG?

23 A I don't remember. If she told us to notify ODAG, then I feel confident that
24 we -- someone on my team, I or someone else, would have notified ODAG. I'm basing only on the
25 words that I see here. I don't know.

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1 Q And who in Lisa Monaco's office would you have notified?

2 A I'm not sure I -- I'm not sure I remember who we had to notify for --

3 Q Was there a particular associate, deputy attorney general, that was keeping tabs on this
4 case?

5 A There may have been. I remember once or twice having communications with a
6 gentleman named Rush Atkinson, but I don't remember that, sir.

7 Q Okay. And do you remember contacting ODAG or notifying ODAG for any other
8 Member toll records subpoena?

9 A I don't remember whether I was the one who notified ODAG about this. I don't have a
10 specific recollection. But I'll tell you, if I obtained any other Members' toll records and if I was told
11 to notify ODAG, I notified ODAG. But I don't have a specific recollection.

12 Q Okay.

13 Mr. Dawson. It may be helpful. Do you know urgent reports more broadly, what an urgent
14 report is?

15 Mr. Duree. A little bit. I mean, I want to say at one point during this case -- and maybe this
16 was it -- I had to ask someone what an urgent report to ODAG was, because I didn't usually deal
17 with that sort of thing.

18 But my understanding is it's a -- my understanding is it's a notification to the Office of the
19 Deputy Attorney General of a investigative step or other thing that's going to be taken that might be,
20 you know, prominent or notable to ODAG, I guess.

21 Okay. We'll move on to another Member's toll records subpoena.

22 Mr. Dawson. It's a hard line to draw, but I'll just caution Mr. Duree to remember to discuss
23 the contemplated subpoenas, your intent, your planning, confine yourself not to address a particular
24 document as a legitimate or not subpoena. But, again, I don't think that'll impede the questioning.
25 . And this will be exhibit No. 8. It's an email exchange, again, between Ms.

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1 Clarke and Mr. Duree. This is on May 19, 2022, at 5:21 p.m. in regards to Chip Roy's toll records.

2 Mr. Duree. Okay.

3 [Duree Majority Exhibit No. 8.

4 was marked for identification.]

5 BY

6 Q And I'm sure you're familiar, but Chip Roy serves on the Judiciary Committee. He's a
7 Member from Texas.

8 Do you remember this email exchange at all or conversations surrounding getting Mr. Roy's
9 toll records?

10 A I don't really. I'm not doubting that it happened if you're telling me it did, but I don't
11 particularly remember this.

12 Q Okay. And do you remember figuring out what time period you needed Mr. Roy's
13 records? Here it's October 1st, 2020 through January 30th, 2021. Do you remember any
14 discussions about the timeframe?

15 A I don't. I'm sorry.

16 Q Do you remember if the approval process for the subpoena, you know, going through
17 PIN, having to notify the DAG's office, did any of that differ between April when you were issuing
18 Mr. Jordan's subpoena and this subpoena in May for Mr. Roy's records?

19 A I have no reason to believe that it did, but, again, I'll be as helpful as I can while telling
20 you I don't have a particular memory of the circumstances surrounding this.

21 Q Okay. And in looking at Ms. Clarke's email in the second paragraph in the middle after
22 the parenthetical, it says, "Should a court find that these election-fraud related calls involving
23 Members of Congress constituted legislative fact-finding and thus privileged legislative acts, under
24 Rayburn, you could be in violation of the privilege by even obtaining and possessing this
information

25 if the Member objected to the disclosure."

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1 Did you have any further discussions with Ms. Clarke about this specific sentence?

2 A I don't -- I don't remember. I see that sentence. I don't remember.

3 Q Were you concerned that you could be violating the Speech or Debate privilege by even

4 obtaining and possessing this information?

5 A I was -- I mean, she emailed this so I was aware of this as a possibility, but I don't
6 remember the level of concern, if any, I had about it.

7 Q Okay. And then, again, there was an NDO that was sought with this specific subpoena.

8 So Mr. Roy wouldn't have known about the subpoena to his service provider. Is that correct?

9 A If you're telling me there was an NDO, an NDO does stop notification, but I don't
10 remember that.

11 Q So how would he have been able to litigate this privilege issue had he not known about
12 the subpoena?

13 A Again, I don't -- I don't remember this email. I don't -- I don't remember this email, but
14 if there was an NDO as you're telling me, an NDO will prohibit a person who holds that phone
15 number from litigating issues surrounding the subpoena.

16 Q And this is a pretty unique privilege that's unique to Members of Congress, that's
17 embedded in the Constitution. There was no concern that you could be violating this privilege and
18 Members wouldn't be able to litigate their privilege underneath the Constitution?

19 A Like I said, I didn't say there was no concern. I certainly didn't say that there was no
20 consideration of this. I said -- I'm saying that I don't particularly remember the degree of concern, if
21 any, that we had over this.

22 I agree with you that Speech or Debate is -- the Speech or Debate Clause does provide
23 protections to Members of Congress.

24 Q And what remedy did these Members have to avail themselves of the Speech or Debate
25 Clause with these specific subpoenas?

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1 A I suppose that if there is a nondisclosure order in place, they are not able to challenge
2 the subpoenas.

3 Q So they had no remedy prior to their records being disclosed to the Justice Department.
4 Is that correct?

5 A I don't -- I mean, I don't know, strictly speaking, if that's entirely correct or not. I can
6 tell you if there was NDO, they're not going to be able to -- they're not -- the subpoena is not going to
7 be disclosed to them and so they wouldn't be able to challenge it. I agree with you on that.

8 Q Okay. On January 24th, 2023, a subpoena was issued for Speaker McCarthy's toll
9 records. What can you tell us about your involvement with that?

10 A I don't know if I was involved with it or not.

11 Q Okay. We -- you signed the subpoena.

12 A Okay.

13 Q So just wondering if you have any recollection of seeking process for Mr. -- Speaker
14 McCarthy's phone records?

15 A I don't. If you want to show me some documents, that could be helpful. I'll tell you
16 everything I remember. But I don't particularly remember that.

17 And it's a subpoena, but we will mark that as exhibit No. 9 I think we're up to.

18 [Duree Majority Exhibit No. 9.
19 was marked for identification.]

20 Mr. Dawson. And, of course, you're welcome to read the document and see if it refreshes
21 your memory.

22 Mr. Duree. Sure.

23 I'm sorry, ma'am. Where are you -- where are you seeing that this has my name on it?

24

25 Q So at the bottom of -- I think yours should be Bates stamped too. At 18. It's

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1 redacted, but in speaking with AT&T, it's your name that's underneath the redaction. It says
2 Timothy Duree.

3 A Okay.

4 Q So just wanted to know what you remember about any conversations you had about
5 subpoenaing toll records for the Speaker of the House.

6 A I don't -- I don't particularly remember -- I don't remember. I'll say that, you know, it
7 doesn't surprise me that I don't remember because over the course of this investigation, we did have
8 to get so so many subpoenas. And part of investigating wherever the facts lead, part of proceeding
9 impartially in your investigation is that you -- you need to obtain evidence relevant to your
10 investigation irrespective of where you might find that evidence.

11 And in this case, there were contacts with Members of Congress by parties relevant to our
12 investigation. So it doesn't surprise me that my office would have sought this subpoena, but I also
13 don't know that this would have struck me as a particularly, you know, huge thing.

14 And in context, we certainly would have sought the proper approvals. We certainly would
15 have done it the right way, but I just don't remember it.

16 Q And in this time period -- you know, January 23rd, 2023, is when the subpoena is dated.
17 Kevin McCarthy became Speaker January 7th, 2023, so couple weeks earlier.

18 Did any of the analysis change after he was elected Speaker of the House?

19 A As I said, I don't remember this, so I don't -- I don't remember.

20 Q Okay. So you don't remember signing a subpoena for the toll records of the Speaker of
21 the House of Representatives?

22 A I don't -- I don't dispute that I did. I just -- I don't remember one way or the other if I
23 did. And as I said, it would not have been -- and I understand why that might seem like a
24 particularly notable thing. But in the course of this investigation, given the topics we were
25 investigating and the magnitude of things being investigated, this doesn't strike me and I suppose

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1 didn't strike me as particularly abnormal. So I just -- I would love to be able to remember more and
2 tell you, but I just do not remember this.

3 Q And why wait until after he was elected Speaker? You sought Mr. Jordan's records in
4 April of 2022, Mr. Roy's records in May of 2022, and then waited until after McCarthy was elected
5 Speaker to send the subpoena for his records.

6 A I think that question might be based on a faulty premise. There was no -- there was no
7 intent to time the subpoena. I couldn't imagine that there was any intent to time the subpoena
8 related to, you know, when he occupied one role or another. I can't tell you why we issued the
9 subpoena on January 23rd, because I don't particularly remember this subpoena.

10 Q Okay. And so there were no extra approvals or anything that you had to get since this
11 was the Speaker's records?

12 A I don't remember. I can tell you just structurally one thing that may have been
13 different. By January 23rd, we're in the -- did you say it's January 23rd of 2023?

14 Q That's correct.

15 A By January 23rd, we're housed in the Special Counsel's Office. And so there was a
16 more rigid management structure. Things were a bit more solidified than they were in the early
17 days. So once Jack was in charge, the structure was, you know, Jack's at the top, J.P. below him,

18 filtering down through various people to me.

19 And I say that to tell you my -- my personal involvement with PIN may have been different at
20 this point.

21 Q Okay.

22 A I may no longer have been the person who needed to contact PIN. I'm not -- I'm not
23 sure if I did or I didn't, but it wouldn't surprise me if someone else in Special Counsel's Office
24 management was handling PIN-related communications at that point.

25 Q Okay. And the NDO that accompanied Speaker McCarthy's subpoena is Bates stamped

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1 19 at the bottom, if that's helpful.

2 A Okay.

3 Q It says, "the Court finds reasonable grounds to believe that such disclosure" -- of the
4 subpoena -- "will result in flight from prosecution, destruction of or tampering with evidence,
5 intimidation of potential witnesses, and serious jeopardy to the investigation."

6 What was the concern, that Speaker McCarthy was going to flee from prosecution?

7 A Now, it says that the court finds reasonable grounds to believe these things, not that
8 anyone on my team thought Kevin McCarthy was going to, you know, flee from prosecution.

9 This -- as I've explained already, we as prosecutors wanted to obtain evidence in its purest,
10 most complete, and most unadulterated form. And notification -- I'm not speaking about Kevin
11 McCarthy. I'm speaking generally about the NDOs and how it might apply in this instance.

12 Q But the NDO is specific to this subpoena. Is that correct?

13 A Yes. There is -- yeah, there is an NDO specific to the subpoena. What I'm saying to
14 you is NDOs are necessary -- are useful and helpful and necessary to investigations for a lot of
15 reasons, one being that even if a per -- you know, you're not accusing the person who has the phone
16 of being a criminal, but you are recognizing that if the fact of the subpoena or the fact of an
17 investigation becomes public, that that information can be spread about everywhere, that your
18 investigation could be compromised, that evidence could be manipulated or adjusted or something.
19 These are all concerns.

20 But as to what the -- what the specific concern was as to Mr. McCarthy, I do not know. I can
21 only tell you that, while I don't remember the specific subpoena or NDO, getting a subpoena like
this,

22 getting an NDO was absolutely par for the course in so many subpoenas that I have issued in my
23 career and that we issued in the Special Counsel's Office.

24 Q And how many other subpoenas were you involved with that sought records of
25 Members of Congress?

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1 A I -- beyond the ones we've talked about today?

2 Q Uh-huh.

3 A I don't -- I don't recall. I don't -- I don't specifically recall any. If you show me
4 documents that I was involved in subpoenas directed to the phone numbers of other Members of
5 Congress, that might jog my memory, but I can't name anybody else for you right now.

6 Q Yeah, we don't see your name anywhere when it comes to the subpoena that was
7 issued in May 2023 for the -- it was like nine Senators and Representative Kelly.

8 Do you remember any conversations about subpoenaing nine Senators and a Representative
9 all at once?

10 A I don't recall that.

11 Q You don't recall it? Okay.

12 A I don't know.

13 Mr. Dawson. One clarifying question. Would you have been involved in getting toll

14 records for Scott Perry? I'm not sure we talked about that specific --

15 Mr. Duree. Yes. You know, I believe that we did have toll records for Scott Perry, and
16 those would have proceeded via the same sort of, you know, procedural approval mechanism
17 through PIN as the others. I would've -- I would've been involved in that.

18 Mr. Dawson. Okay.

19

20 Q So did you stick with investigating the alleged misconduct at DOJ once you went over to
21 the special counsel's team or did your role broaden?

22 A My role broadened and then shifted. I did -- I did stick with the DOJ effort. That
23 remained a large part of what I did. But when we got to the Special Counsel's Office, there were
24 also a significant number of additional investigative workstreams that needed to be addressed and
25 developed.

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1 So I can tell you what they were if you want, but I do remember in the early part of '23
2 spending more of my time on investigative workstreams other than the DOJ one.

3 Q And what were those workstreams at that point in time, in the early 2023 timeframe?

4 A So a few things that I did. I was involved in the workstream to -- I'm not going to
5 remember if these workstreams even had specific names, but I was involved in the work to -- do you
6 need me to stop?

7 Q No, you can go ahead. We have 2 more minutes.

8 A I was involved in the workstream to figure out whether President Trump had pressured
9 officials at the State level to help overturn the vote or get the election decertified or assist him in
10 making, you know, unsubstantiated fraud allegations.

11 I participated in the workstream that involved going from State to State to understand the
12 election processes. And I remember being involved at times in the fraudulent elector workstream,
13 or you might want to call it the alternate elector workstream.

14 I remember doing some work on that and, you know, whatever else -- whatever else the
15 needs of the office dictated, but those are the -- those are the main things I'm remembering offhand.

16 Okay. We can go off the record.

17 [Recess.]

18 We'll go back on the record at 1:05 p.m. Eastern Time.

19 BY

20 Q I just want to pick up on some of the questions that were asked in the last hour, and
21 let's start with the chairman, Chairman Jordan.

22 A Okay.

23 Q I guess, what led you during the investigation, that you recall, to even, you know,
24 requesting the toll records of Chairman Jordan?

25 A Mr. Jordan -- the 937 number that I now know to be Chairman Jordan's was in contact

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1 with other phones held by people of relevance to our investigation.

2 Q Can you describe in more detail some of the other folks of relevance that Mr. Jordan

3 might have been in contact with which would have led to the request for the toll records?
4 A You're testing my memory now, but I remember Scott Perry for sure. I think Mark
5 Meadows. Mr. Jordan may have had communications with President Trump. I'm not sure if that
6 would have been on a cell phone or not. But I -- I don't remember the full cast at this point.
7 Q And I'll direct you to exhibit 6 that the majority entered in during their hour.
8 Look, I'll state the obvious, and I know I've heard some of our majority colleagues make this
9 point before, right, you mentioned President Trump, you mentioned Congressman Perry calling the
10 chairman. These are other congressional members.
11 I guess, what specifically about those calls from congressional Members to Chairman Jordan
12 stood out to you all during the course of your investigation? And I think it's referenced in PIN's
13 email back to you in exhibit 6.
14 A Okay. Yeah, as I look at this pretty -- give me just a second.
15 Q Please take your time.
16 A Yeah, this jogs my memory a little bit. And I should say, to be really clear, I
17 just -- I'm -- as to exactly who Mr. Jordan was contacting, I -- you know, I tried to offer a couple
18 names to be helpful. I really don't remember offhand -- it's just been so long -- which -- you know,
19 who was in that set of people. I really don't.
20 But what I do remember is this: As I've said, I was looking to understand as
21 comprehensively as I could what happened in the, roughly, 2-week period in which there was this
22 effort to elevate Jeff Clark to the acting attorney general's role. And in that time period, Mr. Clark
23 and Scott Perry were in very frequent communication.
24 One of the steps that I took in the early days of the commun- -- in the early days of the case,
25 in April '22 was, you know, relatively early on, is we were trying to build out our understanding of

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1 who was talking with whom and who may have been involved, understanding that not every person
2 with whom another person might talk is necessarily involved in one thing or another. It's just that,
3 you know, understanding the nature of the communications provides you a bit of evidence that's
4 useful.
5 So I sought subpoenas for many numbers that were in contact with Mr. Clark and many
6 numbers that were in contact with Mr. Perry. A thing that I remember doing in general is that once
7 we would get those subpoenas back, we would look through the toll records to identify if there were
8 any common numbers called between that number we'd subpoenaed and the other people we had
9 already -- that are already falling within the scope of our investigation.
10 We would look at the frequency of those calls. We would try to better understand who was
11 talking to whom so that we could build out things like, you know, on date X Jeff Clark called person
12 A.
13 Person B called person C. As soon as that call was over, person B called person -- called Jeff Clark
14 again. So understanding the play-by-play of how it happened.
15 So what brought -- I don't want to say that it brought Congressman Jordan to my attention.
16 What brought the 937 area code phone number to my attention was that that phone number was in
17 contact at relevant times with parties that were pertinent to our investigation.
18 Q And are these types of toll records, the way you just described it, are they helpful in
19 corroborating witness testimony as you're doing your investigation?
20 A They certainly can be.
21 Q And would this type of evidence typically or could it be used to corroborate the witness
22 testimony at trial if it would have gotten to that point?
23 A Yes, sir.

23 Q And is this type of evidence used to build chronologies like you just described, a series of
24 events or a timeline of events?

25 A Yes. That was -- that was one of the key things I was envisioning, yes.

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1 Q Going back as well, I think within the last hour we mentioned Congressman Roy as well.

2 Do you recall Congressman Roy's relevance to the investigation?

3 A Not really. If you want to show me some records, you can jog my memory, but I know
4 that he was a name that came up. But exactly how and the context, I'm struggling to pull those
5 specifics.

6 Q Okay. There was also questions in the last hour about collecting information about
7 President Biden's adversaries I think was -- do you remember those questions?

8 A I do. I do.

9 Q At any point during your investigation, were you collecting information for the benefit of
10 President Biden?

11 A Never.

12 Q Were you collecting information of individuals that you perceived to be adversaries to
13 the Democratic Party?

14 A No, we were not collecting any information for any political purpose.

15 Q Were you collecting information at the direction of President Biden or Vice President
16 Kamala Harris?

17 A Absolutely not.

18 Q Were you collecting information at the direction of Attorney General Merrick Garland?

19 A No, not that I know of.

20 Q You discussed as well and we've seen the emails of you going through PIN before
21 collecting these types of information. Can we -- and I think you've touched on this before, but just
22 to make sure it's clear, what role did PIN play? Why were you going to PIN when requesting these
23 types of records?

24 A So PIN has consulting authority on investigative actions taken in relation to Members of
25 Congress. So even though PIN wasn't, you know, my supervisor or anything -- I didn't have a

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1 supervisor in PIN. PIN's job was to -- PIN had a duty under the Justice manual to be the entity with
2 which we consulted when taking investigative steps relevant to Congress people. So we followed
3 the Justice manual.

4 Q So let's take another investigation, not, for example, the election conspiracy
5 investigation. Let's take a -- say you're investigating another Member of Congress or public official.
6 Would you have to consult PIN in those situations as well?

7 A I presume so yes. I would do -- if I were investigating a Member of Congress or I were
8 investigating a case that in which I needed evidence from a Member of Congress, I would do exactly
9 as the Justice manual requires. And at the time, that required consultation with PIN.

10 Q And I do want to go back to kind of the earlier one I was talking about, and I think the
11 majority might have mentioned this as well, Chairman Jordan's role on Judiciary and the
12 Department

12 of Justice requesting his toll records with him having that role.

13 Had Mr. Jeffrey Clark or Congressman Scott Perry called Ranking Member Nadler about
14 elevating Mr. Clark within the Department of Justice, would you have requested Mr. Nadler's

records

15 as well?

16 A Yes. I want to emphasize here on that point, the records -- what was relevant to me

17 was the 937 phone number that was communicating with parties of interest. I had no particular

18 focus on the titles or professional positions held by the people owning those phones at the moment.

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1 [1:13 p.m.]

2 BY :

3 Q Going back to PIN, are you aware if there's been broad personnel changes at Public

4 Integrity since President Trump assumed office in 2025?

5 A It is my understanding that there has. I'm not a DOJ anymore, so I can't speak too

6 much to --

7 Q Is it your understanding that many folks have been fired from PIN since President Trump

8 assumed office in January 2025?

9 A I honestly am not sure. I have read the news and understand through, you know,

10 colleagues that there had been broad personnel changes. I don't know how the personnel changes

11 came about exactly.

12 Q Is it your belief that gutting PIN, you know, could lead to more or less potential missteps,

13 right, in sensitive investigations? Like how would gutting PIN actually impact the issues that both

14 the majority and minority seem to be asking about today?

15 A So I was only a line prosecutor on this case, but what I will tell you is this: My

16 experience with PIN, PIN attorneys were professionals, seasoned, and the work that they did -- and I
17 personally have found PIN'S guidance to be valuable.

18 Q Okay. Going back to your time as well on the special counsel's Office, in the special

19 counsel's Office investigating these claims in 2022 and moving forward, I guess, how has, you
20 know,

21 being a member of this team and maybe some of the attacks about your investigation, how has that
22 impacted your life, if at all?

23 A How the attacks on the team affect my life or being part of the team?

24 Q Yeah, the attacks on the team that you were a part of, how has that impacted your life?

25 A I personally have found it disappointing that the work of our team has been called into

question or politicized in a way that I as someone on the team believe to be completely unfounded

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1 and completely unfair.

2 But at the same time, I am grateful for the opportunity to do things like be here today and

3 clarify some of that, so that I can hopefully help people understand the nature of the work that we

4 did. And although it's not exactly the question, I do want to emphasize, I felt then and feel now so

5 immensely lucky to have been able to work with the spectacular people on that team that I will

6 consider the time that I spent working with that team on a case of this magnitude to be, you know, a
7 great professional highlight.

8 Q And while we thank you for your service of engaging in this investigation, right, to

9 preserve, right, the election and the transfer, the peaceful transfer of power, we've heard from

10 others, they might have had to take additional steps for their safety, for their family's safety, things

11 of that nature of being a part of this team. Have you had to take similar steps in your own personal
12 life?

13 A You know, we definitely -- I definitely was cautious, but, you know, nothing. Do you
14 want me to identify specific things that we've done?
15 Q Whatever you're comfortable. I think I'm just trying to get a sense of how the
16 politicization of this investigation has impacted the civil servants' life afterward -- lives afterwards?
17 A I did feel like it was prudent to be more cautious and to, you know, take certain steps to
18 minimize the availability of my -- of putting my personal information online, and that kind of thing.
I
19 have taken a few steps.
20 Q Has it impacted your family -- I know you mentioned you wife earlier -- has it impacted
21 our family as well?
22 A You would have to ask my wife.
23 Q I am not going to speculate on your wife. I hear you on that. Has this committee's
24 investigation brought more attention specifically to you than what you might have envisioned or
25 appreciated?

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1 A Well, "appreciate" is hard to say. If I wasn't here today, I would be at work doing my
2 other job, my day job, and this has taken time away from that. But as I said, I am proud of the work
3 that we did. I believe wholeheartedly that we did the right things for the right reason. And I am
4 grateful to have the opportunity to talk to y'all and explain some of that.
5 Q And just a little bit of housekeeping. I know we've shown you a series of documents
6 today from your emails to PIN, subpoenas for toll records. I just want to do some level setting.
7 Have you had a chance to review your records at the Department of Justice from this time period?
8 A I have not reviewed my records at the Department of Justice.
9 Q Has the Department of Justice reached out to you about helping them identify records
10 that they have produced to this committee?
11 Mr. Dawson. Are you aware.
12 Mr. Duree. I have not received any reach-out.
13 BY
14 Q In, fact I'm just using exhibit 6 because it's the one I have in front of me as an example.
15 Are there any Bates numbers on this exhibit that you see?
16 A Which one is exhibit 6?
17 Q Exhibit 6 is your email with PIN from April 26, 2022.
18 A No, there's no Bates numbers.
19 Q So sitting here today, are you aware of whether you know, this committee has received
20 a complete set of emails between the special counsel's Office and PIN, for example?
21 A I have no idea.
22 Q Okay. I think that's all we have. We'll go off the record now. Thanks.
23 [Discussion off the record.]
24 BY
25 Q We'll go back on the record. It's now 1:25 p.m. During the break, we passed out

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1 what will be exhibit 10, which is a lengthy document, and it includes an email exchange between
2 Molly Gaston, J.P. Cooney, Thomas Windom, and they're discussing toll record subpoena for
3 Senators' records.
4 I am going to specifically draw your attention to -- it's page 7 of the packet, and there is an

5 email exchange between Ms. Gaston and John Keller, who was the Principal Deputy Chief of the
6 Public Integrity section.

7 Now, I know in the previous hour you had mentioned that quite possibly when the special
8 counsel took over the investigation, you may have not been the one that was interacting with the
9 Public Integrity Section. Is that correct?

10 A That's correct.

11 Q Do you ever remember discussing interacting with the Public Integrity Section with
12 Molly Gaston?

13 A Do I remember discussing interacting with Molly Gaston or discussing with Molly
14 interactions with PIN?

15 Q Correct. The latter.

16 A It could have come up, but I don't have a specific recollection of any conversations
17 about PIN with Ms. Gaston.

18 Q And do you know if she was designated an individual to reach out to PIN?

19 A I don't know. I don't know.

20 Q And during our last hour together we had discussed whether or not you remembered
21 subpoenas for Senators' records, and I believe you said you did not. Is that correct?

22 A I did not participate in -- I do not remember participating in those at all.

23 Q Okay. Do you remember participating in any discussions regarding the Speech or
24 Debate Clause in that context?

25 A In the context of those Senators --

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1 Q Correct.

2 A -- no, because, as I said, I don't think I was part of those conversations. And if I was, I
3 don't remember it.

4 Q Okay. And I want to walk through Mr. Keller's email just giving your knowledge of the
5 case as well as having prior interaction with PIN and just kind of walk through what was going on
6 here.

7 So looking at the paragraph, it says: Based on the email below in our conversation, PIN
8 concurs in the subpoenas for toll records for identified Members of Congress from January 4th, 2021,
9 through January 7, 2021. As you are aware, there is some litigation risk regarding whether
10 compelled disclosure of toll records of a Member's legislative calls violates the Speech or Debate
11 Clause in the D.C. circuit. Then the next parenthetical states, The bar on compelled disclosure is
12 absolute. And that is quoting from a case.

13 I want to break this down just a little bit. But the toll records for the Senators were only
14 requested between January 4th, 2021, and January 7th, 2021. Can you help explain why the
15 timeframe was so narrow in comparison to what was requested for, you know, Mr. Jordan and Mr.
16 Roy?

17 A Sure. So I can't tell you precisely -- I can't tell you without speculating as to why these
18 3 days were requested because I wasn't on these emails' prior conversations. But I can tell you why
19 the scope narrowed. This is completely normal and standard in a criminal investigation.

20 At the beginning of an investigation -- and I'll tell you generally and apply it to this case.

21 At the beginning of investigation, you know some information, but you're trying to build out
22 your understanding. You want to know the parties involved and all that, and you're trying to build
23 out contacts and understand the folks involved at a broad level. As you build your understanding of
24 the case, you've laid your foundation and understand what the facts are and who the people
25 involved might be, then you start digging in more, refining your focus so that ideally if you've done

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1 your investigation thoroughly, you've done your investigation well, you're going to go from spot at
2 the beginning where you're looking broadly to sort of learn the landscape to a spot at the end where
3 you were laser-focused on developing evidence of specific criminal conduct. And I believe that
4 is -- without speculating or why these 3 days exactly were the ones chosen -- I believe that that is
5 what happened here. That in 2022 when I am beginning to run in the early stages of investigating
6 the DOJ stuff, we were trying to build out our understanding of who may or may not have been
7 involved and understand the universe myriad investigation.

8 By this point in 2023 which is a few months before we did the grand jury returned an
9 indictment against the President in our election case, our investigative focus had refined greatly so
10 that we could specifically target real narrow date ranges, knowing we needed specific information
11 about individual things. And that is a function of a -- that's a particularly normal thing that
12 happens -- in a function of the investigation narrowing if the work is done well as the investigation
13 develops.

14 Q And in speaking with the other prosecutors who have been involved in these subpoenas,
15 you know, they have stated they needed the Senators' toll records. And I'm using Senators, but
16 Representative Kelly was in that subpoena as well -- but Senators' toll records was -- because they
17 had the President's phone records, and they had Mayor Giuliani's phone records, and they were
18 tracking who was calling who, but they needed the Senators' phone records to nail down a timeline
19 of who the President was communicating with. Do you remember any discussions along that line?

20 A I remember generally that being -- that being -- I remember generally there being
21 interest in understanding who was called in the late afternoon, early evening hours of January 6th.

22 Q Okay. And do you know why they still needed the Senators' records even though they
23 had all of these other returns from toll records?

24 A I don't know the specific rationale. I could hazard a guess to reasons, but I don't think
25 that would be productive. I wasn't part of these conversations.

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1 Q And turning back to the email I read the couple sentences of: As you are aware, there
2 is some litigation risk regarding whether compelled disclosure of toll records of a Member's
3 legislative calls violates the Speech or Debate Clause in the D.C. Circuit. Then Mr. Keller quotes
4 some D.C. Circuit cases. One is the bar on compelled disclosure is absolute. Further down, it says:
5 The caselaw is clear that a legislator asserting the invasion of the Speech or Debate Clause privilege
6 by use of the grand jury subpoena to a third party may intervene and oppose such use.

7 Would you agree that a legislator should be able to intervene if the subpoena is to a third
8 party to a service provider to litigate their rights under the Speech or Debate Clause?

9 A First, could you point me to where you're reading.

10 Q Yes, the specific to third party is right after the member?

11 A 594.

12 Q 594. And then it says: The caselaw is clear that a legislator asserting the invasion of
13 the Speech or Debate Clause privilege by use of a grand jury subpoena to a third party may
intervene

14 and oppose such use."

15 A Okay.

16 Q I guess, first of all, was there any discussion of this specific caselaw where the subpoena
17 is to a third party, such as a service provider for a Members' records?

18 A In this context specifically, I don't know, because I wasn't party to these conversations.
19 Q Did this case ever come up in the previous subpoenas that you were involved with.
20 A I can't say I can remember every Speech or Debate Clause case that we analyzed or
21 considered. Just looking at this as it is, the case that you cited, that Mr. Keller is referencing here is
22 a Third Circuit case. The D.C. Circuit, where we were, is a different circuit and has its own
particular
23 and unique Speech or Debate laws.
24 So it's possible that this case would have come up in prior research. I don't doubt it, but I
25 don't have a particular memory. And I'll note that this will be an opinion from outside the most

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1 pertinent --

2 Q So were prosecutors just unconcerned that even records from a third party for a
3 Member of Congress could be privileged under the Speech or Debate Clause?

4 A I wouldn't say that a second. I would say we were hyper vigilant and extremely aware
5 of the contours of the Speech or Debate Clause. We knew that Speech or Debate was something
6 that we had to navigate. We treated it seriously. There are portions of the Speech or Debate
7 caselaw that might, in different circuits, be a little bit underdeveloped, such that the guidance is not
8 entirely clear. But we were very much aware of Speech or Debate, the Speech or Debate Clause
9 and committed to following the law that pertained to us relating to the Speech or Debate Clause, and
10 did the very best we could to navigate and resolve any uncertainty that may have existed therein.
11 We were not unconcerned about the Speech or Debate Clause.

12 Q The last clause here says: Given my understanding of the low likelihood that any of the
13 Members listed below would be charged, the litigation risk should be minimal here.

14 Were you aware that there was, indeed, some sort of litigation risk involved with issuing
15 these subpoenas? I know this is specific to the Senators, but this is a more in-depth Speech or
16 Debate analysis than what went on in the other PIN emails?

17 A I was aware that -- at some point I became aware that certain of the specific issues that
18 we were addressing, or what we were running into were arguably not fully resolved by the existing
19 caselaw on Speech or Debate. And that's a common thing, particularly in complex investigation, to
20 run into the corners of the law that aren't fully built out.

21 Yeah, I was aware that, you know, there was some lack of clarity on certain points. And we
22 did the very best we could to proceed as thoughtfully and intelligently as possible.

23 Q And, just again, I'll represent to you that there was an NDO signed by Judge Boasberg
24 that accompanies this subpoena. So with the NDO, you have mentioned there's a lack of clarity of
25 what, you know, the full spectrum of the rights are underneath the Speech or Debate Clause, and

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1 there's a lack of clarity. But what remedy did Members have to litigate this lack of clarity, if you
2 will?

3 A Are you asking me what ability Members of Congress have to?

4 Q In the context of these subpoenas, what remedies did Members have to litigate this lack
5 of clarity that's apparent from this email?

6 A So a quick clarifying point. I am not saying that there is particularly a lack of clarity in
7 my mind as to whether toll records are protected by the Speech or Debate Clause. I feel pretty
8 confident that toll records are not under D.C. Circuit caselaw. But, you know, again, I am not a
9 judge.

10 But to get to your question what remedy they have, a nondisclosure order does prohibit
11 disclosure of the subpoena. So if the nondisclosures orders follow, the subscriber would not
12 receive that subpoena.
13 Q And do you know if there was any discussion of -- it's a code that protects Senate phone
14 records. It's 2 USC Section 6628. And it says, you know, if a third party receives some sort of legal
15 process for a Senate phone line, they have to notify the Senate office or the Senate Sergeant at Arms.
16 Do you remember any of those conversations occurring at that specific statute?
17 A I don't remember, but I don't remember being part of any conversations about
18 subpoenaing Senators' numbers.
19 Q I am going to jump around a little bit.
20 A As you wish, sure.
21 Q Did you know Jack Smith before joining the special counsel's team?
22 A No.
23 Q And who asked you to join the special counsel's team?
24 A I think Jack. I think Jack. I think I was -- I think he called and asked me to join.
25 Q And you had never worked with Mr. Smith prior to joining?

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1 A I had not.
2 Q And you didn't work at all on the document piece of his investigation, correct?
3 A That wasn't where my work was. I may have, you know, at some point over the three
4 something years have -- touched in a way I am not particularly remembering. But, no, that wasn't
5 what I worked on.
6 Q Okay. And then the President is indicted August 1st, 2023, in D.C. for the election case.
7 A Yes, ma'am.
8 Q And then a gag order was sought against the President on September 15th, 2023.
9 Did you have any -- did you do any work in relation to the filings for this?
10 A If you show me my emails, that could help me a little bit, but I don't remember
11 participating in the gag order really at all.
12 Q And were you aware that it was narrowed at one point by the Appeals Court?
13 A If that happened, I may have been made aware of it. I am not -- I don't think I worked
14 on the gag order stuff. And if I did, I don't remember it, so I don't really recall.
15 Q Were you aware of any violation of 18 USC Section 1512, the Witness Tampering Statute
16 by President Trump?
17 A When?
18 Q At the time of the gag order that was sought in September 15th, 2023?
19 A I don't know one way or the other. I do know that over the course of our investigation,
20 there was a whole lot of evidence that President Trump sought to cajole people to say things that he
21 wanted them to say even if those things didn't bear much relationship to the truth as we understood
22 it. But to your exact question, I don't particularly know.
23 Q And then did you play any role in the appellate process for the Presidential immunity
24 question?
25 A No, we had really great appellate attorneys. They didn't need me.

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1 Q And so after the superseding indictment is handed on August 27th, 2024, did you play
2 any role in the superseding indictment?

3 A Probably some role. I just don't -- you know, I don't remember exactly what I did, but I
4 assume that I probably, you know, reviewed it, participated in some way. I just don't remember
5 what my role was.

6 Q And did you have any role in setting the trial date for when it would start in D.C.?

7 A No.

8 Q After the immunity decision and the superseding indictment on August 2nd, 2024,
9 Smith's office filed a 165-page brief that was styled as like an immunity determinations brief. Are
10 you aware of this brief?

11 A Yeah, I am. It was pretty big, yeah.

12 Q And what was your role in the brief?

13 A I don't remember honestly. Like I probably had some role in reviewing it, addressing
14 some factual issues. I just -- I remember it being a big brief that our office did, but I am a bit hazy as
15 to exactly what work I was doing at that point and if that was something I spent much time on. I
16 don't remember what my particular role was.

17 Q And what can you tell us about any discussions you were party to regarding the timing
18 of the brief. You know, it came out August 2nd, 2024. The defense hadn't even responded to the
19 superseding indictment yet. So it's just kind of out of order. Were you party to any discussions of
20 timing?

21 A Not that I remember other than generally and historically we wanted to move quickly.

22 In this case, the same as any other, you don't want to just leave an indictment hanging out over
23 someone's head. You want to get it resolved. You want to move fast. But I don't remember
24 specific conversations.

25 Q Were there any concerns about the proximity to the November 2024 election?

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1 A We had absolutely zero desire to do anything at any point ever that would have
2 impacted the, you know, the 2024 election. We were as a team aware of the election interference
3 policy, so it was something about which we knew. That's about it.

4 Q Do you know if it was within the Election Interterm Policy? I think it's called, like, a
5 60-day election sensitivities policy.

6 A I'm not remembering how any sort of policies on election interference might have
7 impacted our decisionmaking.

8 Q Do you know if there was any correspondence with the Public Integrity Section given
9 that this was clearly within 60 days of the November 2024, election?

10 A Is that communication I was on that you can show me?

11 Q I don't have any of that communication. I am just trying to see if you remember any
12 communications or discussions?

13 A I am happy to look at whatever you want to show me, but I don't remember anything.

14 Q So if there were discussions with public integrity, you don't remember being party to
15 those just as you sit here today?

16 A I don't.

17 Q I want to talk about our interactions with various other individuals outside of the special
18 counsel's office?

19 A Yes.

20 Q While you were on the special counsel's team, and even prior to joining the special
21 counsel's team, so from January 2022 to January 2025, did you ever have any interactions with the
22 House's January 6th Select Committee?

23 A I don't believe I ever did. I don't think so.

24 Q Were you ever a party to any discussions about receiving information from the January
25 6th Select Committee?

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1 A There may have been in May-ish of 2022. I said, I want you to understand, I'm doing
2 my best on the date, but don't hold me to May.

3 Q Okay.

4 A In May, around that time of 2022, there might have been an opportunity for those of us
5 on the team to review certain transcripts that they had of people that they had interviewed. I don't
6 remember how many transcripts it was, or anything like that, but I have a vague recollection of this.
7 And I think I might have been out of town, and so I wasn't able to participate in any review that might
8 have happened. I sort of vaguely remember that.

9 Q At any point in time, did you ever review materials that were provided by the January
10 6th Select Committee?

11 A Yes.

12 Q And what do you remember reviewing?

13 A I remember that at some point, we were provided a bunch of -- a tranche of documents,
14 and we had things like transcripts. I specifically remember transcripts. I don't know if there was
15 anything other than transcripts. But I remember reviewing transcripts of witnesses that the Select
16 Committee had interviewed.

17 Particularly, in my case, I was particularly but not exclusively focused on witnesses who are
18 also relevant to the work that I was doing and is obvious.

19 Q Okay. And to the extent there were conversations or communications that happened
20 between Mr. Smith's team and the January 6th Select Committee or the election interference
21 investigation prior to Smith's arrival, those communications did not involve you. Is that correct?

22 A To the best of my memory, I cannot say for certain, but I do not remember ever
23 speaking to anyone. I don't remember personally speaking to anyone on the January 6th
24 Committee. I do remember receiving the documents from the January 6th Committee.

25 Q And did you have any contact or communication with Fulton County District Attorney

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1 Fani Willis?

2 A No.

3 Q Are you aware of any contact that occurred between Mr. Smith's team and Ms. Willis?

4 A I am not.

5 Q And no contact with Nathan Wade, he was one of her prosecutors?

6 A No.

7 Q Did you have any contact or communication with Manhattan District Attorney Alvin
8 Bragg?

9 A No.

10 Q Are you aware of any contact that took place between Mr. Smith's team or the election
11 interference investigators?

12 A I'm not aware of that.

13 Q Any communication with Michael Colangelo after he went to Mr. Bragg's office?

14 A I don't know who that person is to tell you the truth.

15 Q Did you have any contact or communication with State Attorneys General?

16 A Yes. In that I -- I interviewed the Michigan -- not Michigan, I'm sorry. I interviewed

17 Georgia Attorney General Chris Carr.

18 Q Okay.

19 A I flew down to Atlanta and talked with him about -- but this was not -- maybe I should
20 clarify your question. I interviewed Chris Carr related to communications President Trump had had
21 with him in 2020. But, yeah, I did talk to Chris Carr.

22 Q Okay. Did you talk to any other State Attorneys General or anyone in their respective
23 offices?

24 A Let me go through the States. I don't remember doing so. And if you -- yeah, I don't
25 remember doing so.

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1 Q And when we had Assistant Attorney General Kenneth Polite -- I am sure you're familiar
2 with him --

3 A I do know him.

4 Q -- in for a transcribed interview, he discussed two calls that he had convened with
5 approximately 10 State Attorneys General. Do you remember if you were on those calls?

6 A Oh, that may have been -- I mean, I don't -- I don't remember. I don't think I would
7 have been. No, I don't. I don't know. I don't know.

8 Q And did you ever discuss what occurred on those calls with either Mr. Polite or Mr.
9 McQuaid?

10 A I'm not sure. Can you tell me what those calls related to that might jog my memory?

11 Q Yeah, I can tell you. I have Mr. Polite's testimony right here. He said: I can recall a
12 call that involved several State Attorneys General on it, and my recollection was that representatives
13 for the Attorney General or from the offices of Michigan, Nevada, Pennsylvania, Colorado were on
14 that call, but it may have been certainly more than that. My recollection was around 10.

15 A Colorado? You know, that's weird to me. I was thinking maybe there's a call about
16 the alternate electors, the fraudulent electors, or something, but no. I can sum it up this way real
17 easily. The communication I had like with Chris Carr, -- and if there was any others -- would have
18 been relevant to investigating what happened in the 2020 election, potentially as witnesses, right.
19 I don't recollect any conversations with people that were Attorneys General in their States at
20 the time we were doing the investigation about, you know, investigative steps that those offices
21 might be taking or anything like that.

22 Q Great.

23 A Does that distinction make sense?

24 Q That's helpful. Thank you. And in the January 2022 to January 2025 timeframe, did
25 you ever have any contact with the Biden White House?

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1 A No.

2 Q I want to talk about the use of FBI confidential human sources in that election
3 interference investigation. While you were working on that investigation, did you ever interact with
4 either FBI confidential human sources or information that was provided by FBI confident human
5 sources?

6 A I do not believe I ever used a confidential human source in this case. I have no
7 recollection of doing so. And I do not have any recollection of ever, you know, receiving
8 information from a confidential source in this case.

9 Q And we're aware of June 2023 payment from Mr. Smith's team -- for the FBI

10 rather -- but Mr. Smith and Mr. Holzer, I believe, okayed the payment of \$20,000 to a confidential
11 human source for review of video footage and photographic evidence in that case. Were you aware
12 of that payment or aware of how the confidential human source was used?
13 A No, not unless you -- if you can provide me with evidence -- with emails, you know, that
14 I was on it or something. But, no, I don't remember that, no.
15 Q Okay. So you weren't aware of any use of confidential human sources in this case?
16 A I don't remember right now being aware of that.
17
18 Q Do you know where Brian Burnett is currently? The IG official?
19 A No. Mr. Burnett have not -- I unfortunately have not maintained communication with
20 him. The last I heard he was still at DOJ OIG, but I haven't talked to him since probably some years.
21 Q Okay. We can go off the record.
22 [Whereupon, at 1:53 p.m., the interview was concluded.]

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1 Certificate of Deponent/Interviewee

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3

4 I have read the foregoing ____ pages, which contain the correct transcript of the answers made
5 by me to the questions therein recorded.

6

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8

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10 _____
10 Witness Name

11

12

13

14 _____
14 Date

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5 COMMITTEE ON THE JUDICIARY,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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13 INTERVIEW OF: TIMOTHY DUREE

14

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16

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18 Thursday, March 5, 2026

19

20 Washington, D.C.

21

22

23 The interview in the above matter was held in room 2237, Rayburn House Office Building,

24 commencing at 10:00 a.m.

2

1 Appearances:

2

3 For the COMMITTEE ON THE JUDICIARY:

4

5 , DEPUTY DIGITAL DIRECTOR

6 , GENERAL COUNSEL

7 , PROFESSIONAL STAFF MEMBER

8 , LAW CLERK

9 , CHIEF COUNSEL FOR OVERSIGHT

10 , COUNSEL

11 , RESEARCH ASSISTANT

12 , MINORITY SPECIAL COUNSEL FOR INVESTIGATIONS AND SENIOR ADVISOR

13 , MINORITY GENERAL COUNSEL

14 , MINORITY FELLOW

15 , MINORITY LEGAL INTERN

16 , MINORITY STAFF ASSISTANT

17 , MINORITY SENIOR COUNSEL

18 , MINORITY LEGAL INTERN

19

20 For TIMOTHY DUREE:

21

22 ANDREW F. DAWSON

23 ELIZABETH A. HECKMANN

24 Keker, Van Nest & Peters LLP

25 We'll go on the record.

3

1 Good morning. This is a transcribed interview of Mr. Timothy Duree. Chairman Jordan has

2 requested this interview as part of the committee's oversight of Special Counsel Jack Smith and his
3 team.

4 Would the witness please state your name for the record?

5 Mr. Duree. My name is Timothy Duree.

6 . We encourage witnesses who appear before the committee to freely consult

7 with counsel if they so choose. And it is my understanding that you are appearing today with
8 personal counsel. Is that correct?

9 Mr. Duree. Yes, ma'am.

10 Would counsel please state your name for the record?

11 Mr. Dawson. Andrew Dawson and Elizabeth Heckmann of Keker, Van Nest & Peters.

12 Thank you.

13 On behalf of the committee, I want to thank you for appearing here today to answer our
14 questions. The chairman also appreciates your willingness to appear voluntarily.

15 My name is , and I'm with Chairman Jordan's staff. I'll now have everyone

16 else from the committee who is here in the room introduce themselves as well.

17 . .

18 with Ranking Member Raskin's staff.

19 with Ranking Member Raskin's staff.

20 with Ranking Member Raskin's staff.

21 with Ranking Member Raskin's staff.

22 with Chairman Jordan's staff.

23 with Chairman Jordan.

24 with Chairman Jordan's staff.

25 with Chairman Jordan's staff.

4

1 , Chairman Jordan's office.

2 I'd like to now go over the ground rules and guidelines that we'll follow during

3 today's interview. Our questioning will proceed in rounds. The majority will ask questions first for

4 1 hour, and then the minority will have an opportunity to ask questions for an equal period of time if

5 they choose. We will alternate back and forth until there are no more questions, and the interview

6 is over. Typically, we take a break at the end of each hour, but if you would like to take a break

7 apart from that, just let us know.

8 As you can see, there's an official court reporter taking down everything we say to make a

9 written record, so we ask that you give verbal responses to all questions. Do you understand?

10 Mr. Duree. Yes, ma'am.

11 . In addition, there is a committee videographer making a video record of this

12 proceeding.

13 So the court reporter can take down a clear record, we'll do our best to limit the number of

14 people directing questions at you during any given hour to just those people on the staff whose turn

15 it is. Please try and speak clearly so the court reporter can understand and so the folks down at the

16 end of table can hear you as well. It's important that we don't talk over one another or interrupt

17 each other, if we can help it, and that goes for everybody present at today's interview.

18 We want you to answer our questions in the most complete and truthful manner as possible,

19 so we will take our time. If you have any questions or if you do not understand one of our

20 questions, please just let us know. Our questions will cover a wide range of topics. So if you need

21 clarification at any point, just say so. If you honestly don't know the answer to a question or do not

22 remember, it is best not to guess. Please give us your best recollection, and it is okay to tell us if

23 you learned information from someone else; just indicate how you came to know the information.

24 If there are things you don't know or can't remember, just say so and please inform us who, to the

25 best of your knowledge, might be able to provide a more complete answer to the question.

5

1 You should also understand that by law you are required to answer questions from Congress
2 truthfully. Do you understand that?

3 Mr. Duree. Yes, ma'am, I do.

4 . This also applies to questions posed by congressional staff in an interview. Do
5 you understand this?

6 Mr. Duree. Yes, ma'am.

7 . Witnesses that knowingly provide false testimony could be subject to criminal
8 prosecution for making false statements under 18 U.S.C. Section 1001. Do you understand this?

9 Mr. Duree. I do.

10 Is there any reason you are unable to provide truthful answers to today's
11 questions?

12 Mr. Duree. No, ma'am. I intend to.

13 . Finally, I'd like to make note that the content of what we discuss here today is
14 confidential. We ask that you not speak about what we discuss in this interview to any outside
15 individuals to preserve the integrity of this investigation.

16 For the same reason, the marked exhibits that we will use today will remain with the court
17 reporter so that they can go in the official transcript, and any copies of those exhibits will be
returned

18 to us when we wrap up.

19 That's the end of my preamble. Is there anything my colleagues from the minority would
20 like to add?

21 . Just thank you for being here voluntarily. We look forward to hearing your
22 testimony today.

23 Mr. Duree. My pleasure to be here.

24 Mr. Dawson, I understand you have some words to say.

25 Mr. Dawson. Just very briefly, I sent a letter last night, apologies for the late hour, regarding

6

1 our understanding of the authorization from the Department of Justice and flagging a few issues just
2 to be aware of. The two I would just mention now in terms of the 6(e) restrictions under the
3 Federal Rules of Criminal Procedure, I don't anticipate those being an impediment to talk about what
4 I understand the committee intends to ask, but I may interject from time to time just to rephrase a
5 question to ensure that we protect Mr. Duree given some inconsistencies in the circuits in terms of
6 what those rules are. But, again, I don't anticipate those will prevent fruitful questioning.

7 And so I would like to kind of enter this into the record just so I don't go through it and chew
8 up time on the clock. So with your permission, I'd just put our letter into the record.

9 We'll mark that as exhibit No. 1.

10 And we can make more copies at the end of the hour if you need it.

11 . It's okay.

12 [Duree Majority Exhibit No. 1.

13 was marked for identification.]

14 . Okay. The clock now reads 10:04 a.m. We'll start our first hour of
15 questioning.

16 EXAMINATION

17 BY :

18 Q Mr. Duree, when did you join the Department of Justice?

19 A June of 2012.

20 Q June of 2012. And can you walk us through the positions you held there?
21 A Yes, ma'am. can you tell me your last name one more time? I'm sorry.
22 Q
23 A Okay. Thank you, ma'am.
24 Q Of course.
25 A The positions I held. And I'll give you as much detail as you want. If you want to

7

1 speed me along, speed me along.

2 Q Okay.

3 A I joined -- I graduated law school in 2008, spent 4 years doing other things, and
4 then -- roughly 4 years. In 2012, I joined the Department of Justice as an assistant United States
5 attorney in beautiful Del Rio, Texas. It's in the western district of Texas. It's where I was already
6 living at the time and had the opportunity to be an AUSA there. Texas is where I grew up.
7 I was in Del Rio for roughly 4 years, I'll call it, prosecuting all manner of crimes that one
8 prosecutes on the border. So a lot of immigration crimes, alien smuggling, drug crimes, guns, that
9 kind of thing.
10 After those 4 years, I was interested in working white collar investigations, corporate crime,
11 that kind of thing, and was lucky enough to get an opportunity here in D.C. at the Fraud Section of
12 the Criminal Division. So I did white collar prosecutions, you know, bank fraud, corporate stuff, that
13 kind of thing. Some public corruption work as well that was assigned to me, even though it wasn't
14 strictly within the normal purview of the Fraud Section. And I did that for a while as a line attorney.
15 In, I want to say, 2020, I became the supervisor of a healthcare fraud strike force and then a
16 second one. So for a while, I supervised two teams of attorneys working healthcare fraud
17 cases and -- attorneys and paralegals working those healthcare fraud cases -- in Brooklyn and
18 Newark. So I was up and back to New York every week working those cases, and had a couple
19 spectacular teams there.
20 Then I was asked -- I can give you more details if you want -- I was asked in January 2022 to
21 join an investigation that ultimately evolved into and became part of the Special Counsel's Office.
22 So, functionally, from January '22 until beginning of January '25, I was working either in the Special
23 Counsel's Office or on similar investigative streams that preceded the Special Counsel's Office.
24 Q And when you left Del Rio, Texas, and started your work in the Fraud Section, was that
25 at Main Justice?

8

1 A It was. In Main Justice -- well, yes. I'll just stop there, yes.

2 Q And then when you supervised the two teams, you mentioned Brooklyn and Newark,
3 were you working out of one of the U.S. Attorney's office in New York?

4 A I was, technically, still -- this whole time I was technically still an employee of the Fraud
5 Section of the Criminal Division at Main Justice. The Fraud Section has a healthcare fraud unit, a
6 securities and financial fraud unit that has a different name now, but that's what it was, and a
7 Foreign Corrupt Practices Act unit. So both of those jobs were within the Fraud Section. I just
8 moved from the financial fraud unit to the healthcare fraud unit.

9 We did work closely with the U.S. Attorney's offices. So like when I went to Newark, I would
10 go sit in the office -- in the U.S. Attorney's Office on Broad Street; Brooklyn, same thing. But I was
a

11 Criminal Division Fraud Section employee the whole time.

12 Q Okay. And while you were at Main Justice, were you ever a political appointee?

13 A No.

14 Q So you were always a line attorney or a supervising attorney?

15 A Yes, ma'am, that's correct.

16 Q Okay. And you mentioned being asked to join an investigative team in January 2022.

17 What can you tell us about that investigative team?

18 A About the work that we did or about joining the team?

19 Q Let's start with joining the team.

20 A Okay. So I'm at home one evening, and I'm going to call it the back side of January --

21 Q Okay.

22 A -- and I get an email in the evening and then have a call with Nick McQuaid, who was the

23 principal deputy assistant attorney general of the Criminal Division. Basically the second in

24 command in Crim.

25 You know, I'd met Nick before, but getting a call from Nick was unusual because he was my

9

1 boss's boss's boss's boss, or maybe one more above that, right. So I knew him but, you know, we

2 didn't have a lot of day-to-day interaction.

3 He calls me -- and at that time I'm just prosecuting my cases and managing my teams in

4 Newark and Brooklyn. I'll paraphrase because it's been, you know, 4 years plus. But as best I can

5 remember, he says that the Criminal Division needs to look into whether there may have been some

6 misconduct within the Department of Justice relating to the transition of power after the 2020

7 election, and asked me if I would be willing, interested, in joining that team. And I said I would.

8 You know, I didn't for a second seek it out. In fact, if I'm completely candid with you, around

9 this period of time, I was kind of sort of considering maybe leaving the Department of Justice,

10 because it'd been years and years -- I have a family at home -- it'd been years of travel every week,

11 long hours, all that.

12 But when Nick presented the opportunity, right, your -- the boss asks you to do something,

13 you do it. I felt duty bound and honored to be asked. So I joined the team, and that was in

14 January of '22. My focus at that point was, as I mentioned, trying to determine whether there had

15 been misconduct within the Department of Justice relating to the transition of power.

16 Q And when Mr. McQuaid asked you to join this team, did he give -- it was going to be a

17 definite period of time, and then you would come back to your normal work, or were you going to

be

18 there indefinitely?

19 A It was unknown. It seemed real hazy and uncertain. I think -- and again, Nick maybe

20 has -- Mr. McQuaid might have a better recollection of this. But as I remember, as I -- we need to

21 look and see if there was any misconduct there. We don't know if there is anything or if there isn't.

22 So it could be that you kick the tires and a couple months you're back to your old job. It could be

23 that there are investigative leads that need to be followed, in which case you'll follow them.

24 So I didn't have a sense of timing at the -- I knew nothing other than, you know, the general

25 sort of impressions I was given from the call. And so I thought -- and I think Nick probably

10

1 thought -- could be a couple months and there's nothing there, could be a long time if the case

2 materializes, but I had no real idea.

3 Q And what was your understanding -- I know you said he had asked you about joining a

4 team. So was it your understanding that there was an investigation that was already underway in
5 terms of looking into alleged misconduct within the DOJ?

6 A I don't know if that was my impression on the call or if I developed that impression
7 shortly thereafter. But the impression that I had around that time --

8 Q Okay.

9 A -- was that there were maybe a couple of people already looking at either this issue or
10 sort of adjacent issues, right, but that the team was small. And so I was under the impression that
11 there had been a -- there was a workstream that was just beginning but was in its kind of embryonic
12 stages.

13 And if I remember precisely, I think that -- actually, I'm pretty confident that there were PIN
14 attorneys -- PIN is the Public Integrity Section of the Department of Justice. If it's all right with you
15 all, I'll just call it PIN, that's what we called it.

16 Q Of course.

17 A There were PIN attorneys originally assigned to this for about a cup of coffee, like couple
18 of weeks or something. I can't tell you the time. It seemed very short. But my understanding is
19 that PIN felt that it might want to recuse itself sort of proactively, and so they needed someone in
20 the Criminal Division to investigate these things. And there were two of us from Crim originally
21 assigned to do that. I was one of those two.

22 Q Okay. And when you joined the team, how many people were working on this specific
23 investigative stream?

24 A Once I joined -- I and my colleague joined, and I believe we doubled the size of the team
25 to four. I think there were two.

11

1 Q Okay. So who was the colleague that joined with you?

2 A That joined with me from the Criminal Division?

3 Q Yes, uh-huh.

4 A The brilliant and lovely Teresa McHenry --

5 Q Okay.

6 A -- who is a great attorney and has the benefit of being an all-around wonderful person.

7 Q And then who were the two people who were already there working on this?

8 A Other really great people as well. Alex Bogle, who at the time was -- she was
9 employed by the National Security Division. And Thomas Windom, who was technically, I
10 think -- was technically employed by the U.S. Attorney's Office for the District of Maryland but had
11 been detailed over to the D.C. U.S. Attorney's Office.

12 Q Okay. And did you ever work with the PIN attorneys on this investigation before they
13 recused themselves?

14 A No, not really. When Nick called me and I realized that there was going to be a PIN
15 recusal, and so -- sometime around there I realized -- and so I started working the case. I think -- I
16 couldn't remember their names.

17 Q Okay.

18 A I think that we had one or two phone calls just to kind of pass the time, learn what they
19 had done, so that we could, you know, pick up where they left off. But as I remember, that was, like
20 I said, only one, maybe two calls. And because the case was still new, there hadn't really been a lot
21 done yet. So I didn't work with those people necessarily.

22 Q And why did the PIN attorneys recuse themselves, if you know?

23 A I will tell you -- I'll tell you what I know.

24 Q Okay.

25 A Understanding that my information comes secondhand on this, and you might want to

12

1 go to sources if you want to get, you know, their stories as well. But PIN recused itself. So Corey
2 Amundson was the head of PIN at the time. And during the, what I'll call the post-election
3 period -- it'll probably come up during the day, and I don't know if, like, y'all have been using that
4 term -- but I generally refer to the post-election period as that period between election day and the
5 transition of power. In our case, it'd be 2020 and early 2021, right.

6 But everyone in this room, everyone who was in America probably remembers that there
7 were a lot of allegations of election misconduct being made by the President and people allied with
8 him.

9 Attorney General Barr, as I understand it, felt that it may be beneficial to look into some of
10 these allegations, you know, immediately in the post-election period. This was maybe either
11 dissonant with or at least uncommon under the election interference memos and other PIN
12 precedent. Essentially, you don't really bring -- I'm not a PIN attorney, but my understanding is that
13 you don't really investigate election issues like this during the pendency of, you know, the event
14 giving rise to the issue, I suppose, so as not to be seen as interfering with the election.

15 Anyway, I say all that to say, there was, I think, some back-and-forth between PIN, people in
16 higher levels in the Department of Justice, and maybe the U.S. Attorney's Office or FBI in Atlanta,
17 maybe. Like, I'm just trying to tell you what I remember as best I remember it. And because
18 Mr. Amundson had been involved in those emails and communications about whether or not it was
19 appropriate to investigate these cases in the short term, I think he felt that his office should recuse
20 itself. There was no mandate that they do it. But the idea was that PIN would be investigating a
21 case that hypothetically, conceptually could involve inquiry into PIN's own decision-making, I
guess.

22 But, again, I say all that with the caveat of I'm trying to be as transparent as I can, but I don't
23 mean to speak the gospel on this. Corey would be able to tell you more precisely.

24 Q And the four individuals that you worked with, did that team ever grow to more than
25 four individuals?

13

1 A Sure did.

2 Q And who else was added to that team, before Jack Smith was appointed? What kind of
3 end point is there? So he was appointed November 18th, 2022.

4 A That is correct. So, again -- and if you want me to stop, you know, giving this reminder,
5 I will. I just want to make sure it's clear. My memory might not be perfectly precise. It's been
6 4 years, but I'm going to try to tell you as best I can.

7 Q Okay.

8 A It was Teresa, Thomas, Alex, and I --

9 Q Okay.

10 A -- for a while. January into April, May?

11 Q Okay.

12 A Then we added, as I remember it, one more person from the D.C. U.S. Attorney's Office.

13 That was Ahmed Baset.

14 Q Okay.

15 A Then we were a slightly larger team for a period of time into the summer. And I guess
16 around Labor Day maybe, the team really grew in size. There was -- I can give you more detail on

17 this if you want it, but there was a point at which decisions were made by folks much higher up in
18 DOJ than me that it would be wise to grow this team into something bigger than just the five of us.
19 And so at that point, several other attorneys were added. Our size grew greatly. I mean, I would
20 guess -- I'm ballparking it now, but if we were five, we might have ended up 10, a dozen, something
21 like then -- something like that.

22 Q Okay. And this team, when it was just the four of you, was there anyone supervising
23 your work, or what was the chain of command there?

24 A Yes, it was a little -- there was a chain of command. It was a little bit fluid. We were
25 kind of a bit of a confederacy, right.

14

1 Q Okay.

2 A So I was in the criminal -- we had multiple chains of oversight, but we all worked
3 together. I was in the Criminal Division, Ms. Bogle was in NSD, Thomas was in the U.S. Attorney's
4 Office, Ahmed was in the U.S. Attorney's Office, Teresa was in Crim. So we had three different
5 offices supervising us. Functionally, Teresa and I reported up to folks in the front office of the
6 Criminal Division.

7 Q Okay.

8 A Alex -- Ms. Bogle reported to whoever was in the front office of the National Security
9 Division. Thomas and Ahmed reported to the top folks in the U.S. Attorney's Office. At the time,
10 the U.S. Attorney's Office was -- the U.S. Attorney was Matt Graves.

11 So each of us -- we -- the four of us worked, and then five of us worked closely together. We
12 were, you know, a team day to day. We would each report up our chains of command, but we
13 would also sort of harmonize back and forth. So there might be occasion where all of us would
14 meet to make sure we were eye to eye. There might be points where Crim took the lead or where
15 the U.S. Attorney's Office took the lead on different things. So we had sort of three different chains
16 of command all connecting together and talking to each other --

17 Q Okay.

18 A -- on case decisions.

19 Q And I know that Mr. Windom was working out of the D.C. U.S. Attorney's Office.

20 A He was.

21 Q Were you also stationed there or were you still at Main Justice?

22 A Real brief I was at the U.S. Attorney's Office. The way it worked was I was a Crim
23 Division employee -- I mean, I -- I was technically a Crim Division employee until the day I got
fired.

24 Q Okay.

25 A I was on detail from Crim to different places. But from January until ballpark maybe

15

1 again in August, I was a -- I worked as a Criminal Division employee. If you look at my documents
2 from that time, I probably signed them on behalf of the Fraud Section, Criminal Division.
3 There was a period of maybe a couple of months before Mr. Smith came in where -- this is
4 that same time period where the team grew, right.

5 Q Yep.

6 A Because the growth of the team also coincided with the consolidation of the team under
7 one supervisory chain. So when the team -- the team both simultaneously grew and was then
8 placed under the supervision of the U.S. Attorney's Office.

9 Q Okay.

10 A When that happened, my day-to-day work didn't really change, but I then, for a brief
11 period of time, was detailed over to the D.C. U.S. Attorney's Office.

12 Q Okay.

13 A That was probably -- again, there's records that would show you precise dates, but I'm
14 going to say it feels Labor Day-ish up until Mr. Smith took over, and during that period of time, I
and

15 my colleagues worked out of the U.S. Attorney's Office. Like, I had an office there for like 2
months.

16 And before that, I had my whole office at the Criminal Division.

17 Q And were you reporting to J.P. Cooney at that point in time?

18 A That's a good question. Like, the reason that I'm hesitating, I don't know if I -- you
19 should ask J.P. I don't know if I was reporting to him at that time or not. I can tell you this: I
20 think I was. I probably was.

21 Q Okay. Was he leading the investigation at that point in time, or who was leading the
22 investigation?

23 A These are all real good questions. J.P., I -- again, you'll hear this refrain from many of
24 my colleagues. J.P. is a spectacular guy, someone I am proud to know. I did not know J.P. before
25 that summer. And when we first got to the D.C. U.S. Attorney's Office, I'm not -- I'm not sure one

16

1 way or the other whether J.P. was a person with whom I interacted at the U.S. Attorney's Office in
2 that very first period or if he was my supervisor from the start. I just don't really remember.

3 It was sort of a fluid period of sort of supervisory transition. I can tell you that most
4 definitely J.P. was a supervisor above me in the Special Counsel's Office. But I just don't remember
5 if like on day one in the U.S. Attorney's Office he was the guy or if it evolved to that.

6 Q Okay. And you had mentioned earlier that there were people who were, you know,
7 looking at the specific issue about misconduct within the DOJ and then adjacent issues. So who
8 worked on the misconduct within DOJ? Who worked on that issue with you?

9 A , you'll need to specify the time periods because it did change.

10 Q Okay. So when it was just the four of you in the beginning between January and April
11 and May, who was working on the misconduct within DOJ?

12 A Well, Teresa and I principally, but --

13 Q Okay.

14 A -- all of us to a lesser degree. In those early days, the workstreams were still
15 developing. So we didn't have ossified streams of work and teams particularly dedicated to one
16 thing to the exclusion of another. But functionally the way it worked is I understood my mandate to
17 be to investigate the work within -- the work related to misconduct from DOJ. So I took the lead on
18 that along with Teresa. We were sort of co-leads on it. But as needed, you know, if there was
19 work to do, Thomas or Alex would also participate in that workstream, just as, once we developed
20 additional workstreams, Teresa and I may participate in those.

21 But I would say the rough division in those previous U.S. Attorney's Office days was that it was
22 Teresa and I heading the DOJ stuff.

23 Q Okay. And did you ever get an understanding of what workstream Thomas Windom
24 was working on?

25 A Yeah, yeah. I mean --

17

1 Q What was his workstream?

2 A -- I knew what workstream he was working on; we worked together. We had -- they
3 evolved. It's not that I didn't know the workstream. I certainly did. It's that the investigation
4 was very new at the beginning, and as it matured, our investigative focus sharpened. So the
5 workstreams became more clearly defined.

6 But early on, I'd say -- you know, Thomas and I worked, you know, side by side on whole lot of
7 things. He maybe took more of a leading role on the fraudulent electors issue at the beginning as
8 that came up. You know, that is a workstream that changed personnel a lot over time. But he
9 maybe took lead on that. There were issues related to John Eastman and legal theories presented
10 to Mike Pence and all that. That wasn't a specific workstream, but that was the thing that came up.
11 In those early days, I wasn't really looking at the White House. Like, the President and the
12 White House were of interest to me only in that the President was a person like several others who
13 had interacted with Jeff Clark with DOJ. But as White House stuff came more into focus, Thomas
14 spent a good deal of time on that.

15 Q Okay. And when you say when the White House stuff came into focus, what White
16 House stuff came into focus, if you will?

17 A Well, again, this was a focus that developed over a long period of time. But what came
18 into focus over time was that President Trump may need to become a subject into which we inquired
19 in our investigation. And I'll pause right there before I go any further and say, when I say subject, I
20 mean -- like, I'm not a prosecutor anymore, I got fired, but I -- when I was, we would use the term
21 "subject" to basically mean anyone within the scope of an investigation who wasn't, you know,
22 essentially just like a witness, like an eyewitness, anyone who wasn't a target. So it's a whole lot of
23 people, right.

24 Q Okay.

25 A As we investigated the Jeff Clark components, the DOJ component that is, the

18

1 fraudulent elector stuff and that kind of thing, I felt like -- and this is sort of subjective. You know, if
2 you ask Thomas his opinion of how it evolved, might be a little different. But we kept seeing, you
3 know, investigative avenues that would lead us back toward President Trump and to the White
4 House.

5 Q Okay.

6 A And so naturally, this investigation, while it was, you know, kind of high profile, was no
7 different than any other that I'd ever -- that I had done in that you just -- you refine your investigation
8 and you follow the investigative leads where they go. And so when the investigative work started
9 to point us in the direction of the White House, we felt compelled to follow it in that way.

10 And so workstreams that developed from that were sort of generally, I guess ultimately, the
11 workstreams that people might associate with our election fraud case, the work that caused us to
12 inquire into whether President Trump and those allied with him had taken steps to corruptly impede
13 the transition of power through use of the fraudulent electors, through misstatements about, you
14 know, these completely unfounded allegations of fraud, through trying to unduly pressure Mike
15 Pence to change the outcome of the election, and to also, you know, cajole State and local leaders
16 and officials to do what they could to adjust electoral votes. I mean, that's -- so that's where the
17 White House work had developed.

18 I mean, the way I kind of describe it real simply is this: The DOJ case, you look up at the sky
19 and you see a star, and over time we backed out a little bit and saw it wasn't just one star, there was
20 a whole constellation, and they fit together. And seeing how all those stars sort of lined up with

21 each other took a lot of -- that was something that became clear as we investigated independently
22 our workstreams and sort of saw how things ran into each other, lined up with each other, and
23 realized that there might be -- and indeed to my belief and opinion based on the evidence was unity
24 to these workstreams that had not been immediately apparent to me and perhaps to anyone on the
25 team when we started the investigation.

19

1 Q And so did your work on specifically looking into misconduct at the DOJ, did that ever
2 end or did you continue to work on that between -- I'm talking in the timeframe January 2022 to
3 November of 2022?

4 A I worked on that throughout that time period. Wasn't the only thing I worked on, but
5 it was a main thing I worked on, yeah.

6 Q Okay. And can you just kind of list off what various investigative streams you worked
7 on? I know we have the misconduct at DOJ and then the White House streams. Were there
8 other --

9 A Do you mean -- do you mean during that early 2022 period or throughout my time as
10 special counsel?

11 Q I just mean in the 2022 period, the January to November.

12 A Okay. Yeah, yeah. You know, we -- I principally did the DOJ workstream. That
13 was --

14 Q Okay.

15 A That was my main focus. But like I said, we were a small team and we weren't siloed
16 off from each other. So if there was investigative work to do related to any other workstream, I
17 would -- there was a decent chance that I could be pulled into that. You know, we just -- we
18 all -- Thomas, Ahmed, Teresa, Alex, and I -- we would talk, you know, regularly. We knew what
each

19 other were do -- we each knew what the other was doing, mostly. And when one of our sort of
20 areas of focus needed more manpower or someone just, you know, we would jump onto the thing.
21 So I principally did the DOJ stuff, but I also helped broadly with just about anything during
22 that time period. You know, maybe we had subpoenas out to fraudulent electors; I could have had
23 some role in that. You know, issues related to the lawyers and stuff in the -- the Trump legal team,
24 stuff like that. It was a little bit of everything we did.

25 BY :

20

1 Q Can I ask you, the term "fraudulent electors," when did that come into focus as opposed
2 to alternative electors?

3 A You asking me?

4 Q Yes.

5 A I call them alternative electors to be diplomatic and nice. To me, they were fake
6 electors.

7 Q Okay.

8 A And we call them fake electors -- I mean, just like, as we're talking to each other, you
9 know, the team, we think they're fake electors, but we chose -- I think we -- you know, we use
10 different terminology -- fraudulent electors, alternative electors. There was nothing particularly,
11 like, intentional about it. It's just we realized -- we realized that an investigative piece we were
12 going to get a look at was these slates of electors that had, in fact, not been chosen by the voters

13 and -- by the voters in their respective States. And so we just had different ways to shorthand and
14 call them that.

15 Q Okay. But if, you know, President Trump had won one of those States, those electors
16 would have been the electors, correct?

17 A Probably. I mean --

18 Q So isn't it more, you know, precise to refer to them as the Trump electors or alternative
19 electors rather than fraudulent electors, because --

20 A Because?

21 Q Because, you know, there were a lot of -- a lot of very serious issues with a number of
22 States -- Georgia, Pennsylvania, Arizona, Michigan. And at the time, you know, during times
23 relevant, the President and his allies believed that they had won some of those States. And had
24 they won some of those States, wouldn't those electors have served as the official electors?

25 A A few points to try to respond to everything. I understand your question but disagree

21

1 substantially with the -- with some of the facts that you put in there as to whether there really were
2 problems in these States and what people might have believed. I said that --

3 Q Let me back up. Let me back up. I didn't say there were problems. What I said was
4 President Trump and his allies believed there were problems.

5 A Okay. I understand your question. I take the question. I am not addressing
6 whether I agree with that factual assertion, but what I will tell you is this. First, as we look through
7 today, the electors, I mean, is shorthand to me. You want to call them the Trump electors, you're
8 welcome to call them the Trump electors. I mean no offense to anybody in the nomenclature that
9 we choose.

10 There was certainly a theory that was, you know, that was something that we investigated in
11 our case that if the electoral votes had been sent back to the various States and, you know, through
12 litigation, President Trump was determined to have won the States and President Biden had not,
13 there was certainly a theory that these electors would then have become the duly appointed electors
14 from those States. That was a theme that was part of the case, yes.

15 Q Okay. So referring to them as fraudulent electors or fake electors is just -- I mean, it
16 just seems to me that, you know, it reveals a state of mind that the Justice Department, you know,
17 had concluded very, very early on that these were not the Trump electors, these were somehow
18 electors that were procured in a fraudulent manner.

19 A Is that a question to me?

20 Q Yes.

21 A What is the question?

22 Q The question is, don't you see that as an issue? You know, the investigators, especially
23 Justice Department criminal prosecutors, you're supposed to enter into these matters with an open
24 mind. And if right away at the outset your state of mind is that these electors are fraudulent
25 electors or fake electors, doesn't that cloud the whole investigation?

22

1 A No. And I disagree wholeheartedly and completely with the suggestion that we had
2 any predetermined ideas. When I got on this case -- and I'm going to speak for myself, but I also
3 think this is true of all my colleagues -- I was stunned to be asked to participate in the DOJ
4 investigation, stunned that I would be entrusted with something of that magnitude.
5 And from the day I started, I took seriously, deadly seriously, my obligation to be neutral and

6 fair and impartial. I recognized from the start, even before the investigation grew into the thing it
7 grew into, that this was a unique and potentially prominent and potentially very serious
8 investigation. The gravity of that humbled me and was never lost on me. And I made it my duty
9 throughout, as I did in every case, to have no preconceived notions, allow no personal feelings to
10 enter into decision-making but just, rather, proceed dispassionately and neutrally in the
11 investigation. And so that is what I did and what I saw every member of my team do.
12 If for the sake of today's conversation you want to refer to the electors as Trump electors,
13 alternate electors, that's fine. I consider it no value judgment, just shorthand to describe something
14 that would take a package of words to describe otherwise, but we had no preconceived notions.
15 In my mind, the fakeness wasn't a democratic -- or Democrat or Republican thing. Fake or
16 fraudulent or whatever was just simply, by the time we're investigating, the election had long been
17 over, the election had long been certified. And in each State certain electors had been identified as
18 legitimate ones and certain had not. It was as simple as that.
19 Q Okay.
20 BY :
21 Q While you were investigating the alleged misconduct within the DOJ, did you ever
22 interact with anyone from the DOJ'S Office of Inspector General?
23 A I did.
24 Q And what was their role in that specific piece of the investigation?
25 A So for sometime in those early days, we worked with DOJ OIG agents. It was a natural

23

1 fit early on because we were investigating potential misconduct within the Department of Justice.
2 And so the Inspector General's Office was a sort of normal landing spot for -- that took that case.
3 Q And how many DOJ OIG agents did you work with?
4 A There may have been other people sort of on the fringes adjacent to the case, you
5 know, analysts or back office people or someone else. But the ones I remember most prominently,
6 there were two agents with whom I worked, one named Brian Burnett --
7 Q Okay.
8 A -- and one named Jake Higley.
9 Q And what was Special Agent Burnett's role in the investigation?
10 A Well, over time in my interactions with the OIG, Mr. Higley, Jake, played a larger role --
11 Q Okay.
12 A -- and was -- to my mind, he was the agent with whom I ended up doing more work.
13 Q Okay.
14 A But early on, Mr. Burnett was the OIG agent assigned to our case. And so he would do
15 normal agent work -- investigating things, dealing with subpoenas, I mean, that kind of stuff.
16 Q And did the OIG ever stop helping with the investigation?
17 A In '22?
18 Q In '22.
19 A No. No. The OIG was -- I don't know if OIG ever formally separated from the
20 investigation, but by the end of the Special Counsel's Office, we weren't really working, you know,
21 with OIG on a day-to-day at all. In '22, before we were the Special Counsel's Office, I feel like -- I
22 feel like OIG stayed involved to some degree.
23 Q Okay. And were Agents Higley and Agents Burnett the primary agents that you worked
24 with or did you work with anyone else?
25 A If I worked with anyone else, and they ever read this transcript, I apologize if I'm not

24

1 remembering you. But Agent Higley and Agent Burnett were the two agents I remember working
2 with.

3 Q Okay. And did you ever interact or speak with Inspector General Michael Horowitz?

4 A I don't recall. I don't recall. I had some calls with -- maybe a couple call or two with
5 management-type people at OIG. I can't remember who they are. It's possible that I was on a call
6 with Mr. Horowitz, but I don't remember specifically.

7 Q Okay. And beyond --

8 A I'm going to say I doubt it, but I don't know for sure.

9 Q Okay. Did you ever work with -- just think of outside entities right now. Did you ever
10 work with the National Archives Inspector General?

11 A Our team did.

12 Q Okay.

13 A Our team did. I can't remember the NARA OIG agents' names.

14 Q Waleska McLellan, is she --

15 A That is a name that I remember.

16 Q Okay.

17 A Yeah. And I think we might have met once or twice. If you've got other names -- it's
18 been so long. There were maybe a couple other people, I was trying to remember their names.
19 But the bottom line is NARA OIG was, you know, attached to our team in some way at some point.

20 Q Okay.

21 A But to my recollection, if I -- while I'm sure I did interact with those folks some, I don't
22 remember specific interactions or agents really. That wasn't --

23 Q Okay.

24 A -- my thing.

25 Q They weren't part of the investigative stream for misconduct at DOJ?

25

1 A That's not to say they weren't, right.

2 Q Right.

3 A Because, again, one thing that I do want to convey is it was kind of fluid. If we
4 needed -- we were all -- it wasn't like -- you know, we're not running, playing football, and Thomas is
5 the wide receiver out this way, and I'm the wide receiver over here, and, you know, Alex, the
6 quarterback or something. We all would sort of shift on to doing things together. We were a
7 team more than like a group of siloed individuals.

8 So I can't tell you for certain that NARA OIG didn't help in some way. NARA OIG may
9 have -- may have -- done something ancillary to the DOJ stuff, but I do not remember that happening.
10 I don't have any recollection that they did.

11 Q Okay. What about the United States Postal Inspection Service?

12 A I think we did have a guy from Postal, but I don't remember who it was, and I don't
13 remember what his role was on the case, and I don't think he was on the -- I don't think Postal
14 participated very much in the case.

15 Q Okay.

16 A Just -- again, I don't recall. I can tell you that most of the work that I did from '22
17 through '25 was with the FBI and in the early stages with Jake and Brian at DOJ OIG.
18 Okay. I'm going to mark this as exhibit No. 2. It's a DAG briefing document.

19 [Duree Majority Exhibit No. 2.]

20 was marked for identification.]

21 BY

22 Q And this is a seven-page document with bullet points. You should take your time to
23 review, but I'll point and refer to specific pages and bullets.

24 A Do you want me to sit and read the whole thing for a few minutes or you want to just
25 ask me?

26

1 Q It's up to you what you want to do. I'm going to refer you to specific bullets, so
2 whatever you'd like to do.

3 A Okay. Give me a second just to familiarize myself with it.

4 Q Yep.

5 A Okay.

6 Q Okay, great. Have you seen this document before we gave it to you today?

7 A I don't know.

8 Q Okay.

9 A This reminds me that there was a -- called DAG briefing. There was a briefing of

10 Deputy Attorney General Monaco --

11 Q Okay.

12 A -- in the U.S. Attorney's Office, and it would have been sometime in the fall-ish of '22.

13 Q Okay.

14 A I believe -- I know we did put papers together for that. So I feel like this is something

15 that I've seen, and I feel like this is probably that, but I can't tell you for sure.

16 Q Okay. And the DAG briefing that you're remembering in the fall of '22, did you

17 participate in that briefing?

18 A I did.

19 Q And who else went along to the briefing? Was it the whole team?

20 A Yeah, I think. I mean, I don't know if there was one person -- I don't know if someone

21 might have been absent that day or what. But, yeah, roughly. The team as constituted at that

22 time and the names on this -- this includes a lot of names that I didn't mention from those early

23 days -- this includes the people who have joined onto the team in that like post-Labor Day, around

24 Labor Day-type period when we grew.

25 But, yeah, as I remember it, most or all of us were there. We sat in the room in the U.S.

27

1 Attorney's Office and we briefed the DAG on the case.

2 Q And your name is down next to the -- on page 4, it's down next to the Jeffrey Clark

3 workstream. Did you present at the briefing on the status of the investigation?

4 A I did. I did. I don't think -- I don't know that I wrote this. There are parts of this

5 that made me think I didn't write it or someone else might have finalized it. But, yes, I did present

6 to Deputy Attorney General Monaco on the Jeff Clark/DOJ workstream.

7 Q Okay. And as part of the Jeff Clark workstream, it was Representative Scott Perry was

8 kind of involved in that area. And on here, on page 4, there's a bullet point that says, "The key

9 individuals in this investigation, including witnesses are" -- then it mentions several individuals --
and

10 it says, "Perry, subject light/intermediary." We had had a discussion about the use of "subject".

11 What can you tell us, what does subject light mean?

12 A I don't know. I don't think -- I say I don't know, but I'll tell you my best.

13 Q Okay.

14 A I don't think that I -- this is one of the things I was saying that made me think I didn't
15 probably write this exactly. I may have. I may have. But "subject light" isn't terminology I think I
16 would normally use.

17 But as I understand it, you know, as I described, there are three categories, right: witness,
18 target, and subject. But subject is the big one. Subject is like most people, right. You're
19 either -- anyone who might be within the scope of the investigation can be a subject. So it can be
20 useful at times, whether it's subject light or something else to denominate the same thing, can be
21 terminology to suggest that this person is a subject but is trending investigatively in one direction.

22 Q Okay.

23 A So I would say, you know, you could be a subject trending towards becoming a target if
24 the investigation's turning up a lot of evidence of your criminal culpability. You could be a subject
25 trending towards witness if the investigation is revealing that while you are within the scope of the

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1 investigation, you perhaps are not someone on whom we at that point are thinking we're going to
2 develop evidence to charge, but we don't know yet.

3 So I think subject light is just an effort to try to situate, if Perry is referring to Congressman
4 Perry, an effort to situate Congressman Perry within the broad spectrum of subject to understand
5 kind of, you know, how we viewed him at that point in the investigation.

6 Q Okay. So would subject light have been on subject trending toward target or subject
7 trending toward witness?

8 A I mean, I don't generally call people subject light. It seems like a diet drink. It's an
9 odd way to put it. But I would guess that subject to me, subject light means as we -- if we took a
10 snapshot of this day in time, we think that you are probably moving roughly in the direction towards
11 witness, but you are certainly not a witness. We don't know. We have a lot of investigation left to
12 do, but at this point what we are seeing is suggestive of you're basically sort of being downgraded
13 through the, you know, tiers of subject-dom.

14 Q Okay. And a few months before this, August 9th, 2022, the Justice Department seized
15 Representative Perry's cell phone. Were you involved in seeking the search warrant for Mr. Perry's
16 cell phone?

17 A I would -- yes. I was not involved in seizing the phone, like physically seizing it.

18 Q Okay.

19 A That's what the agents would do. I was involved in building the evidence for that
20 search warrant.

21 Q Okay. And who else was involved in building the evidence for the search warrant?

22 A I was. I mean, me.

23 Q Okay. Were you the --

24 A No, I would -- there's no universe in which I'm going to put together, no matter how
25 strong the evidence is, there's no universe in which I am going to put together and get a search

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1 warrant on a Congressman's cell phone without the input of others.

2 I would think that -- you know, Teresa was working -- Teresa was working the DOJ stuff with
3 me. Teresa would have been involved. But Thomas probably would have had some involvement.
4 And, you know, whether Alex or Ahmed did, I would think they certainly would know about it

5 because we were a small team, we talked about it. I would have, of course, run it through
6 supervisory chains and all that kind of thing.

7 But I would -- I would say that I was the person who did -- I would say -- I will say, I am saying,
8 I was the person who did the -- I was the person who did the most work to prepare that search
9 warrant.

10 Q Okay. And when did the idea come about that you thought you needed Mr. Perry's
11 cell phone?

12 A It came about as we were investigating the DOJ misconduct. I can't tell you when the
13 seed first planted in my head and then, you know, blossomed. But in that period from January till
14 beginning of August -- or probably -- I guess we probably wrote the warrant before August. So
15 January till, you know, prior -- before the search warrant, sometime in that range, as we developed
16 the evidence of what had happened within DOJ and the effort to elevate Jeff Clark to the attorney
17 general's role, Scott Perry featured significantly in that effort.

18 And so at some point -- and I can tell you more about how the investigation went if you want
19 to, but at some point in that period, I probably came to think that Scott Perry's phone would have
20 evidence that would be beneficial to that case and evidence of a crime.

21 Q And what evidence were you looking for? I mean, when they took the phone, they
22 took, as we understand it, like a full copy of the phone. They got like the photos of him and his
23 children and all of that. So, obviously, I didn't think you probably needed the photos of him and his
24 children, but what contents were you specifically looking for?

25 A Well, I mean, technically, you're looking for information that might exist on that phone

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1 that provides evidence of the criminal conduct you are investigating. So that could be text
2 messages, Signal, WhatsApp, you know, photos, in some cases, emails, whatever's on a phone. I'm
3 not saying that just specific to Scott Perry, when you seize a phone, you're looking for evidence that's
4 on that phone.

5 Congressman Perry was very -- again, you are testing my memory because this has been some
6 years. But what I came to understand about the DOJ scheme essentially is -- what I'm calling the
7 DOJ scheme right now -- was this effort to elevate Assistant Attorney General Jeff Clark, who had
8 previously been the Assistant Attorney General over the Environment and Natural Resources
9 Division, and then was the Acting Assistant Attorney General over the Civil Division -- it was an
effort

10 in late December and early January to elevate him to the Acting Attorney General role so that he
11 could -- and one result of that would have been, had he obtained the role, that he would have been
12 able to send a letter falsely telling State legislatures, including the legislature in Georgia, that there
13 was -- I forget the exact wording -- but evidence of -- significant evidence of fraud or misconduct,
or

14 something like that, that might warrant pulling back the electoral votes. And the whole, you know,
15 outcome of this, if all that would have happened, could have been to destabilize the elections in
16 those States to which he sent the letter and maybe even others where he didn't, with the end result
17 of potentially causing the electoral votes to be pulled back, I guess, hypothetically.

18 I say all that to say, Scott Perry was connected to that throughout. What we found was that
19 Congressman Perry had, it appeared, introduced Mr. Clark to President Trump around the 20th, 21st
20 of December, and that Congressman Perry was in close contact with Jeff Clark throughout the
period

21 of, like, that December 20th or 21st through January 3rd when the scheme climax had ended, more
22 or less.

23 So he was in close contact with Mr. Clark. He was in close contact with other -- a lot of other
24 people that were connected to both the DOJ scheme and the sort of overall effort to overturn the
25 election. We knew that he had text messages, Signal messages, other communications with Jeff

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1 Clark. We knew that he had been involved in, you know, looking at election fraud-type stuff in
2 Pennsylvania in December. We knew that -- so I guess I'll stop there --

3 Q Okay.

4 A -- and just end by saying, there were many factors, many points of contact, many pieces
5 of evidence indicating that Scott Perry was closely connected to the effort to install Jeff Clark as the
6 Acting Attorney General, which -- and we believed that we had probable cause to find evidence on
7 that phone related to that criminal scheme.

32

1 [10:58 a.m.]

2 BY

3 Q And I think we can agree that seizing the phone of a sitting Member of Congress is a
4 pretty serious investigative step. Would you agree?

5 A I think seizing anyone's phone is a significant investigative step, and I recognize it as
6 such and take it seriously, yeah.

7 Q And you had mentioned your supervisory chain was involved. So what sign-offs did
8 you have to get in order to go after a search warrant for a -- or seek a search warrant for a sitting
9 Member of Congress' cell phone?

10 A I cannot remember the specific approval chain.

11 Q Uh-huh.

12 A I -- you know, I haven't seen those emails in years, and don't remember exactly emails
13 and calls we had.

14 That approval chain would have involved PIN, the Public Integrity Section. That would have
15 been important. That would have probably involved at least the knowledge and buy-in of my
16 supervisory chain, which at the time would have been Crim. Potentially, you know, the others, the
17 U.S. Attorney's Office might have known about it and buy-in as well. I just don't -- I don't
18 remember.

19 In some things -- I'm not saying that this was or wasn't -- but some things that were
20 particularly prominent required us to give notice to the Deputy Attorney General's Office as well.

21 Q Okay.

22 A So I know that's not a particularly precise answer, but it's just because it's been a long
23 time. I don't remember specifically, but I know that PIN, my supervisory chain, and Crim would
24 have definitely been involved and potentially those others as well.

25 Q And what conversations can you tell us about that took place regarding seeking consent

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1 to obtain his cell phone prior to obtaining a warrant?

2 A Seeking consent from whom?

3 Q From Mr. Perry or Mr. Perry's attorneys to search the cell phone.

4 A It would -- I don't remember doing that. It would be extremely abnormal in any
5 criminal case for -- for me to seek consent to just have someone hand their phone over when we

6 believe there is probable cause of a crime and they were a subject of the case and all that.

7 So I don't -- I don't remember having any conversations like that, and I don't think that I
8 would have.

9 Q And what conversations do you remember regarding the Speech or Debate Clause?

10 A A lot.

11 Q What can you tell us --

12 A A lot.

13 Q What conversations took place prior to seeking the warrant?

14 A I mean, we're getting on to the hour. Do you -- this could take me a little while.

15 Q Let's get started, yeah.

16 A Okay. The Speech or Debate Clause is something that we took incredibly seriously.

17 The Speech or Debate Clause protects from -- protects Congress -- Members of Congress from

18 prosecution for, you know, legislative acts within the scope of their job, roughly, for the sake of this
19 conversation.

20 In D.C. -- in D.C., there is specific case law named after this beautiful office building in which

21 we sit, called Rayburn that provides that in the D.C. Circuit not only are Speech or Debate protected

22 materials, things that can't be used in prosecution, but also that prosecutors can't take those

23 materials, can't have them, right?

24 Q Uh-huh.

25 A So --

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1 Q Were prosecutors concerned that there were Speech or Debate covered materials --

2 A Oh, yeah.

3 Q -- on Mr. Perry's cell phone?

4 A For sure. I mean, I was not concerned thinking, Oh, my goodness, there's Speech or

5 Debate materials or anything like that.

6 When I say concerned, I mean there is a recognition that when I'm dealing with a Member of

7 Congress, there is a possibility that that Member of Congress could have Speech or Debate protected

8 materials on their phone, and it is absolutely the best practice and the only practice I would endorse

9 to think that through on the front end and take steps to protect those materials from disclosure to

10 you for the sake of, you know, the Congressman and the legislative process, but also for the sake of

11 the prosecution and the team, just to keep everything as it should be under the law, right?

12 So yeah, we definitely -- we definitely knew that we had to be thoughtful about that, and we

13 implemented protocols that I can try to remember and describe to you, very thoughtful protocols to

14 ensure that there was a review process in place that made certain to the very best of our ability that

15 we would obtain relevant evidence that was not Speech or Debate protected and not accidentally

16 stumble into Speech or Debate materials.

17 Q And what can you tell us about the -- there was a DOJ OIG agent who went along to

18 serve the search warrant.

19 Do you remember if that was Mr. Higley or Mr. Burnett?

20 A I think it was Jake.

21 Q Okay.

22 A I think it was Mr. Higley, I should say.

23 Q And what was his involvement in seizing the cell phone? I know we have a minute left,

24 but --

25 A They had to get the phone. The physical location was somewhere on the Jersey Shore.

35

1 Because that's -- I guess Congressman Perry was in Jersey at the beach on vacation, and I was not
2 there. I did not go.

3 But my understanding is that Mr. Higley imaged the phone, that is, took the forensic copy of
4 it. And one thing that I remember being particularly careful about, right, is when you seize a phone,
5 you seize a phone.

6 It's -- you have -- I say you. I'm talking in the second person. The Federal Government,
7 having seized the phone, has the right to possess and extract the information from it.

8 In this particular case, I know I sure wanted, and I think the whole team wanted to image the
9 phone and get it back to Congressman Perry as quickly as possible. We were trying real hard to do
10 this in a way that was minimally disruptive, it was as respectful as it could be, and it didn't put
11 Congressman Perry in an awkward spot where we're seizing a phone right out on Independence in
12 front of the Rayburn Building or it's some big hubbub. So we tried to be very discreet, very
13 cautious, very careful.

14 And that goes to your question about Mr. Higley. My recollection is that Mr. Higley, upon
15 seizing the phone, that Mr. Higley and the other agent that was with him imaged that phone as
16 quickly as the data could be transmitted over, as quickly they could find a spot to do it and do it,
17 couple of hours, and then went and gave it -- gave the phone back to Congressman Perry.

18 So Mr. Higley's role was -- you can ask Mr. Higley -- but as I remember it, it was to image the
19 phone and get it back to the Congressman.

20 We're at the end of our hour, so we'll go off the record.

21 [Recess.]

22 We'll go back on the record at 11:12 a.m.

23 BY :

24 Q Just to reintroduce myself, I'm . I'm joined by . We're with

25 Mr. Raskin's staff. We'll take this hour to ask you questions just like the majority did last hour.

36

1 A Yes, sir.

2 Q But I do want to touch a little bit on your background just a little bit more.

3 Where did you go to undergrad? Where did you go to law school?

4 A I went to undergrad and law school at the University of Texas.

5 Q Okay. That describes the football analogy from the last hour.

6 And you started at DOJ, again, at 2012. Is that about right?

7 A Yes, sir.

8 Q And you stated about 4 years before graduating from law school and then starting at

9 DOJ. Is that about right?

10 A It was about -- are you asking me where I was for that 4 years?

11 Q The time -- yeah, I was about to. Sure. Can you let us know where you worked
12 before joining DOJ?

13 A Sure. I graduated from -- I grew up in Texas. I was in Austin for college and law
14 school. I graduated law school in 2008 and worked at a firm here in D.C. until 2010.

15 In the fall of 2010, I moved to Del Rio to clerk for a district judge on the Western District of
16 Texas. And I clerked for Judge Moses, the same judge, for, I guess, a little under 2 years, year and a
17 half --

18 Q Okay.

19 A -- until I joined DOJ.

20 Q So about the DOJ, I guess, what was your motivation in wanting to be a prosecutor and
21 wanting to work at DOJ? And this might be, like, an obvious question, but I just want to hear from
22 you what your motivation was.

23 A It's -- I believed it would be and it proved to be a job where I every day was able to go in
24 and do work of purpose, work of meaning where I felt like I got to do something that was good for
25 the world. You're helping to uphold the ideals of justice and equality and all those good principles.

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1 And there are few jobs out there where you're entrusted with the responsibility to ensure
2 that our legal system operates fairly, transparently, and equally for everybody. So it's -- it was a fun
3 job and a meaningful job, and that's why I did it.

4 Q Do you feel like you're able to live out those ideals you just described during your about
5 12 years at DOJ?

6 A Yeah. I mean, I outkicked my coverage. I certainly did. I was thrilled to get
7 the job in Del Rio, and I never expected that I would get to do anything -- I was honored and
8 surprised to get that job.

9 I never expected that I'd get to do the kind of work that I got to do at the Criminal Division. I
10 never expected that I would be able to supervise really talented prosecutors like I did in New Jersey
11 and New York, and I certainly never expected to be entrusted with a case as -- with a role on a case
12 as important as this one and to work with such brilliant and decent and good people as I was able to.
13 So yeah, like, I got -- getting -- having it end with getting fired is no fun, but I got to -- I feel
14 blessed and honored that I got to work at DOJ for a long time and do the things I did.

15 Q And thank you for your service. And despite how it ended, overall, looking back, are
16 you proud of the work even up to the last day? Are you proud of what you were able to do at DOJ?

17 A 100 percent. And that includes -- and I'll emphasize while we're talking about
18 everything -- at the special counsel's office, most definitely. Very proud of it.

19 Q So I'm familiar -- I am familiar with Del Rio and the Western District of Texas.

20 A Awesome.

21 Q So I do want to ask a few questions. I have a feeling it might be quite a few numbers.
22 But looking back all the way to the Western District to your time at Main Justice and Crim,
23 approximately how many investigations were you involved with or that you led? Just give us like an
24 approximate number over that time period.

25 A At least hundreds, if I include management and personal, you know, work on the line as

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1 well, yeah.

2 Q And going back again, similarly, about how many cases, going all the way back to your
3 days in the Western District of Texas do you imagine you might have tried in court? Every
4 prosecutor knows this answer, by the way.

5 A I wish I did. More than a dozen. I can't tell you specifically.

6 Q Okay. But more than a dozen. Is that a fair estimate?

7 A Yeah. I'd say at least around a dozen is right, yeah.

8 Q During your tenure in the Western District of Texas and at DOJ, did you receive any
9 awards for your work?

10 A I did. I did.

11 Q Can you describe some of those, and please do not be humble here. Can you share
12 some of the awards that you're most proud of?

13 A I don't know that I know the names of them.

14 Q You can just describe them, too.

15 A I mean, I did get -- I did get a few. A line of thinking is that you stick around DOJ long enough, they'll give you an award for something, right? But I got -- I remember getting an award from -- distinguished service award or something like that. That might be the wrong name. I don't mean to act like I wasn't honored by getting the award. I just don't remember the exact name at this point.

20 I got an award from the Attorney General for one case that we built. I got an award from the Assistant Attorney General of Crim Division for some COVID-related cases; an award from, I think,

22 the Inspector General's Office of -- at some point, or a group of Inspector General's Offices, yeah, anyway.

24 Q And, look, I know you touched on this in the last hour, and so I just want to make sure we understand the timeline. It sounds like you got the call from Mr. McQuaide to start working on

39

1 the Jan. 6 cases on the back end of January of 2022. Is that correct?

2 A That's correct.

3 Q And which investigations were you working on when you were assigned in January 4 2022?

5 And the way we've broken it out in our head is there's the rioter cases and then there's the election conspiracy cases. I guess, which bucket were you working on?

7 A I worked on what became the election conspiracy cases. I did not work on the rioter cases.

9 Q And what was your direction or your marching orders, per se, when you were assigned to these January 6th cases -- or I think it was a DOJ-related case?

11 A So I wouldn't -- I'd be careful not to call them the January 6th cases --

12 Q Right.

13 A -- because I roughly consider those to be more rioter-related.

14 But the marching orders, as I described and can describe in more detail if you want, was to look into whether there had been misconduct within the Department of Justice related to the transfer of power after the 2020 election.

17 Q And can you describe in general what this conspiracy was or what the criminal acts you were investigating related to the Department of Justice and misconduct within it?

19 A Yes. I mean, I guess, to put a statute on it, there are several that it could have been.

20 But I was thinking of this at times through a lens of 18 U.S.C. 1512.

21 The -- one theory that I had was that -- and that I think the evidence supported as to -- as to, you know, the Jeff Clark and Department of Justice is that the attempt to install Jeff Clark as Acting Attorney General was intended to destabilize the election results and cajole certain States into reconsidering and maybe changing their electoral votes.

25 And so one criminal charge that that could lead to is a charge for corruptly interfering with a

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1 Federal proceeding.

2 Q Thank you. And we'll get into this a little bit more a little bit later.

3 I'm going to introduce an exhibit. I think it will be exhibit 3. It's going to be document 1, which is the letter that this committee sent to you for those transcribed interviews.

5 [Duree Exhibit No. 3.

6 was marked for identification.]

7 BY

8 Q I'll give you a second to look over this. And, again, this is exhibit 3. It's a December
9 16, 2025, letter from this committee to Mr. Timothy Duree.

10 A Yes, sir. I've looked it over.

11 Q Okay. I'm going to read a few quotes from this, and then I want to get your impression
12 from it.

13 But in this letter to you for this interview, the chairman said that the committee has
14 been -- and this is a quote -- "investigating former Special Counsel Jack Smith's partisan
investigations

15 into President Trump and his associates following the 2020 election."

16 The letter continues by stating that your testimony is, quote, "vital to our investigation into
17 how the Biden-Harris administration weaponized the Justice Department for political purposes and
18 misused Federal law enforcement resources," end quote.

19 Now, just to make sure the record is clear, you were on the special counsel's team, correct?

20 A Yes, sir.

21 Q Was your investigation partisan, as the chairman's letter suggests?

22 A No, never.

23 Q Did you engage in partisan politics while investigating the crimes associated with the
24 conspiracy leading up to the January 6th certification?

25 A No, never.

41

1 Q Did you take investigative steps simply because the target of the investigation was
2 associated with a certain political party?

3 A Absolutely not.

4 Q Did you investigate President Trump or any of his associates because they were
5 members of the Republican Party?

6 A Absolutely not.

7 Q Did you take investigative steps and request records because the subjects of those
8 requests were members of the Republican Party?

9 A No, I did not.

10 Q If a Democratic member would have been involved in the conspiracy to overturn the
11 2020 election, would you have taken the same investigative steps with them, too?

12 A Definitely.

13 Q In general, what is your response to this committee's assertion that you were part of a
14 DOJ that was weaponized for political purposes?

15 A That is entirely false. Our -- our team adhered to the highest principles of the
16 Department of Justice throughout. We took it as our mandate to be transparent, thoughtful,
17 honest, and evenhanded in everything that we did. There was not a single instance in which
18 partisan favoritism ever factored into any of our decision-making.

19 Q I'm going to take -- build upon your single instance language there.

20 It sounded like from the last hour, you know or worked with Mr. J.P. Cooney. Is that
21 correct?

22 A I did. I think highly of J.P.

23 Q And very high level, what was his role overall in this investigation?

24 A He was Mr. Smith's deputy.

25 Q And did you ever encounter or witness Mr. Cooney taking an investigative step in a

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1 partisan manner?

2 A Absolutely not. J.P. is a straight arrow, and one of the best prosecutors I've ever
3 known. He would not and did not do that.

4 Q And are you familiar with Molly Gaston?

5 A Yes.

6 Q How do you know Ms. Gaston?

7 A Ms. Gaston was also on the special counsel's team. She was a supervisor of our
8 election fraud case.

9 Q And did you ever encounter Ms. Gaston taking investigative steps or speaking in a
10 partisan manner while in the investigation?

11 A Never. Again, Ms. Gaston is a spectacular prosecutor and a spectacular person. And
12 I have never seen her do anything except act with the greatest respect for the traditions and norms
13 of the Department of Justice.

14 Q And what about Mr. Thomas Windom? You mentioned him in the last hour as well.

15 A The answer will sound familiar. I think Thomas is an amazing prosecutor and an
16 amazing person with an ethical compass that points to true north. I have never seen -- never seen
17 Thomas do anything other than act with the greatest integrity. He was -- he never acted with
18 partisan favoritism.

19 Q Okay. And last but certainly not least, Special Counsel Jack Smith, I'm assuming you
20 know Jack -- Mr. Smith?

21 A I do. I do.

22 Q And did you ever witness Mr. Smith taking investigative steps, or directing investigative
23 steps in a partisan manner?

24 A Absolutely not. It is my impression of Jack that he is one of the most unfailingly ethical
25 and disciplined people I ever have known, and I think he would be disgusted if anyone in our office

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1 ever considered for a second doing something like that. Jack would not permit it.

2 Q Did you ever encounter the special counsel targeting or directing an investigation
3 directly at President Trump because of Mr. Trump's affiliation with the Republican Party?

4 A Absolutely not.

5 Q So going back to the overall premise of the special counsel's indictments, of your team's
6 indictments, do you believe there was sufficient evidence to justify bringing charges -- the charges
7 that were brought against President Trump?

8 A Absolutely.

9 Q I'm going to actually -- I'm going to go a little off track. I want to go to the
10 Congressman Perry's cell phone discussion.

11 A Okay.

12 Q It sounds like you were involved in the investigation into Mr. Jeffrey Clark. Is that
13 correct?

14 A Yes, sir.

15 Q And through that investigation, is that what led you -- the facts led you to Congressman
16 Perry. Is that correct as well?

17 A They did.

18 Q Can you walk us through -- because I've heard a lot of prosecutors say you follow the
19 facts and the law. Is that what you did in this investigation?

20 A Yes, sir, it is.

21 Q So how did we get from investigating misconduct within the Department of Justice with
22 Mr. Jeffrey Clark to, you know, a court-authorized seizure of Mr. Perry's phone? And summarizing
23 is fine.

24 A Because the evidence indicated that Mr. Perry was involved with Mr. Clark and others to
25 advance the effort to have Jeff Clark installed as the Acting Attorney General. And we sought a

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1 search warrant for Congressman Perry's phone because the evidence we had developed to date led
2 us to believe that there was probable cause that on Congressman Perry's phone would be evidence
3 of the criminal conduct we were investigating.

4 Q And I guess, let's take a step back. What is a search warrant? We've used the term
5 frequently. I think all of us probably know what it is, but what is a search warrant?

6 A A search warrant is an investigative tool and legal process that allows -- allows
7 prosecutors and agents, upon a showing of probable cause, to access things to which they might
8 otherwise -- to which they would otherwise be unentitled to access, things like a cell phone in this
9 case. But a search warrant can also be used to permit access to a house, a locked car, all types of
10 things.

11 Q In layman's terms, what is probable cause? Sorry for the law school exam here, by the
12 way.

13 A Probable cause, I'll ask my attorneys to chime in if my criminal procedure is a little bit
14 messy.

15 But probable cause is, roughly, evidence more likely than not of the crime.

16 Q And it sounds like you were involved in seeking this court authorization to search
17 Congressman Perry's cell phone?

18 A I'm sorry. I spoke over you. Yes, sir, I was.

19 Q And you mentioned earlier that you would have never sought this step without, you
20 know, input from your teammates or even going to your superiors.

21 Can you just -- from what you remember, can you walk us through what that process would
22 have looked like before seeking this court authorization for Congressman Perry's cell phone?

23 A Well, I would have -- a lot of things would have happened. I would have pored over
24 the evidence that we had developed to date over those several months of the investigation to
25 determine whether it appeared there was probable cause, and in this case, satisfied myself that

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1 there was.

2 I would have needed to decide not only that there was probable cause, but that making that
3 showing of probable cause and getting the phone was something that I thought was going to be
4 investigatively productive and useful to the advancement of our cases.

5 I would have spent -- and believe I did spend -- a lot of time looking through evidence, looking
6 through records, tying the pieces together to, in the first instance, satisfy myself that the probable
7 cause was there and that this tool, which is powerful but also invasive and needs to be, you know,
8 wielded with caution, was one worth using.

9 After looking through the phone records, the -- you know, whatever else we may have had,
10 which was a lot, and convincing myself of that, I would have then written a draft of the affidavit.

11 I would have built this affidavit, along with the other members of my team, who were each
12 very smart, very seasoned, very ethical, and very thoughtful prosecutors. And I would have
13 solicited their input on whether we met the necessary standards, whether this was a good
14 investigative step, whether the evidence was articulated clearly, whether there were other things we
15 wanted to add and all that.

16 We would have all chimed in to create the best product possible.

17 Q You said -- it sounded like you had quite a bit of evidence even before requesting
18 Congressman Perry's cell phone or search of it. Is that correct?

19 A I believe so yeah.

20 Q So why then -- and I think I know why, but just for the sake of the record, why then
21 would you seek then to search Congressman Perry's cell phone if you already had a lot of evidence?

22 A Having a lot of evidence doesn't mean that you have all the evidence you want or all the
23 evidence you need. Investigations tend to proceed in phases.

24 And we, as investigators and as prosecutors, are constantly -- are building towards a
25 determination of whether we're able to get proof beyond a reasonable doubt. But more than just

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1 that, we want to be comprehensive and inclusive so we know that we have thoroughly considered
2 the evidence that may exist and the charges that we want to bring.

3 And so we had some evidence, but that doesn't mean we had all the evidence. And
4 moreover, just because we have some evidence against some people doesn't mean we have all the
5 evidence against all the people or even that we knew everybody that may have been involved.

6 And so obtaining all the evidence that you can in an investigation like this, I believe, is
7 necessary to being thorough, being comprehensive, ensuring that you understand the criminal
8 conduct correct, ensuring that you've included the right people in the case and excluded the right
9 people. It is -- it's the way that you are supposed to do your job diligently.

10 It is also, you know, fair to the defendants that you are -- the people being investigated
11 before they were defendants, that you are considering everything as diligently and thoroughly as you
12 can.

13 Q Is this a common investigative step in white collar investigations?

14 A A search warrant?

15 Q Search warrant for cell phone records, for -- to search a phone for communications?

16 A Yes, sir. I would say that it is.

17 Q Okay. And you mentioned beyond a reasonable doubt when you were talking about
18 the evidentiary standard and kind of describing why you would seek this type of evidence.

19 What is beyond a reasonable doubt?

20 A Beyond a reasonable doubt is evidence sufficient to satisfy you in the most serious of
21 your own personal affairs. Beyond a reasonable doubt is the standard you need to prove someone
22 guilty at trial, and it doesn't mean that there isn't some teeny tiny shred of possible doubt, but it
23 means, yeah, that you are satisfied to a degree that you would be in the most important of your
24 personal affairs.

25 Q Also in the last hour with the majority, they started on the discussion of Speech or

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1 Debate Clause issues. Do you recall that discussion?

2 A I do.

3 Q And it sounded like Speech or Debate issues were something that your team thought

4 about before going through Congressman Perry's cell phone materials. Is that correct?

5 A Yes, sir.

6 Q Can you walk us through just what that consideration looked like, and I think you even
7 mentioned that there were some thoughtful protocols, I think, is the term you used last hour.

8 Can you just walk us through what those protocols were? Like, what was your team trying
9 to figure out before going through with this investigative step with Congressman Perry?

10 A So we were fundamentally trying to ensure that we did not obtain evidence of
11 legislative acts to which we were not entitled and that we did not want to get. It can be challenging
12 to determine both what is -- it can be difficult to determine what a legislative act actually is, and it is
13 impossible to know what you are going to find on the phone before you find it.

14 So we implemented -- and if you ask me to tell you exactly what it is, I'm going to struggle on
15 the bit by bit. But we implemented filter processes that I believe involved Congressman Perry and
16 his lawyers, ultimately, that enabled us to have the assurance that we were going to properly exclude
17 evidence of legislative acts from things that we obtained.

18 Q So just to make sure I understand this, it sounds like Congressman Perry and his
19 attorneys were involved in this review prior to you all looking at the -- or using the materials?

20 A Yes. As I remember it -- this is to the best of my recollection -- our filter process did
21 involve, after we seized the phone, allowing them, his attorneys to look through the records, identify
22 things that they believed to be privileged, and then provided a mechanism by which disputes over
23 those privileged materials could be presented to the court for resolution.

24 Q And it actually -- these issues actually were presented to the court for resolution. Is
25 that correct?

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1 A They were.

2 Q Before I get to that, one thing that has come up in other instances of this investigation is
3 why didn't you all simply ask Congressman Perry to give over relevant materials from his cell phone?
4 Can you explain to us why you wouldn't have taken that step?

5 A That is not a step that I would -- that is not an approach I would take in any criminal
6 investigation. And it would -- I think that I am par for the course amongst prosecutors in that.
7 There are a lot of reasons why you wouldn't want to just ask someone for their phone.

8 Principally --

9 Q Sorry. Can I ask you to give us a few of those reasons?

10 A Yeah. Principally, it is because you want to obtain that evidence in unadulterated
11 form. And if I were to just ask someone to turn over their phone and give me evidence, they could
12 say no, they could delete things, they could modify things, they could add things, they could change
13 things. I would not have a clear and unvarnished picture of what was on that phone.

14 So there are a lot of reasons related to the preservation of evidence why you wouldn't want
15 to do that.

16 Q Would you say it's fair to say that by seeking a court authorization to search someone's
17 phone, it helps preserve the integrity of the investigation?

18 A I think that's fair, yes.

19 Q Okay. I'm going to introduce another exhibit. It will actually be a court opinion about
20 the Speech or Debate Clause issues.

21 [Duree Exhibit No. 4.

22 was marked for identification.]

23 BY :

24 Q So this will be exhibit 4. It is a December 19th, 2023, opinion out of the District Court

25 of D.C. I'll give you a second to look over that.

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1 A I'm familiar with this. Do you need me to read the whole thing?

2 Q Oh, no. I'll direct you to some pages as well as we go through this. Now, just to give

3 a little bit of procedural posture before this, please correct me if I misstate anything.

4 I believe there was a district court opinion that was initially entered over specific

5 communication by Judge Boasberg that went up to the circuit court, which then sent it back down to

6 Judge Boasberg to do a -- almost a document-by-document analysis under *Gravel v. United States*.

7 Is that what you recall as a summary of the procedural posture of this?

8 A One change. I think that the chief judge at the time this initially came before her was

9 Judge Howell. So it went from Judge Howell to the D.C. Circuit, and then to Judge Boasberg, who in
10 the time in between, had become the chief.

11 Q Thank you for that clarification. I appreciate that.

12 So let's start on page 1 on the bottom of the first paragraph. And just to add on to the

13 summary that I just kind of gave, specifically in your words, or in your opinion, why did the circuit

14 court or what was the reason for the circuit court remanding this case back down to district court?

15 I believe they talk about it at the end of the first paragraph.

16 A Yeah. I mean, it's -- the opinion sort of speaks for itself. And I would be hesitant to

17 say more about the circuit than I have to.

18 But essentially, yes, the D.C. Circuit wanted the district court to apply a fact-specific inquiry

19 that it believed the district court had not fully done the first time around.

20 Q Thank you. We'll go to page 11. So in general, I kind of just want to get a sense of

21 what the court ruled when it came to the actual records related to Congressman Perry and what he

22 had to disclose. Feel free to reference any part of this opinion.

23 I know that 11 and 12 talk about this. But can you give us a summary of what the court

24 ordered Congressman Perry to disclose?

25 A In summary, the court ordered Congressman Perry to disclose the vast majority of

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1 documents that were in dispute on the phone.

2 As I remember it, the court determined that many of the things that Congressman Perry was

3 claiming to be legislative act, materials were not, and so Congressman Perry was required to turn

4 over to us everything except certain, like, maybe legislative newsletters, things like that, that were

5 legislative acts.

6 Q Okay. And just to make sure it's clear for the record, from this opinion on the bottom

7 of page 11, it says that Congressman Perry must disclose to the Government 1,659 of the 2,055

8 records still at issue.

9 A Uh-huh.

10 Q Is that accurate with the opinion?

11 A I don't remember the exact -- that is what the opinion states, yes.

12 Q Okay. So additionally, the court said that Congressman Perry was only permitted to

13 withhold 396 documents under Speech or Debate Clause. Is that correct?

14 A That is what the opinion says.

15 Q So I guess taking a step back, would you say it was -- would you say or would you agree

16 with the assertion that Congressman Perry had the opportunity to litigate Speech or Debate Clause

17 issues before the Department of Justice was able to consider those messages or communications as

18 part of your investigation?

19 A He did, as evidenced by the fact that the litigation happened.

20 Q I think you also mentioned earlier when discussing investigative actions dealing with

21 Members of Congress or political leaders that you sought to, I guess, image the phone as quickly as
22 possible, I think, is the term you used. Do you recall saying that?

23 A I do.

24 Q I guess, why were you trying to image the phone as quickly as possible? You touched

25 on it a little bit, but I would love to hear why you were trying to image it as quickly as possible for

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1 Congressman Perry.

2 A To minimize the disruption to Congressman Perry, fundamentally.

3 Q And why was it important to minimize the disruption for Congressman Perry?

4 A We basically did not want to impede Congressman Perry's ability to use his phone and

5 live his life any more than we absolutely had to. We believed that we -- the court agreed that we
6 were entitled to the evidence on that phone.

7 We believed that we needed that phone -- that that evidence would be useful to advance our

8 case, but we also recognized that a search warrant is a powerful tool and invasive tool, so we wanted
9 to minimize the disruption.

10 Q Is this something, I guess -- and by "something," I mean, minimizing the disruption,

11 moving as quickly as possible when you image somebody's phone.

12 Did you do that with every subject of investigations during your career?

13 A I -- I tried to be as cautious as I could, and I always tried to remember not to allow

14 the -- I did my best not to allow the tools of criminal investigation to disrupt the lives of those who
15 were within the scope of the investigation any more than we had to.

16 This was probably quicker than a quicker-than-normal turnaround, but circumstances of cases

17 and facts of cases differ. I can't say that I turned many phones -- that I was on teams that turned

18 many phones around quite this quickly, but we tried to be fast and efficient when we could.

19 Q I'm going to introduce another exhibit. This will be exhibit 5, I believe, and it will be

20 the Volume 1 of the special counsel report.

21 A Okay.

22 [Duree Exhibit No. 5.

23 was marked for identification.]

24 BY :

25 Q Do you have a copy of volume -- are you familiar with this?

52

1 A I should probably look at a copy.

2 Q Please take a second to refresh your recollection. We're going to start on page 53, just

3 because I want to continue a line of questioning from the last hour, but then we'll go back to the
4 beginning after that.

5 A I'll tell you this. I'm not -- it's a long document. I'm not going to sit and read

6 150-something pages.

7 Q Great.

8 A But if, like, this -- from the few seconds I've looked at it, this appears to be the report of

9 the election investigation that we prepared at the end of the special counsel's office. And if that is

10 this report, I'm familiar with it.

11 Q So to carry on what you just said -- and thank you for that summary -- did you assist in
12 the preparation of volume 1 of the special counsel's report related to the election interference?

13 A I believe that I did.

14 Q And so I believe you just said also you're familiar generally with the contents of this
15 report?

16 A Yes, sir.

17 Q Actually, let's go right to page 53. During the last hour there was a discussion about
18 fake or fraudulent electors.

19 And I guess what the President Trump might have believed to be outcome-determinative
20 fraud or issues in certain States. Do you recall that conversation last hour?

21 A Yes. Yes, sir.

22 Q Would you -- I guess, the notion of President Trump believing an
23 outcome-determinative fraud, did you all seek evidence to see whether that was a reasonable
24 conclusion for the President to come to during this relevant time period?

25 A Yes.

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1 Q And what evidence -- just give us an example -- and I think page 53 actually outlines
2 some of the evidence you found that should have made it or President Trump should have known or
3 a reasonable person would have known that there was no outcome-determinative fraud for the
4 election integrity that caused him to lose?

5 A I cannot in the time we have identify all the evidence on that point because there was a
6 lot.

7 But in broad summary, the President's advisers, people that were in positions close to him,
8 positions that appeared to be positions of trust, told him at various points throughout the
9 election -- the post-election period that the allegations he was making were not substantiated by the
10 evidence. That was people, you know, at high levels within the Federal Government, like the
11 Attorney General, people, as I recollect, within the White House counsel's office.

12 Then that was -- those same statements were made by State and -- by State and local leaders
13 on the ground in the various States. So a few that come to mind, among many others, Brad
14 Raffensperger in Georgia, prominently, let the President know that allegations of fraud being made
in

15 Georgia were false.

16 The Attorney General of Georgia, Chris Carr, told the President that they weren't seeing
17 evidence of what he was -- what he was saying -- what the President was saying had happened.
18 In Michigan, State -- a State legislative leader that I'm thinking of right now also conveyed that
19 they were not seeing what the President was saying.

20 And I'll pause there for just a second to say, in each instance, these were -- these State and
21 local leaders were Republicans, people of the same party as the President. And a theme that
22 developed throughout the case is that it appeared that President Trump may have been preying on
23 party loyalty and presuming that people within his party would bend their ethics and their morals
24 and their sense of truth based on their party affiliation.

25 And we found out, reassuringly, happily, that there were a good many people who would not

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1 do that. So those were parts of it, and I'll continue just a little bit longer to say, there was also
2 significant evidence that we developed about the overall structure of how the elections worked in

3 each contested State, Michigan, Georgia, Pennsylvania, all six or seven of them.

4 And the evidence we developed made it clear that not only had the fraud being alleged not
5 happened, but that in many, many, many instances, the allegations that were made would have been
6 virtually impossible to have happened, that the structures and redundancies set up in these systems
7 would not permit such things.

8 So that's a relatively broad overview of some of the evidence.

9 Q Thank you. And just taking what you said, that thread of, quote, "virtually impossible,"

10 is it fair to say that the office -- the Special Counsel's Office developed strong proof that Mr. Trump
11 should have known that his election fraud claims were false?

12 A Yes.

13 Q Thank you. Going back to just the special counsel's report in general -- and special
14 counsels' reports in general, not just the one led by Mr. Jack Smith but led by others, do you think
15 it's

16 important for the public to be aware of special counsel's investigative findings?

17 A I hesitate to answer that question because I -- I do think that, yes, the public should be
18 aware. I also think that the rights of the criminally accused are paramount, and I wouldn't want to,
19 you know, accuse people of things that -- for which they've not been convicted.

20 But generally, yes, I know that prior special counsels have spoken about their work, and I
21 think that is a worthwhile thing.

22 Q And so going through what you just said of past special counsels speaking about their
23 work, to the best of your knowledge, was Special Counsel Mueller's report or parts of it made public
24 when -- at the conclusion of his investigation?

25 A I think so. I'm probably the wrong person to ask. I don't know -- I don't much
anything about any special counsel's office other than Mr. Smith's.

55

1 Q Okay. I'm just going to go through a few, and if you don't recall, that's fine.

2 Do you recall whether Special Counsel Hur's report was made public at the conclusion of his
3 investigation?

4 A Might have been.

5 Q And are you aware of whether Special Counsel Weiss's report was made public at the
6 conclusion of his investigation?

7 A I don't know.

8 Q Okay. In this report that you all drafted, volume 1 of Special Counsel Jack Smith's
9 report, it documents Donald Trump's crimes attempting to overturn the election results. So I want
10 to direct you to page 2 specifically here.

11 A Page 2 of the report?

12 Q Page 2 of the report. Not the cover letter, but actual page 2.

13 And on page 2, the special counsel writes -- and this is a quote -- "When it became clear that
14 Trump had lost the election and that lawful means of challenging the election results had failed, he
15 resorted to a series of criminal efforts to retain power." Do you see that quote?

16 A Yes, sir.

17 Q Do you agree and stand by this summary of Donald Trump's criminal conduct in general?

18 A Yes, sir.

19 Q On the next page -- so page 3 of the report -- it outlines some of those criminal acts that
20 President Trump engaged in after he lost the election and after President Trump had exhausted
21 lawful means.

22 Can you summarize what some of these acts were that your report details?

23 A Well, it lists them right here. I'll just read from it because this is a good summary.
24 It included attempts to induce State officials to ignore true vote counts, to manufacture
25 fraudulent slates of presidential electors in seven States that President Trump had lost, to force

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1 Department of Justice officials and his own Vice President, Mike Pence, to act in contravention of
2 their oaths, and to instead advance President Trump's personal interest. And on January 6, 2021, to
3 direct an angry mob to the U.S. Capitol to obstruct the congressional certification of the presidential
4 election and then leverage rioters' violence to further delay those --

5 Mr. Dawson. I'll just caution the witness, for the court reporter's benefiting, if you're
6 reading, to read slowly.

7 Mr. Duree. I'm sorry. My apologies. But, yes, I am only reading verbatim -- virtually
8 verbatim from the report.

9 BY

10 Q Thank you. And eventually, the Special Counsel's Office indicted Mr. Trump for his
11 actions leading up to the -- leading up to the certification of the 2020 election. Is that correct?

12 A That's correct.

13 Q For these charges stemming from Mr. Trump's efforts to overturn the 2020 election, do
14 you believe that you had sufficient evidence to prove the charges beyond a reasonable doubt?

15 A Yes.

16 Q And do you believe there were multiple -- or do you believe there was a Federal interest
17 in proceeding with prosecuting Mr. Trump after he attempted to overturn the 2020 election?

18 A Absolutely.

19 Q Page 3 of the special counsel's report writes -- and this is a quote -- "Indeed,
20 Mr. Trump's cases represented ones in which the offenses was the most flagrant and the public harm
21 the greatest and the proof most certain."

22 Do you agree with this statement?

23 A Yes.

24 Q And can you just summarize for us, what was the public harm that was so significant
25 with this criminal conduct?

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1 A It remains hard for me to articulate. Smarter people can do better.

2 But the public harm is that President Trump -- we developed -- I believe that we developed
3 proof beyond a reasonable doubt that President Trump had tried to undermine the results of the
4 2020 election, and to do so is to undermine the very foundation of our democratic system.

5 If the sanctity of our elections is called into question, every single piece of this government
6 crumbles right behind it. Our safety, our peace, our well-being, our faith in our institutions,
7 everything.

8 It is hard for me to imagine a crime that has a more significant Federal interest than using the
9 highest office in the land to try to undermine the results of a proper election.

10 Q Thank you. All right. We'll end our hour there. Thank you.

11 [Recess.]

12 We'll go back on the record. The time is now 12:01 p.m.

13 BY

14 Q Mr. Duree, when we ended our last hour, we were discussing procedure of
15 Congressman Perry's cell phone. I want to jump back to that topic.

16 Did you ever become aware that the FBI surveilled Mr. Perry for a week prior to executing the
17 search warrant?

18 A I may have been aware. I'm not exactly sure what you mean by surveillance, but I may
19 have been aware of that.

20 Q And what were you aware of in terms of surveillance?

21 A Now, did you say before executing the search warrant?

22 Q Correct.

23 A Or before we obtained the search warrant?

24 Q It was before executing the search warrant. This occurred in the late July 2022 time
25 frame.

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1 A Oh, I'm not sure I can speak to that. I don't know.

2 What I remember is that we did need to identify where Congressman Perry was to actually
3 take the phone from him --

4 Q Okay.

5 A -- and wanted to do that, ideally, in a discreet way. But to answer your question, I'm
6 not remembering offhand. Show me documents, maybe you can refresh me.

7 I'm not remembering offhand whether the FBI looked at Mr. Perry's locations before we
8 obtained the search warrant.

9 Q Okay. Okay. So are you aware of whether -- you said there was some surveillance
10 that occurred before executing the search warrant to identify daily patterns, where he worked, his
11 associates. That occurred in the late July 2022 time frame.

12 Was there other surveillance of Mr. Perry that you are aware of?

13 A No. I mean, it's been years, so my memory might be a little hazy. Everything -- I
14 don't have great specific memories of that.

15 But everything you're describing to me seems like something that we would normally do in
16 the course of any investigation when trying to execute a search warrant. So it doesn't surprise me.
17 I just don't have a lot of specific memories to offer you.

18 BY

19 Q Was Mr. Perry a target at this point?

20 A Again, using the subject target witness sort of categories, I would not have called
21 Mr. Perry a target at this point. A target --

22 Q So there's no evidence that he did anything wrong?

23 A I didn't say that. I said a target is essentially -- you can look to the justice manual for
24 the exact wording. A target is someone that is a presumptive defendant, basically. I believe
25 Mr. Perry, at this point, was a subject.

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1 Q Okay. And when you obtained his phone, you had to litigate with his team over the
2 Speech or Debate issues, correct?

3 A Yes, sir.

4 Q And how long did that last?

5 A A long time. We -- I mean, the litigation -- the records of litigation, which are public,
6 speak for themselves. I don't have those dates --

7 Q Right.

8 A -- at hand. But roughly from, you know, August or September of '22 until the case

9 went up to the D.C. Circuit and back and Judge Boasberg's opinion came down in December of '23.
10 So it would have been entangled in litigation over a year and a few months.
11 Q So wouldn't it have been easier if you simply asked Representative Perry's lawyers for
12 the communications you were looking for?
13 A I don't believe so no.
14 Q And why is that?
15 A Well, the number one -- a few things here. One, I can't really speculate. The fact is
16 we didn't do that. And to do that would have been an extraordinarily unusual prosecutorial step in
17 this case or any other. But I don't believe it would have been easier. For all the reasons that I
18 described in the last hour that I'm sure you were listening to, if you seek to obtain something
19 voluntarily, people can just choose not to give it to you. That's one obvious thing. But there are
20 myriad opportunities for evidence to be altered, tampered with, deleted, added to. And in this
21 search warrant, same as any others, as I just explained in the last hour, it was important to me and
22 our team to obtain the evidence in a way that was unadulterated.
23 Q Okay. So you had concerns that Congressman Perry would alter, tamper, delete,
24 otherwise obstruct your investigation?
25 A I didn't say that.

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1 Q Then what did you say?
2 A I answered your questions as to what the concerns are that motivate a person.
3 Q Well, when you're dealing with a Member of Congress, you're obviously dealing with a
4 different -- a different type of individual.
5 I mean, this is somebody that has constitutionally been elected by his 800,000 people, or
6 whatever it is, in the State of Pennsylvania, and so he's obviously a person presumed to have honesty
7 and integrity.
8 A It is that line of thinking that is so perniciously dangerous. I do not mean for a second
9 to impugn Congressman Perry's integrity. But I will say, I am never going to look at a Congressman,
10 a janitor, a President, or a person on the street and presume that one person is more likely to be
11 honest, more likely to have integrity, more likely to be truthful than the others. To believe that
12 would be to corrupt my role as a prosecutor.
13 My role as a prosecutor is not to make value judgments about whether one person seems
14 more honest based on their status in life. My role is to follow the facts dispassionately where they
15 may lead, irrespective of the power or money or status or title a person might hold.
16 So I endeavored throughout this process to treat Congressman Perry exactly as I would treat
17 every other individual who was in possession of a phone that we needed to search. The only
18 wrinkle that was added is that, because of his status as a Congressman, we needed to consider
19 Rayburn and Speech or Debate considerations, which we did.
20 Q What were you seeking on his phone?
21 A Evidence.
22 Q But specifically, what were you seeking? I mean, did you want pictures of him and his
23 family?
24 A I don't believe that pictures of him and his family would have been particularly valuable
25 to our investigation.

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1 Q But you took them anyway?

2 A That is the nature of how a search warrant works, yes.

3 Q So what were you looking for on his phone? Did you want call records of who he was
4 calling while he was considering his legislative duties?

5 A As I believe I have explained, if you're intimating that those calls would have been
6 Speech or Debate protected in some way -- I'm not agreeing that records of calls would be -- we were
7 not at any point attempting to get Speech or Debate materials.

8 Q But you did anyway?

9 A No. In fact, as I have explained at great length, probably in a way that's kind of
10 tiresome to everyone in this room, we implemented strict and rigorous protocols to ensure that we
11 did not obtain Speech or Debate-protected materials and that our actions --

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1 [12:10 p.m.]

2 BY

3 Q Well, you did take it. It's whether you looked at it or not, whether you looked at it, but
4 somebody in DOJ did. There had to be a filter team.

5 A I don't think that that is true. Again, if -- I'd encourage you to familiarize yourself with
6 our protocols, which did not permit -- for which we're very careful in the way that, you know, Speech
7 or Debate material, should they exist, were handled.

8 I can answer your question by saying, yeah, we did take his phone. And whatever was on
9 that phone is something that was imaged.

10 Q And, again, what exactly were you looking for on the phone? If you weren't looking for
11 pictures of his family, if you weren't looking for phone call records, what were you looking for?

12 A Evidence. And to be a little more specific --

13 Q So what was the evidence you were looking for?

14 A To be a little more specific, we were looking for evidence of criminal conduct by any
15 party, and more specifically than that, evidence related to the effort to install Jeff Clark as the Acting
16 Attorney General, which was an investigative stream in which I had a significant part.

17 Q Okay. But specifically, were you looking for telephone records or content of his emails
18 or text messages with -- with who?

19 A You, naturally, when you execute a search warrant on a phone, are going to be looking
20 for content, right? Like phone tolls, call logs. Those are things that can be obtained in a less
21 burdensome way through subpoenas and that sort of thing.

22 But yes, we did seek content, content of text messages with individuals with whom Mr. Perry
23 was communicating and, again, more specifically, text messages relevant to the effort to utilize the
24 Department of Justice potentially to help overturn the 2020 election.

25 Q Okay. And how long was Mr. Perry without the use of his telephone, do you know?

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1 A Few hours. Couldn't tell you exactly how many.

2 Q Would it surprise you if it was all day, 9 to 5?

3 A No. I mean, could have been, yeah.

4 Q Okay. So for one day, Mr. Perry was out -- was without the ability to have
5 communications with his chief of staff?

6 A Again, if you --

7 Q Members of Congress?

8 A Are you -- are you asking me a question or should I wait for you?

9 Q I'm asking you, did you understand that Mr. Perry, while his phone was in DOJ's
10 possession, he was unable to have communications with his chief of staff, with Members of
Congress,
11 and with other key people that he needed to do his constitutionally elected responsibilities?
12 A I understood that while we took Mr. Perry's -- while we were in possession of Mr.
13 Perry's personal phone, Mr. Perry was not able to access that personal phone.
14 Q Okay. Did you understand, for example, he didn't know his chief of staff's telephone
15 number? I mean, a lot of people nowadays don't know the numbers. You know, it's programmed
16 in your phone under a contact card.
17 A Did I know that Congressman Perry didn't know his chief of staff's phone number?
18 Q And was unable to contact his chief of staff during that time period.
19 A I don't -- I don't recall if that was anything I knew. I don't know why I would know that.
20 Q Okay.
21 BY
22 Q Were there any conversations that were had about depriving Mr. Perry of his ability to
23 conduct his legislative duties while you all had his cell phone?
24 A As I've said, we worked to return the cell phone to Congressman Perry as quickly as we
25 could. It is understood when you take someone's phone that they are going to be deprived of use

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1 of that phone for a while. That's Congressman Perry, that's you, that's me, that's anyone else's cell
2 phone.
3 We consider that deprivation of the use of a cell phone is a thing that can be burdensome,
4 and so we tried to get it back to him as quick as we could.
5 Q When did the idea that the team needed toll records for Members of Congress, when
6 did that idea first come about?
7 We know there are subpoenas for Members of Congress in 2022 and 2023. So when did
8 that first come about that you thought you needed Members' phone logs?
9 A I understand what you're asking me. I think there might be a couple of things
10 conflated. At no point were we out to just, you know, we want to get Members of Congress' phone.
11 This wasn't a thing, right.
12 We -- there were Members' phones that I -- there were toll records for certain Members'
13 phones that I believe were obtained at different times in the course of the investigation. And those
14 tolls, along with tolls for dozens of -- dozens and dozens of other people, were obtained when they
15 were investigatively necessary.
16 And so those points came about -- and I can address whatever specific you'd like. Those
17 points came about at different times.
18 Q Okay. We can take each Member individually.
19 Let's have -- this will be exhibit No. 6.
20 [Duree Majority Exhibit No. 6.
21 was marked for identification.]
22 BY
23 Q And this is an email between you and Ms. Jennifer Clarke from PIN discussing toll
24 records for Chairman Jordan, who was the ranking member at the time, the relevant time period
25 here.

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1 A Okay.
2 I'm going to enter as exhibit No. 7 too the actual subpoena that was issued for
3 Mr. Jordan.
4 Mr. Duree. Okay.
5 [Duree Majority Exhibit No. 7.
6 was marked for identification.]
7 Mr. Dawson. And based on that description of the next exhibit, I just want to caution that
8 for grand jury subpoenas, I'm hoping we can keep the questions at a certain level of abstraction,
9 which I think will still allow you to get all the answers you need. But I don't want Mr. Duree to be
10 confirming that a particular document is a legitimate grand jury subpoena or not. But email
11 records, contemplations of what was in one's mind at a certain phase of the investigation, I think
12 that's all fine. And I'm hoping that that's a guardrail that will work for you.
13 Has it been released publicly?
14 This has been released publicly, correct.
15 It's been publicly released.
16 Mr. Dawson. It has. The rules governing a government attorney remain even if, you know,
17 the subpoena recipient can disclose it. They can talk about what they say in the grand jury. And
18 there are still restrictions. And, again, I think we can get you what you need, but 6(e) is a
19 notoriously tricky, inconsistently interpreted provision. And so my job is, of course, to keep Mr.
20 Duree safe.
21 Mr. Duree. , what would you like to ask me?
22
23 Q Yes. So if we can look at exhibit No. 6 first, which is the email exchange. I thought it
24 would just be helpful to have both the email and the subpoena itself.
25 A Okay.

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1 Q So we'll start with the email from Ms. Clarke to you on April 26, 2022, at 11:29 a.m., just
2 so the record's clear. I'll read the first sentence. It says, "PIN concurs with the proposed covert
3 investigative step of issuing a grand jury subpoena for toll records for the personal telephone number
4 of Rep. Jim Jordan for the time period of August 1st, 2020 through January 30th, 2021, based on the
5 fact that you have evidence that this phone number was in communication with Perry and others
6 suspected to be involved in alleged obstruction of the congressional certification proceeding on
7 January 6, 2021, related to the 2020 election for President of the United States."
8 So first, I want to talk about the timeframe of August 1st, 2020 through January 30th, 2021.
9 Why was there such a broad timeframe at this point?
10 A Okay. So I'm not remembering -- like, I see the words on the email, right. I
11 remember being part of the process to get the subpoena for Mr. Jordan's phone. I don't remember
12 the exact timeframe as I sit here talking to you today, the start and end dates of those records. So
13 it's a little hard for me to speak to that, but I will say we did subpoena a period of, I guess, some
14 breadth. And the -- you're asking me the reason why.
15 Q That's correct.
16 A Okay. I can tell you that.
17 Q And just -- sorry. Just before you start, I just want to point out that there's a
18 discrepancy with the email and then what's actually in the subpoena is -- you are correct that it was
19 some breadth. It was 2-and-a-half years. It was January 1st, 2020 to April 25th, 2022, was
20 when -- was the timeframe for the subpoena. So there's quite a change between what PIN signed
21 off on and what was in the subpoena.

22 A Okay.

23 Q So first, if you want to touch on why 2-and-a-half years was requested, and then if you
24 want to touch on the discrepancy.

25 A Yeah. Maybe because it relates to the timeframe, I'll touch on the discrepancy first --

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1 Q Okay.

2 A -- as you've identified it.

3 I don't -- I remember being part of the process of getting Mr. Jordan's toll records. And I
4 don't remember right now whether the records that we actually have were for August 1st or January
5 30th, whether they were for a 2-and-a-half-year period or whether they were from -- whether they
6 were from some other period.

7 I don't know that this is a genuine copy of the subpoena. I'm just not sure. But I do
8 remember being part of that process.

9 I don't know that there is a discrepancy, and I'll tell you what I mean. If you're telling me
10 that there are dates on these -- the date on this email that is different than the date on the
11 subpoena, I can give you a few possibilities as to why. But I'll start with sort of the unspoken
12 implication, just to clear that one out of the room.

13 There is absolutely no chance that I would ever have sought to circumvent PIN or go against
14 the order -- the direction they gave me. I saw, as a prosecutor, and continue to see, the adherence
15 and fidelity to process as sacrosanct. If a prosecutor does not follow the processes and instead, you
16 know, does what she or he wants to do, then the integrity of the system is undercut. I did not do
17 that in this case. I would not do that. That just plain old did not happen, period.

18 Now, as to why there's a discrepancy, there are a few possibilities. I had -- I haven't been
19 able to go back and look at my old emails from this time period, and my memory is hazy anyway,
but

20 I do know that I had lots of communications with PIN in this timeframe, with Ms. Clarke and others.
21 We had several phone calls. We had emails. We might have had like a video meeting or
22 something from time to time. So I talked to these people fairly regularly in this time period and
23 kept them informed about what we were doing.

24 I do not know if there is additional communication that expands or extends this timeframe.

25 Maybe Ms. Clarke got it wrong and she corrected it in a future one -- a future email. I don't know.

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1 There are probably other communications out there that would shed light on this.

2 Another -- I mean, another possibility is that there was a mistake. You know, if this was the
3 subpoena that was sent out -- I see Special Agent Burnett -- I see an email indicating to me, as this
4 email reads, that Special Agent Burnett sent a subpoena for a longer time period to -- to Verizon.
5 And if that happened, it would have been a mistake. He could have been using an old copy of the
6 subpoena, a different thing. I'm not sure.

7 I'd like to think that if there was a mistake, we would have caught it because, again, my
8 commitment to doing what PIN asked was strong and certain. So we would have -- I would like to
9 think that if there was a mistake, which is a possibility, we would have corrected it, sought additional
10 guidance from PIN, whatever.

11 But the bottom line is, I can't tell you exactly what the discrepancy was or if there was a
12 discrepancy at all, because I do not have the benefit of the full records.

13 Q But, I mean, that's a pretty big mistake. You went from wanting records for 6 months

14 to 2-and-a-half years. So can you just help explain how could it have gone from 6 months to
15 2-and-a-half years?

16 A And I'll tell you again, I'm not saying that we made a mistake. I offered the possibilities
17 to you. One that I think is less likely is that there was a mistake. And if we would have made a
18 mistake because, you know, the wrong dates were on the subpoena we sent or something, I would
19 like to think we would have corrected that. I don't know if there was a mistake.

20 Another possibility is that, amongst all the many phone calls, emails, video meetings,
21 everything else I had with PIN, that PIN authorized a longer time period. I just -- I just don't know.
22 I don't know that there was a mistake.

23 Q So if the criminal conduct that you were investigating at the time was the Clark matter
24 and trying to have him installed at the Justice Department, that was happening in the November
25 2020 timeframe -- is that correct? -- or in the post-election I know you described earlier?

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1 A December. The DOJ scheme was principally in December 2020 into early January
2 2021.

3 BY

4 Q So what did you need August, September, October phone records for?

5 A I'll tell you. What we knew -- so toll records are one way to build out -- one tool you
6 can use to build out an investigation and understand the people communicating with each other in
7 the timeframe of relevance.

8 All toll records tell me is that some certain number communicated with some other certain
9 number, right. But it's use -- they are useful to establish contact between people so that you can
10 understand who the individuals who appear to be part of your investigation were talking with. You
11 can understand their networks. You can understand who might otherwise be involved. You can
12 often exclude people who are not involved.

13 So I'm coming to a more comprehensive answer for you but, basically, that is why you need
14 toll records. Something that you have to be careful of, particularly in a case like Mr. Clark's, where
15 we're investigating really a 2-week period more than anything else for the DOJ scheme, is that all
you

16 get is a relatively tiny snapshot of the communication patterns of a person. And so you want to
17 extend the scope of the subpoena long enough so that you can see if the communications that were
18 occurring within that time period are abnormal or are exactly consistent with what that person
19 always otherwise does.

20 So for instance, right, if you looked at a 2-week snapshot of my phone, you'd probably see a
21 lot of calls with my wife. You could pull out from that and take a larger snapshot of my phone to
22 see is this person someone with whom Tad regularly communicates or is this a sudden abnormal,
you

23 know, party with whom you never communicated before or after. Those things can help you
24 identify the nature of the relationship, the frequency and duration of the communications.
25 And, as I said, understanding better whether the frequency with which people talk over a

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1 slightly longer term can help you both include and exclude people from the scope of your
2 investigation. So that's why we need a longer period, to contextualize and better understand if the
3 frequency of the calls in this period was abnormal or not.

4 Q But it becomes a problem when some of the phone -- the toll records you're seeking are

5 the President's political adversaries, in terms of Speaker McCarthy and Chairman Jordan.

6 A Are you telling me --

7 Q Like, developing a pattern of who Speaker McCarthy or, you know, soon-to-be Speaker
8 McCarthy and Chairman Jordan, develop -- you know, developing a record of who their network is
9 and how frequently they call, I mean, that is a real big problem.

10 A Is that a question to me?

11 Q Yeah. How can you do that?

12 A How can I -- I'm sorry, how can I do what?

13 Q So how does the Justice Department justify collecting all of this data and information
14 about the President's political adversaries?

15 A I don't -- I'm not trying to be dense. I don't think -- I don't think Chairman Jordan is
16 President Trump's political adversary.

17 Q President Biden.

18 A Oh, okay. I will tell you what we did and why we did it. We subpoenaed phone
19 numbers, including of instance -- of relevance to this immediate conversation, a 937 number that I
20 know pertains to Congressman Jordan. We subpoenaed that number because that number was in
21 contact with other individuals who were within the scope of our investigation. And we were trying
22 to develop evidence of that investigation to include, you know, whether -- to include building out an
23 understanding of the people involved, potentially, in the effort to overturn the election and to
24 elevate Jeff Clark within DOJ.

25 So we sought those records just to build out the network, and that is a completely normal,

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1 standard step in any criminal investigation. It has nothing to do with Mr. Jordan's status as a
2 Congressman or anything else and everything to do with this 937 number was contacting other
3 people of interest to me, and that's what we wanted to figure out.

4 Q So it didn't matter to you that he was the top Republican on the House Judiciary
5 Committee with oversight of the Justice Department?

6 A It mattered to me in that that meant that that 9 -- to get the subpoena for that 937
7 number, I was going to need to go through PIN and add some additional process. It mattered to me
8 because --

9 Q Those were speed bumps for you, right?

10 A I'm not going to classify them that way. I think that the policies that DOJ has are
11 thoughtfully made, and I understand why they have them. Whether I agree or disagree with them,
12 I'm a line prosecutor. I was a line prosecutor. I didn't make the policies.

13 What I'm telling you is that this 937 number was different from some of the other numbers I
14 subpoenaed only in that understanding, as I came to understand, that it was a Congressman's phone
15 number, we had to go through PIN to get approval.

16 Q Did you tell Mr. Burnett that the phone numbers included a Member of Congress when
17 you sought the subpoena?

18 A I would -- I don't recall what I specifically said to Mr. Burnett.

19 Q Would Mr. Burnett know that, know who the telephone numbers belonged to?

20 A Mr. Burnett was part of the investigative team at the time. I would have kept him, like
21 other members of the investigative team, apprised of investigative steps, of parties involved, and of
22 other things. So it is totally reasonable that I might have told Mr. Burnett who these phone
23 numbers were for, but I don't have a specific recollection of discussing this 937 number with
24 Mr. Burnett one way or the other.

25 Q So in the ordinary course, you think you probably would let him know whose numbers

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1 are involved?

2 A I'm -- I mean, I'm not saying that, right. Like, I certainly -- there would certainly be
3 nothing abnormal about letting my agents know the numbers we were subpoenaing. And given
4 that they are investigators, I think it would make sense.

5 Q Okay. And did he raise any issues that, you know, the Justice Department Inspector
6 General's Office has a special relationship with Congress, a special relationship with the Judiciary
7 Committee, that there presents a conflict there?

8 A I don't recall that.

9 Q Was that discussed?

10 A Again, I don't -- as I've told you, I don't recall discussing specifically this 937 number with
11 Special Agent Burnett, whether I did or whether I didn't. I don't recall a discussion on the point you
12 are describing.

13 Q Okay. And when you seek a nondisclosure order before the judge, you didn't let the
14 court know that you were seeking a nondisclosure order for a congressional telephone number. Is
15 that correct? A Member of Congress' phone?

16 A The NDOs would speak for themselves. I don't remember the specific wording of the
17 NDOs, but I do not think in 2022 that we were required to provide that information. We just did as
18 policy and law required us to do.

19 Q Do you understand that DOJ is required to do that now under their policy?

20 A I mean, you're telling me that. I don't -- I don't -- I don't dispute what you're telling
21 me. I don't work at DOJ anymore, and I haven't been keeping up to speed with developments on
22 the justice manual recently as much as I should.

23 At the time I was there, I was certainly cognizant of policies that affected the work I was
24 doing. I take your word. I don't know.

25 BY

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1 Q And looking back at the email here, the second full paragraph says, "PIN also concurs
2 with sending a preservation request to Google for the account -- redacted -- which is the personal
3 email account used by Jordan. There are numerous emails between this account and Perry's
4 personal account in December 2020 and early January 2021." Are you aware of whether you sent a
5 preservation request to Google for Mr. Jordan's email?

6 A I am not aware of if I did or I didn't, but if PIN concurred with it, I can see why you would
7 think that I did.

8 Q And with the preservation request, were you looking for the content of the emails, or
9 what were you --

10 A We don't get --

11 Q -- looking for there?

12 A I'm sorry, You don't get the content of an email with a preservation request.

13 A preservation request does just exactly what it says to do and basically nothing more. It causes the
14 email provider, in this case Google, to preserve it, to just not delete it.

15 So we didn't get anything. You don't -- you don't get anything from a provider through a
16 preservation request. You just have a request that they not destroy it or delete it.

17 Q And do you know if you ever got records from Google for Mr. Jordan's personal
18 account?

19 A You asking me if I got a subpoena for Jim Jordan's email?
20 Q Yes. Are you aware of --
21 A I'm sorry, a search warrant for Jim Jordan's email? I don't remember doing that. No,
22 I don't think so.
23 Q What about just a subpoena?
24 A I don't recall.
25 Q I want to turn to Ms. Clarke's Speech or Debate analysis here in the email.

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1 Can I just back up one second? I'm sorry.
2
3 Q If you had obtained a subpoena for the content of Mr. Jordan's emails -- the content,
4 not toll records, the content -- don't you think you would have remembered that?
5 A Yes, because that would be a terribly strange and procedurally -- like, it never happened.
6 You can't get a subpoena for content.
7 Q Okay.
8 A So I would --
9 Q So we're only talking about metadata here?
10 A No. I would -- I would never have sought a subpoena for content because the Fourth
11 Amendment and all the rules that apply do not allow you to get content through a subpoena, period.
12 Q Okay. So what you don't remember about Mr. Jordan's email account is whether you
13 sought metadata?
14 A Can you -- I don't know that I'm following the question exactly. I did not -- I guess I
15 don't know.
16 Q So you do remember getting a subpoena for Mr. Jordan's toll records, for his --
17 A I do, yes.
18 Q -- his Verizon telephone number?
19 A That's the 937 number. Yes, sir, I do.
20 Q Okay. But you don't remember if you did anything with respect to Google?
21 A I -- correct. I do not. I have no specific recollection that I took any action as to
22 Congressman Jordan's, you know, Google accounts beyond potentially this preservation request, but
23 I just don't remember. It was a long time ago.
24 Q Okay.
25 Looking to Ms. Clarke's Speech or Debate analysis, just reading the last

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1 paragraph on the page there, it says, "As we've previously discussed, obtaining these types of records
2 from a third-party provider for the personal email address of a Member of Congress arguably does
3 not violate the Speech or Debate Clause, even under an interpretation that the clause provides a
4 privilege against disclosure, as the disclosure of the records is not compelled from the Member
5 directly and the records are for the Member's personal email account rather than a congressional
6 email account. That position is not without litigation risk as the D.C. Circuit does not interpret the
7 privilege as one of nondisclosure."
8 Mr. Dawson. I'll just -- I guess, "the D.C. Circuit does interpret."
9 "Does," excuse me.
10 Mr. Dawson. Just for clarity on the record.
11 "Does interpret" -- thank you -- "the privilege as one of nondisclosure."

12 The paragraph --

13 I would just add that it's never been litigated whether the toll -- to the extent

14 the toll records are implicated in the Speech or Debate realm.

15 Mr. Dawson. I don't dispute that.

16 So I don't think it would surprise you that the House lawyers and Members of

17 Congress and their staff believe that the toll record content is protected by Speech or Debate.

18 Mr. Dawson. I have no doubt.

19

20 Q The paragraph mentions "previously discussed." Do you remember having any

21 conversations with Ms. Clarke prior to her memorializing all of this concurrence and analysis in the
22 email?

23 A Like I said, I do remember having phone calls with Ms. Clarke. The exact timing of

24 them I can't tell you.

25 Q And did you understand -- she mentions a lot in here the personal email account. Did

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1 you understand that this analysis also applied to the toll records as well?

2 A Where she writes about an email account, I presume that to apply to an email account.

3 Q Okay. So you didn't know if this applied to the toll records as well?

4 A Whether her statements about an email account applied to toll records?

5 Q Correct.

6 A I guess I don't.

7 Q And did it concern you that there was some litigation risk in issuing the subpoena for toll
8 records?

9 A It did not.

10 Q It did not. So you did not think that any of the toll records would be covered by the

11 Speech or Debate Clause?

12 A I do not and did not, but I will tell you a little more. We throughout this case did take
13 seriously and spend a lot of time thinking about the Speech or Debate Clause. There is the Rayburn
14 decision in the D.C. Circuit, which prohibits the disclosure of legislative materials, as those are
15 defined. There is no case law, that I'm aware of, supporting the idea that toll records, basically
16 records of one phone communicating with another, are themselves legislative acts.

17 So I understood that the Speech or Debate Clause was a thing that we need to consider.

18 And I understood that the exact question of whether toll records were legislative acts maybe had not
19 been squarely and decisively addressed, but I believed that this subpoena was appropriate and the
20 Speech or Debate concerns attendant thereto did not dissuade me from taking this investigative step.

21 I did not think then and do not think now that toll records are protected by the Speech or
22 Debate Clause, but I'm not a Supreme Court Justice or a D.C. Circuit judge.

23 And one of the huge upsides of this is that Mr. Jordan would never know and

24 the Members of Congress who you're seeking the toll records who have standing to bring this type
of

25 litigation would never know. Isn't that one of the upsides when calculating litigation risk?

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1 Mr. Duree. No. I'm not -- as is evidenced by our protocols and our work with Scott Perry's

2 phone and generally the way we approached and -- we approach litigation generally, I am not at all

3 afraid and I don't think anyone on my team was afraid of standing behind our legal arguments and

4 legal principles and allowing a judge to adjudicate the issues. We believed that what we were doing
5 was right under the law. And I would welcome the opportunity to, you know, have any sort of
6 clarity on any issue that existed.

7 But, you know -- yeah, a nondisclosure order does prohibit someone from, you know, having
8 the opportunity to intervene, I guess. I take your point on that.

9 Mr. Dawson. Did you have authority to draw your own Speech or Debate lines within the
10 Department?

11 Mr. Duree. No. No, I did not. I was doing what I was told.

12 BY

13 Q And when you all received the records of Mr. Jordan's phone calls for the
14 2-and-a-half-year timeframe, were those received by the DOJ OIG or did those get delivered to the
15 Justice Department?

16 A So again, I don't know that we got toll records for a 2-and-a-half-year timeframe. I
17 know that you've got the subpoena right here. I'm not sure what was actually returned or if this
18 was the operative subpoena. But I -- I'm not sure where those toll records would have first gone.
19 I presume, normally, the agent would -- an agent will download toll records from a law enforcement
20 internet site that Verizon has, something like that, but I don't -- I don't remember in this instance.

21 Q And how were those toll records that you did receive from Mr. Jordan's phone, how
22 were those used in the investigation?

23 A The same -- the same way that we use the dozens and dozens and dozens of other toll
24 records that we received, which is we looked at those toll records to determine parties with
25 whom -- people with whom parties, you know, we were looking at were talking, the frequency of

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1 those communications, the duration of those communications, the timing of those communications.

2 Q And wouldn't, if -- you know, before a big vote, who's calling a Representative, before
3 the big vote or after the big vote, what can you tell us of what was the analysis of the Justice
4 Department?

5 I understand we have different analyses of what's covered under Speech or Debate Clause.

6 What was the Justice Department's analysis of how that was not a legislative act of who a
7 Congressman is calling before and after a vote?

8 A My understanding of the Justice Department's position is what's encapsulated in this
9 email, that I as a line prosecutor had to seek approval for the search warrant -- not search warrant,
10 I'm sorry. I had to seek approval for this subpoena from PIN. I did seek approval from PIN. PIN
11 authorized the subpoena. And so I participated in obtaining that subpoena. That's it.

12 Q Was there ever a discussion that if you were able to map out who a Member was
13 calling -- who the Member was calling or who was calling a Member before and after a big vote,
how

14 that could be considered part of their legislative duty?

15 A I don't remember conversations on that, but I'll say that would have been of absolutely
16 zero interest to me or anyone on my team to map out people's congressional activities. We were
17 looking at the effort to overturn the 2020 election and specifically the DOJ scheme I described.

18 BY

19 Q Before we move on, the last two sentences of the Clarke email, she indicates, "You
20 should also notify ODAG via urgent report about legal process related to Jordan."

21 A Okay.

22 Q Did you need ODAG to okay or was this just simply a notification to ODAG?

23 A I don't remember. If she told us to notify ODAG, then I feel confident that

24 we -- someone on my team, I or someone else, would have notified ODAG. I'm basing only on the
25 words that I see here. I don't know.

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1 Q And who in Lisa Monaco's office would you have notified?

2 A I'm not sure I -- I'm not sure I remember who we had to notify for --

3 Q Was there a particular associate, deputy attorney general, that was keeping tabs on this
4 case?

5 A There may have been. I remember once or twice having communications with a
6 gentleman named Rush Atkinson, but I don't remember that, sir.

7 Q Okay. And do you remember contacting ODAG or notifying ODAG for any other
8 Member toll records subpoena?

9 A I don't remember whether I was the one who notified ODAG about this. I don't have a
10 specific recollection. But I'll tell you, if I obtained any other Members' toll records and if I was told
11 to notify ODAG, I notified ODAG. But I don't have a specific recollection.

12 Q Okay.

13 Mr. Dawson. It may be helpful. Do you know urgent reports more broadly, what an urgent
14 report is?

15 Mr. Duree. A little bit. I mean, I want to say at one point during this case -- and maybe this
16 was it -- I had to ask someone what an urgent report to ODAG was, because I didn't usually deal
with

17 that sort of thing.

18 But my understanding is it's a -- my understanding is it's a notification to the Office of the
19 Deputy Attorney General of a investigative step or other thing that's going to be taken that might be,
20 you know, prominent or notable to ODAG, I guess.

21 Okay. We'll move on to another Member's toll records subpoena.

22 Mr. Dawson. It's a hard line to draw, but I'll just caution Mr. Duree to remember to discuss
23 the contemplated subpoenas, your intent, your planning, confine yourself not to address a particular
24 document as a legitimate or not subpoena. But, again, I don't think that'll impede the questioning.
25 . And this will be exhibit No. 8. It's an email exchange, again, between Ms.

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1 Clarke and Mr. Duree. This is on May 19, 2022, at 5:21 p.m. in regards to Chip Roy's toll records.

2 Mr. Duree. Okay.

3 [Duree Majority Exhibit No. 8.

4 was marked for identification.]

5 BY

6 Q And I'm sure you're familiar, but Chip Roy serves on the Judiciary Committee. He's a
7 Member from Texas.

8 Do you remember this email exchange at all or conversations surrounding getting Mr. Roy's
9 toll records?

10 A I don't really. I'm not doubting that it happened if you're telling me it did, but I don't
11 particularly remember this.

12 Q Okay. And do you remember figuring out what time period you needed Mr. Roy's
13 records? Here it's October 1st, 2020 through January 30th, 2021. Do you remember any
14 discussions about the timeframe?

15 A I don't. I'm sorry.

16 Q Do you remember if the approval process for the subpoena, you know, going through
17 PIN, having to notify the DAG's office, did any of that differ between April when you were issuing
18 Mr. Jordan's subpoena and this subpoena in May for Mr. Roy's records?
19 A I have no reason to believe that it did, but, again, I'll be as helpful as I can while telling
20 you I don't have a particular memory of the circumstances surrounding this.
21 Q Okay. And in looking at Ms. Clarke's email in the second paragraph in the middle after
22 the parenthetical, it says, "Should a court find that these election-fraud related calls involving
23 Members of Congress constituted legislative fact-finding and thus privileged legislative acts, under
24 Rayburn, you could be in violation of the privilege by even obtaining and possessing this
information
25 if the Member objected to the disclosure."

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1 Did you have any further discussions with Ms. Clarke about this specific sentence?
2 A I don't -- I don't remember. I see that sentence. I don't remember.
3 Q Were you concerned that you could be violating the Speech or Debate privilege by even
4 obtaining and possessing this information?
5 A I was -- I mean, she emailed this so I was aware of this as a possibility, but I don't
6 remember the level of concern, if any, I had about it.
7 Q Okay. And then, again, there was an NDO that was sought with this specific subpoena.
8 So Mr. Roy wouldn't have known about the subpoena to his service provider. Is that correct?
9 A If you're telling me there was an NDO, an NDO does stop notification, but I don't
10 remember that.
11 Q So how would he have been able to litigate this privilege issue had he not known about
12 the subpoena?
13 A Again, I don't -- I don't remember this email. I don't -- I don't remember this email, but
14 if there was an NDO as you're telling me, an NDO will prohibit a person who holds that phone
15 number from litigating issues surrounding the subpoena.
16 Q And this is a pretty unique privilege that's unique to Members of Congress, that's
17 embedded in the Constitution. There was no concern that you could be violating this privilege and
18 Members wouldn't be able to litigate their privilege underneath the Constitution?
19 A Like I said, I didn't say there was no concern. I certainly didn't say that there was no
20 consideration of this. I said -- I'm saying that I don't particularly remember the degree of concern, if
21 any, that we had over this.
22 I agree with you that Speech or Debate is -- the Speech or Debate Clause does provide
23 protections to Members of Congress.
24 Q And what remedy did these Members have to avail themselves of the Speech or Debate
25 Clause with these specific subpoenas?

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1 A I suppose that if there is a nondisclosure order in place, they are not able to challenge
2 the subpoenas.
3 Q So they had no remedy prior to their records being disclosed to the Justice Department.
4 Is that correct?
5 A I don't -- I mean, I don't know, strictly speaking, if that's entirely correct or not. I can
6 tell you if there was NDO, they're not going to be able to -- they're not -- the subpoena is not going to
7 be disclosed to them and so they wouldn't be able to challenge it. I agree with you on that.

8 Q Okay. On January 24th, 2023, a subpoena was issued for Speaker McCarthy's toll
9 records. What can you tell us about your involvement with that?
10 A I don't know if I was involved with it or not.
11 Q Okay. We -- you signed the subpoena.
12 A Okay.
13 Q So just wondering if you have any recollection of seeking process for Mr. -- Speaker
14 McCarthy's phone records?
15 A I don't. If you want to show me some documents, that could be helpful. I'll tell you
16 everything I remember. But I don't particularly remember that.
17 And it's a subpoena, but we will mark that as exhibit No. 9 I think we're up to.
18 [Duree Majority Exhibit No. 9.
19 was marked for identification.]
20 Mr. Dawson. And, of course, you're welcome to read the document and see if it refreshes
21 your memory.
22 Mr. Duree. Sure.
23 I'm sorry, ma'am. Where are you -- where are you seeing that this has my name on it?
24
25 Q So at the bottom of -- I think yours should be Bates stamped too. At 18. It's

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1 redacted, but in speaking with AT&T, it's your name that's underneath the redaction. It says
2 Timothy Duree.
3 A Okay.
4 Q So just wanted to know what you remember about any conversations you had about
5 subpoenaing toll records for the Speaker of the House.
6 A I don't -- I don't particularly remember -- I don't remember. I'll say that, you know, it
7 doesn't surprise me that I don't remember because over the course of this investigation, we did have
8 to get so so many subpoenas. And part of investigating wherever the facts lead, part of proceeding
9 impartially in your investigation is that you -- you need to obtain evidence relevant to your
10 investigation irrespective of where you might find that evidence.
11 And in this case, there were contacts with Members of Congress by parties relevant to our
12 investigation. So it doesn't surprise me that my office would have sought this subpoena, but I also
13 don't know that this would have struck me as a particularly, you know, huge thing.
14 And in context, we certainly would have sought the proper approvals. We certainly would
15 have done it the right way, but I just don't remember it.
16 Q And in this time period -- you know, January 23rd, 2023, is when the subpoena is dated.
17 Kevin McCarthy became Speaker January 7th, 2023, so couple weeks earlier.
18 Did any of the analysis change after he was elected Speaker of the House?
19 A As I said, I don't remember this, so I don't -- I don't remember.
20 Q Okay. So you don't remember signing a subpoena for the toll records of the Speaker of
21 the House of Representatives?
22 A I don't -- I don't dispute that I did. I just -- I don't remember one way or the other if I
23 did. And as I said, it would not have been -- and I understand why that might seem like a
24 particularly notable thing. But in the course of this investigation, given the topics we were
25 investigating and the magnitude of things being investigated, this doesn't strike me and I suppose

1 didn't strike me as particularly abnormal. So I just -- I would love to be able to remember more and
2 tell you, but I just do not remember this.

3 Q And why wait until after he was elected Speaker? You sought Mr. Jordan's records in
4 April of 2022, Mr. Roy's records in May of 2022, and then waited until after McCarthy was elected
5 Speaker to send the subpoena for his records.

6 A I think that question might be based on a faulty premise. There was no -- there was no
7 intent to time the subpoena. I couldn't imagine that there was any intent to time the subpoena
8 related to, you know, when he occupied one role or another. I can't tell you why we issued the
9 subpoena on January 23rd, because I don't particularly remember this subpoena.

10 Q Okay. And so there were no extra approvals or anything that you had to get since this
11 was the Speaker's records?

12 A I don't remember. I can tell you just structurally one thing that may have been
13 different. By January 23rd, we're in the -- did you say it's January 23rd of 2023?

14 Q That's correct.

15 A By January 23rd, we're housed in the Special Counsel's Office. And so there was a
16 more rigid management structure. Things were a bit more solidified than they were in the early
17 days. So once Jack was in charge, the structure was, you know, Jack's at the top, J.P. below him,
18 filtering down through various people to me.

19 And I say that to tell you my -- my personal involvement with PIN may have been different at
20 this point.

21 Q Okay.

22 A I may no longer have been the person who needed to contact PIN. I'm not -- I'm not
23 sure if I did or I didn't, but it wouldn't surprise me if someone else in Special Counsel's Office
24 management was handling PIN-related communications at that point.

25 Q Okay. And the NDO that accompanied Speaker McCarthy's subpoena is Bates stamped

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1 19 at the bottom, if that's helpful.

2 A Okay.

3 Q It says, "the Court finds reasonable grounds to believe that such disclosure" -- of the
4 subpoena -- "will result in flight from prosecution, destruction of or tampering with evidence,
5 intimidation of potential witnesses, and serious jeopardy to the investigation."

6 What was the concern, that Speaker McCarthy was going to flee from prosecution?

7 A Now, it says that the court finds reasonable grounds to believe these things, not that
8 anyone on my team thought Kevin McCarthy was going to, you know, flee from prosecution.
9 This -- as I've explained already, we as prosecutors wanted to obtain evidence in its purest,
10 most complete, and most unadulterated form. And notification -- I'm not speaking about Kevin
11 McCarthy. I'm speaking generally about the NDOs and how it might apply in this instance.

12 Q But the NDO is specific to this subpoena. Is that correct?

13 A Yes. There is -- yeah, there is an NDO specific to the subpoena. What I'm saying to
14 you is NDOs are necessary -- are useful and helpful and necessary to investigations for a lot of
15 reasons, one being that even if a per -- you know, you're not accusing the person who has the phone
16 of being a criminal, but you are recognizing that if the fact of the subpoena or the fact of an
17 investigation becomes public, that that information can be spread about everywhere, that your
18 investigation could be compromised, that evidence could be manipulated or adjusted or something.
19 These are all concerns.

20 But as to what the -- what the specific concern was as to Mr. McCarthy, I do not know. I can
21 only tell you that, while I don't remember the specific subpoena or NDO, getting a subpoena like

this,

22 getting an NDO was absolutely par for the course in so many subpoenas that I have issued in my
23 career and that we issued in the Special Counsel's Office.

24 Q And how many other subpoenas were you involved with that sought records of
25 Members of Congress?

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1 A I -- beyond the ones we've talked about today?

2 Q Uh-huh.

3 A I don't -- I don't recall. I don't -- I don't specifically recall any. If you show me
4 documents that I was involved in subpoenas directed to the phone numbers of other Members of
5 Congress, that might jog my memory, but I can't name anybody else for you right now.

6 Q Yeah, we don't see your name anywhere when it comes to the subpoena that was
7 issued in May 2023 for the -- it was like nine Senators and Representative Kelly.

8 Do you remember any conversations about subpoenaing nine Senators and a Representative
9 all at once?

10 A I don't recall that.

11 Q You don't recall it? Okay.

12 A I don't know.

13 Mr. Dawson. One clarifying question. Would you have been involved in getting toll
14 records for Scott Perry? I'm not sure we talked about that specific --

15 Mr. Duree. Yes. You know, I believe that we did have toll records for Scott Perry, and
16 those would have proceeded via the same sort of, you know, procedural approval mechanism
17 through PIN as the others. I would've -- I would've been involved in that.

18 Mr. Dawson. Okay.

19

20 Q So did you stick with investigating the alleged misconduct at DOJ once you went over to
21 the special counsel's team or did your role broaden?

22 A My role broadened and then shifted. I did -- I did stick with the DOJ effort. That
23 remained a large part of what I did. But when we got to the Special Counsel's Office, there were
24 also a significant number of additional investigative workstreams that needed to be addressed and
25 developed.

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1 So I can tell you what they were if you want, but I do remember in the early part of '23
2 spending more of my time on investigative workstreams other than the DOJ one.

3 Q And what were those workstreams at that point in time, in the early 2023 timeframe?

4 A So a few things that I did. I was involved in the workstream to -- I'm not going to
5 remember if these workstreams even had specific names, but I was involved in the work to -- do you
6 need me to stop?

7 Q No, you can go ahead. We have 2 more minutes.

8 A I was involved in the workstream to figure out whether President Trump had pressured
9 officials at the State level to help overturn the vote or get the election decertified or assist him in
10 making, you know, unsubstantiated fraud allegations.

11 I participated in the workstream that involved going from State to State to understand the
12 election processes. And I remember being involved at times in the fraudulent elector workstream,
13 or you might want to call it the alternate elector workstream.

14 I remember doing some work on that and, you know, whatever else -- whatever else the
15 needs of the office dictated, but those are the -- those are the main things I'm remembering offhand.
16 Okay. We can go off the record.
17 [Recess.]
18 We'll go back on the record at 1:05 p.m. Eastern Time.
19 BY
20 Q I just want to pick up on some of the questions that were asked in the last hour, and
21 let's start with the chairman, Chairman Jordan.
22 A Okay.
23 Q I guess, what led you during the investigation, that you recall, to even, you know,
24 requesting the toll records of Chairman Jordan?
25 A Mr. Jordan -- the 937 number that I now know to be Chairman Jordan's was in contact

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1 with other phones held by people of relevance to our investigation.
2 Q Can you describe in more detail some of the other folks of relevance that Mr. Jordan
3 might have been in contact with which would have led to the request for the toll records?
4 A You're testing my memory now, but I remember Scott Perry for sure. I think Mark
5 Meadows. Mr. Jordan may have had communications with President Trump. I'm not sure if that
6 would have been on a cell phone or not. But I -- I don't remember the full cast at this point.
7 Q And I'll direct you to exhibit 6 that the majority entered in during their hour.
8 Look, I'll state the obvious, and I know I've heard some of our majority colleagues make this
9 point before, right, you mentioned President Trump, you mentioned Congressman Perry calling the
10 chairman. These are other congressional members.
11 I guess, what specifically about those calls from congressional Members to Chairman Jordan
12 stood out to you all during the course of your investigation? And I think it's referenced in PIN's
13 email back to you in exhibit 6.
14 A Okay. Yeah, as I look at this pretty -- give me just a second.
15 Q Please take your time.
16 A Yeah, this jogs my memory a little bit. And I should say, to be really clear, I
17 just -- I'm -- as to exactly who Mr. Jordan was contacting, I -- you know, I tried to offer a couple
18 names to be helpful. I really don't remember offhand -- it's just been so long -- which -- you know,
19 who was in that set of people. I really don't.
20 But what I do remember is this: As I've said, I was looking to understand as
21 comprehensively as I could what happened in the, roughly, 2-week period in which there was this
22 effort to elevate Jeff Clark to the acting attorney general's role. And in that time period, Mr. Clark
23 and Scott Perry were in very frequent communication.
24 One of the steps that I took in the early days of the commun- -- in the early days of the case,
25 in April '22 was, you know, relatively early on, is we were trying to build out our understanding of

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1 who was talking with whom and who may have been involved, understanding that not every person
2 with whom another person might talk is necessarily involved in one thing or another. It's just that,
3 you know, understanding the nature of the communications provides you a bit of evidence that's
4 useful.
5 So I sought subpoenas for many numbers that were in contact with Mr. Clark and many
6 numbers that were in contact with Mr. Perry. A thing that I remember doing in general is that once

7 we would get those subpoenas back, we would look through the toll records to identify if there were
8 any common numbers called between that number we'd subpoenaed and the other people we had
9 already -- that are already falling within the scope of our investigation.
10 We would look at the frequency of those calls. We would try to better understand who was
11 talking to whom so that we could build out things like, you know, on date X Jeff Clark called person
A.
12 Person B called person C. As soon as that call was over, person B called person -- called Jeff Clark
13 again. So understanding the play-by-play of how it happened.
14 So what brought -- I don't want to say that it brought Congressman Jordan to my attention.
15 What brought the 937 area code phone number to my attention was that that phone number was in
16 contact at relevant times with parties that were pertinent to our investigation.
17 Q And are these types of toll records, the way you just described it, are they helpful in
18 corroborating witness testimony as you're doing your investigation?
19 A They certainly can be.
20 Q And would this type of evidence typically or could it be used to corroborate the witness
21 testimony at trial if it would have gotten to that point?
22 A Yes, sir.
23 Q And is this type of evidence used to build chronologies like you just described, a series of
24 events or a timeline of events?
25 A Yes. That was -- that was one of the key things I was envisioning, yes.

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1 Q Going back as well, I think within the last hour we mentioned Congressman Roy as well.
2 Do you recall Congressman Roy's relevance to the investigation?
3 A Not really. If you want to show me some records, you can jog my memory, but I know
4 that he was a name that came up. But exactly how and the context, I'm struggling to pull those
5 specifics.
6 Q Okay. There was also questions in the last hour about collecting information about
7 President Biden's adversaries I think was -- do you remember those questions?
8 A I do. I do.
9 Q At any point during your investigation, were you collecting information for the benefit of
10 President Biden?
11 A Never.
12 Q Were you collecting information of individuals that you perceived to be adversaries to
13 the Democratic Party?
14 A No, we were not collecting any information for any political purpose.
15 Q Were you collecting information at the direction of President Biden or Vice President
16 Kamala Harris?
17 A Absolutely not.
18 Q Were you collecting information at the direction of Attorney General Merrick Garland?
19 A No, not that I know of.
20 Q You discussed as well and we've seen the emails of you going through PIN before
21 collecting these types of information. Can we -- and I think you've touched on this before, but just
22 to make sure it's clear, what role did PIN play? Why were you going to PIN when requesting these
23 types of records?
24 A So PIN has consulting authority on investigative actions taken in relation to Members of
25 Congress. So even though PIN wasn't, you know, my supervisor or anything -- I didn't have a

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1 supervisor in PIN. PIN's job was to -- PIN had a duty under the Justice manual to be the entity with
2 which we consulted when taking investigative steps relevant to Congress people. So we followed
3 the Justice manual.

4 Q So let's take another investigation, not, for example, the election conspiracy
5 investigation. Let's take a -- say you're investigating another Member of Congress or public official.
6 Would you have to consult PIN in those situations as well?

7 A I presume so yes. I would do -- if I were investigating a Member of Congress or I were
8 investigating a case that in which I needed evidence from a Member of Congress, I would do exactly
9 as the Justice manual requires. And at the time, that required consultation with PIN.

10 Q And I do want to go back to kind of the earlier one I was talking about, and I think the
11 majority might have mentioned this as well, Chairman Jordan's role on Judiciary and the
Department

12 of Justice requesting his toll records with him having that role.

13 Had Mr. Jeffrey Clark or Congressman Scott Perry called Ranking Member Nadler about
14 elevating Mr. Clark within the Department of Justice, would you have requested Mr. Nadler's
records

15 as well?

16 A Yes. I want to emphasize here on that point, the records -- what was relevant to me
17 was the 937 phone number that was communicating with parties of interest. I had no particular
18 focus on the titles or professional positions held by the people owning those phones at the moment.

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1 [1:13 p.m.]

2 BY :

3 Q Going back to PIN, are you aware if there's been broad personnel changes at Public
4 Integrity since President Trump assumed office in 2025?

5 A It is my understanding that there has. I'm not a DOJ anymore, so I can't speak too
6 much to --

7 Q Is it your understanding that many folks have been fired from PIN since President Trump
8 assumed office in January 2025?

9 A I honestly am not sure. I have read the news and understand through, you know,
10 colleagues that there had been broad personnel changes. I don't know how the personnel changes
11 came about exactly.

12 Q Is it your belief that gutting PIN, you know, could lead to more or less potential missteps,
13 right, in sensitive investigations? Like how would gutting PIN actually impact the issues that both
14 the majority and minority seem to be asking about today?

15 A So I was only a line prosecutor on this case, but what I will tell you is this: My
16 experience with PIN, PIN attorneys were professionals, seasoned, and the work that they did -- and I
17 personally have found PIN'S guidance to be valuable.

18 Q Okay. Going back to your time as well on the special counsel's Office, in the special
19 counsel's Office investigating these claims in 2022 and moving forward, I guess, how has, you
know,

20 being a member of this team and maybe some of the attacks about your investigation, how has that
21 impacted your life, if at all?

22 A How the attacks on the team affect my life or being part of the team?

23 Q Yeah, the attacks on the team that you were a part of, how has that impacted your life?

24 A I personally have found it disappointing that the work of our team has been called into
25 question or politicized in a way that I as someone on the team believe to be completely unfounded

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1 and completely unfair.

2 But at the same time, I am grateful for the opportunity to do things like be here today and
3 clarify some of that, so that I can hopefully help people understand the nature of the work that we
4 did. And although it's not exactly the question, I do want to emphasize, I felt then and feel now so
5 immensely lucky to have been able to work with the spectacular people on that team that I will
6 consider the time that I spent working with that team on a case of this magnitude to be, you know, a
7 great professional highlight.

8 Q And while we thank you for your service of engaging in this investigation, right, to
9 preserve, right, the election and the transfer, the peaceful transfer of power, we've heard from
10 others, they might have had to take additional steps for their safety, for their family's safety, things
11 of that nature of being a part of this team. Have you had to take similar steps in your own personal
12 life?

13 A You know, we definitely -- I definitely was cautious, but, you know, nothing. Do you
14 want me to identify specific things that we've done?

15 Q Whatever you're comfortable. I think I'm just trying to get a sense of how the
16 politicization of this investigation has impacted the civil servants' life afterward -- lives afterwards?

17 A I did feel like it was prudent to be more cautious and to, you know, take certain steps to
18 minimize the availability of my -- of putting my personal information online, and that kind of thing.
I

19 have taken a few steps.

20 Q Has it impacted your family -- I know you mentioned you wife earlier -- has it impacted
21 our family as well?

22 A You would have to ask my wife.

23 Q I am not going to speculate on your wife. I hear you on that. Has this committee's
24 investigation brought more attention specifically to you than what you might have envisioned or
25 appreciated?

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1 A Well, "appreciate" is hard to say. If I wasn't here today, I would be at work doing my
2 other job, my day job, and this has taken time away from that. But as I said, I am proud of the work
3 that we did. I believe wholeheartedly that we did the right things for the right reason. And I am
4 grateful to have the opportunity to talk to y'all and explain some of that.

5 Q And just a little bit of housekeeping. I know we've shown you a series of documents
6 today from your emails to PIN, subpoenas for toll records. I just want to do some level setting.
7 Have you had a chance to review your records at the Department of Justice from this time period?

8 A I have not reviewed my records at the Department of Justice.

9 Q Has the Department of Justice reached out to you about helping them identify records
10 that they have produced to this committee?

11 Mr. Dawson. Are you aware.

12 Mr. Duree. I have not received any reach-out.

13 BY

14 Q In, fact I'm just using exhibit 6 because it's the one I have in front of me as an example.

15 Are there any Bates numbers on this exhibit that you see?

16 A Which one is exhibit 6?

17 Q Exhibit 6 is your email with PIN from April 26, 2022.

18 A No, there's no Bates numbers.

19 Q So sitting here today, are you aware of whether you know, this committee has received
20 a complete set of emails between the special counsel's Office and PIN, for example?

21 A I have no idea.

22 Q Okay. I think that's all we have. We'll go off the record now. Thanks.

23 [Discussion off the record.]

24 BY

25 Q We'll go back on the record. It's now 1:25 p.m. During the break, we passed out

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1 what will be exhibit 10, which is a lengthy document, and it includes an email exchange between
2 Molly Gaston, J.P. Cooney, Thomas Windom, and they're discussing toll record subpoena for
3 Senators' records.

4 I am going to specifically draw your attention to -- it's page 7 of the packet, and there is an
5 email exchange between Ms. Gaston and John Keller, who was the Principal Deputy Chief of the
6 Public Integrity section.

7 Now, I know in the previous hour you had mentioned that quite possibly when the special
8 counsel took over the investigation, you may have not been the one that was interacting with the
9 Public Integrity Section. Is that correct?

10 A That's correct.

11 Q Do you ever remember discussing interacting with the Public Integrity Section with
12 Molly Gaston?

13 A Do I remember discussing interacting with Molly Gaston or discussing with Molly
14 interactions with PIN?

15 Q Correct. The latter.

16 A It could have come up, but I don't have a specific recollection of any conversations
17 about PIN with Ms. Gaston.

18 Q And do you know if she was designated an individual to reach out to PIN?

19 A I don't know. I don't know.

20 Q And during our last hour together we had discussed whether or not you remembered
21 subpoenas for Senators' records, and I believe you said you did not. Is that correct?

22 A I did not participate in -- I do not remember participating in those at all.

23 Q Okay. Do you remember participating in any discussions regarding the Speech or
24 Debate Clause in that context?

25 A In the context of those Senators --

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1 Q Correct.

2 A -- no, because, as I said, I don't think I was part of those conversations. And if I was, I
3 don't remember it.

4 Q Okay. And I want to walk through Mr. Keller's email just giving your knowledge of the
5 case as well as having prior interaction with PIN and just kind of walk through what was going on
6 here.

7 So looking at the paragraph, it says: Based on the email below in our conversation, PIN
8 concurs in the subpoenas for toll records for identified Members of Congress from January 4th, 2021,

9 through January 7, 2021. As you are aware, there is some litigation risk regarding whether
10 compelled disclosure of toll records of a Member's legislative calls violates the Speech or Debate
11 Clause in the D.C. circuit. Then the next parenthetical states, The bar on compelled disclosure is
12 absolute. And that is quoting from a case.

13 I want to break this down just a little bit. But the toll records for the Senators were only
14 requested between January 4th, 2021, and January 7th, 2021. Can you help explain why the
15 timeframe was so narrow in comparison to what was requested for, you know, Mr. Jordan and Mr.
16 Roy?

17 A Sure. So I can't tell you precisely -- I can't tell you without speculating as to why these
18 3 days were requested because I wasn't on these emails' prior conversations. But I can tell you why
19 the scope narrowed. This is completely normal and standard in a criminal investigation.

20 At the beginning of an investigation -- and I'll tell you generally and apply it to this case.

21 At the beginning of investigation, you know some information, but you're trying to build out
22 your understanding. You want to know the parties involved and all that, and you're trying to build
23 out contacts and understand the folks involved at a broad level. As you build your understanding of
24 the case, you've laid your foundation and understand what the facts are and who the people
25 involved might be, then you start digging in more, refining your focus so that ideally if you've done

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1 your investigation thoroughly, you've done your investigation well, you're going to go from spot at
2 the beginning where you're looking broadly to sort of learn the landscape to a spot at the end where
3 you were laser-focused on developing evidence of specific criminal conduct. And I believe that
4 is -- without speculating or why these 3 days exactly were the ones chosen -- I believe that that is
5 what happened here. That in 2022 when I am beginning to run in the early stages of investigating
6 the DOJ stuff, we were trying to build out our understanding of who may or may not have been
7 involved and understand the universe myriad investigation.

8 By this point in 2023 which is a few months before we did the grand jury returned an
9 indictment against the President in our election case, our investigative focus had refined greatly so
10 that we could specifically target real narrow date ranges, knowing we needed specific information
11 about individual things. And that is a function of a -- that's a particularly normal thing that
12 happens -- in a function of the investigation narrowing if the work is done well as the investigation
13 develops.

14 Q And in speaking with the other prosecutors who have been involved in these subpoenas,
15 you know, they have stated they needed the Senators' toll records. And I'm using Senators, but
16 Representative Kelly was in that subpoena as well -- but Senators' toll records was -- because they
17 had the President's phone records, and they had Mayor Giuliani's phone records, and they were
18 tracking who was calling who, but they needed the Senators' phone records to nail down a timeline
19 of who the President was communicating with. Do you remember any discussions along that line?

20 A I remember generally that being -- that being -- I remember generally there being
21 interest in understanding who was called in the late afternoon, early evening hours of January 6th.

22 Q Okay. And do you know why they still needed the Senators' records even though they
23 had all of these other returns from toll records?

24 A I don't know the specific rationale. I could hazard a guess to reasons, but I don't think
25 that would be productive. I wasn't part of these conversations.

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1 Q And turning back to the email I read the couple sentences of: As you are aware, there

2 is some litigation risk regarding whether compelled disclosure of toll records of a Member's
3 legislative calls violates the Speech or Debate Clause in the D.C. Circuit. Then Mr. Keller quotes
4 some D.C. Circuit cases. One is the bar on compelled disclosure is absolute. Further down, it says:
5 The caselaw is clear that a legislator asserting the invasion of the Speech or Debate Clause privilege
6 by use of the grand jury subpoena to a third party may intervene and oppose such use.
7 Would you agree that a legislator should be able to intervene if the subpoena is to a third
8 party to a service provider to litigate their rights under the Speech or Debate Clause?
9 A First, could you point me to where you're reading.
10 Q Yes, the specific to third party is right after the member?
11 A 594.
12 Q 594. And then it says: The caselaw is clear that a legislator asserting the invasion of
13 the Speech or Debate Clause privilege by use of a grand jury subpoena to a third party may
intervene
14 and oppose such use."
15 A Okay.
16 Q I guess, first of all, was there any discussion of this specific caselaw where the subpoena
17 is to a third party, such as a service provider for a Members' records?
18 A In this context specifically, I don't know, because I wasn't party to these conversations.
19 Q Did this case ever come up in the previous subpoenas that you were involved with.
20 A I can't say I can remember every Speech or Debate Clause case that we analyzed or
21 considered. Just looking at this as it is, the case that you cited, that Mr. Keller is referencing here is
22 a Third Circuit case. The D.C. Circuit, where we were, is a different circuit and has its own
particular
23 and unique Speech or Debate laws.
24 So it's possible that this case would have come up in prior research. I don't doubt it, but I
25 don't have a particular memory. And I'll note that this will be an opinion from outside the most

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1 pertinent --

2 Q So were prosecutors just unconcerned that even records from a third party for a
3 Member of Congress could be privileged under the Speech or Debate Clause?
4 A I wouldn't say that a second. I would say we were hyper vigilant and extremely aware
5 of the contours of the Speech or Debate Clause. We knew that Speech or Debate was something
6 that we had to navigate. We treated it seriously. There are portions of the Speech or Debate
7 caselaw that might, in different circuits, be a little bit underdeveloped, such that the guidance is not
8 entirely clear. But we were very much aware of Speech or Debate, the Speech or Debate Clause
9 and committed to following the law that pertained to us relating to the Speech or Debate Clause, and
10 did the very best we could to navigate and resolve any uncertainty that may have existed therein.
11 We were not unconcerned about the Speech or Debate Clause.
12 Q The last clause here says: Given my understanding of the low likelihood that any of the
13 Members listed below would be charged, the litigation risk should be minimal here.
14 Were you aware that there was, indeed, some sort of litigation risk involved with issuing
15 these subpoenas? I know this is specific to the Senators, but this is a more in-depth Speech or
16 Debate analysis than what went on in the other PIN emails?
17 A I was aware that -- at some point I became aware that certain of the specific issues that
18 we were addressing, or what we were running into were arguably not fully resolved by the existing
19 caselaw on Speech or Debate. And that's a common thing, particularly in complex investigation, to
20 run into the corners of the law that aren't fully built out.

21 Yeah, I was aware that, you know, there was some lack of clarity on certain points. And we
22 did the very best we could to proceed as thoughtfully and intelligently as possible.
23 Q And, just again, I'll represent to you that there was an NDO signed by Judge Boasberg
24 that accompanies this subpoena. So with the NDO, you have mentioned there's a lack of clarity of
25 what, you know, the full spectrum of the rights are underneath the Speech or Debate Clause, and

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1 there's a lack of clarity. But what remedy did Members have to litigate this lack of clarity, if you
2 will?

3 A Are you asking me what ability Members of Congress have to?

4 Q In the context of these subpoenas, what remedies did Members have to litigate this lack
5 of clarity that's apparent from this email?

6 A So a quick clarifying point. I am not saying that there is particularly a lack of clarity in
7 my mind as to whether toll records are protected by the Speech or Debate Clause. I feel pretty
8 confident that toll records are not under D.C. Circuit caselaw. But, you know, again, I am not a
9 judge.

10 But to get to your question what remedy they have, a nondisclosure order does prohibit
11 disclosure of the subpoena. So if the nondisclosures orders follow, the subscriber would not
12 receive that subpoena.

13 Q And do you know if there was any discussion of -- it's a code that protects Senate phone
14 records. It's 2 USC Section 6628. And it says, you know, if a third party receives some sort of legal
15 process for a Senate phone line, they have to notify the Senate office or the Senate Sergeant at Arms.
16 Do you remember any of those conversations occurring at that specific statute?

17 A I don't remember, but I don't remember being part of any conversations about
18 subpoenaing Senators' numbers.

19 Q I am going to jump around a little bit.

20 A As you wish, sure.

21 Q Did you know Jack Smith before joining the special counsel's team?

22 A No.

23 Q And who asked you to join the special counsel's team?

24 A I think Jack. I think Jack. I think I was -- I think he called and asked me to join.

25 Q And you had never worked with Mr. Smith prior to joining?

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1 A I had not.

2 Q And you didn't work at all on the document piece of his investigation, correct?

3 A That wasn't where my work was. I may have, you know, at some point over the three
4 something years have -- touched in a way I am not particularly remembering. But, no, that wasn't
5 what I worked on.

6 Q Okay. And then the President is indicted August 1st, 2023, in D.C. for the election case.

7 A Yes, ma'am.

8 Q And then a gag order was sought against the President on September 15th, 2023.

9 Did you have any -- did you do any work in relation to the filings for this?

10 A If you show me my emails, that could help me a little bit, but I don't remember
11 participating in the gag order really at all.

12 Q And were you aware that it was narrowed at one point by the Appeals Court?

13 A If that happened, I may have been made aware of it. I am not -- I don't think I worked

14 on the gag order stuff. And if I did, I don't remember it, so I don't really recall.

15 Q Were you aware of any violation of 18 USC Section 1512, the Witness Tampering Statute
16 by President Trump?

17 A When?

18 Q At the time of the gag order that was sought in September 15th, 2023?

19 A I don't know one way or the other. I do know that over the course of our investigation,
20 there was a whole lot of evidence that President Trump sought to cajole people to say things that he
21 wanted them to say even if those things didn't bear much relationship to the truth as we understood
22 it. But to your exact question, I don't particularly know.

23 Q And then did you play any role in the appellate process for the Presidential immunity
24 question?

25 A No, we had really great appellate attorneys. They didn't need me.

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1 Q And so after the superseding indictment is handed on August 27th, 2024, did you play
2 any role in the superseding indictment?

3 A Probably some role. I just don't -- you know, I don't remember exactly what I did, but I
4 assume that I probably, you know, reviewed it, participated in some way. I just don't remember
5 what my role was.

6 Q And did you have any role in setting the trial date for when it would start in D.C.?

7 A No.

8 Q After the immunity decision and the superseding indictment on August 2nd, 2024,
9 Smith's office filed a 165-page brief that was styled as like an immunity determinations brief. Are
10 you aware of this brief?

11 A Yeah, I am. It was pretty big, yeah.

12 Q And what was your role in the brief?

13 A I don't remember honestly. Like I probably had some role in reviewing it, addressing
14 some factual issues. I just -- I remember it being a big brief that our office did, but I am a bit hazy as
15 to exactly what work I was doing at that point and if that was something I spent much time on. I
16 don't remember what my particular role was.

17 Q And what can you tell us about any discussions you were party to regarding the timing
18 of the brief. You know, it came out August 2nd, 2024. The defense hadn't even responded to the
19 superseding indictment yet. So it's just kind of out of order. Were you party to any discussions of
20 timing?

21 A Not that I remember other than generally and historically we wanted to move quickly.
22 In this case, the same as any other, you don't want to just leave an indictment hanging out over
23 someone's head. You want to get it resolved. You want to move fast. But I don't remember
24 specific conversations.

25 Q Were there any concerns about the proximity to the November 2024 election?

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1 A We had absolutely zero desire to do anything at any point ever that would have
2 impacted the, you know, the 2024 election. We were as a team aware of the election interference
3 policy, so it was something about which we knew. That's about it.

4 Q Do you know if it was within the Election Interterm Policy? I think it's called, like, a
5 60-day election sensitivities policy.

6 A I'm not remembering how any sort of policies on election interference might have

7 impacted our decisionmaking.

8 Q Do you know if there was any correspondence with the Public Integrity Section given
9 that this was clearly within 60 days of the November 2024, election?

10 A Is that communication I was on that you can show me?

11 Q I don't have any of that communication. I am just trying to see if you remember any
12 communications or discussions?

13 A I am happy to look at whatever you want to show me, but I don't remember anything.

14 Q So if there were discussions with public integrity, you don't remember being party to
15 those just as you sit here today?

16 A I don't.

17 Q I want to talk about our interactions with various other individuals outside of the special
18 counsel's office?

19 A Yes.

20 Q While you were on the special counsel's team, and even prior to joining the special
21 counsel's team, so from January 2022 to January 2025, did you ever have any interactions with the
22 House's January 6th Select Committee?

23 A I don't believe I ever did. I don't think so.

24 Q Were you ever a party to any discussions about receiving information from the January
25 6th Select Committee?

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1 A There may have been in May-ish of 2022. I said, I want you to understand, I'm doing
2 my best on the date, but don't hold me to May.

3 Q Okay.

4 A In May, around that time of 2022, there might have been an opportunity for those of us
5 on the team to review certain transcripts that they had of people that they had interviewed. I don't
6 remember how many transcripts it was, or anything like that, but I have a vague recollection of this.
7 And I think I might have been out of town, and so I wasn't able to participate in any review that might
8 have happened. I sort of vaguely remember that.

9 Q At any point in time, did you ever review materials that were provided by the January
10 6th Select Committee?

11 A Yes.

12 Q And what do you remember reviewing?

13 A I remember that at some point, we were provided a bunch of -- a tranche of documents,
14 and we had things like transcripts. I specifically remember transcripts. I don't know if there was
15 anything other than transcripts. But I remember reviewing transcripts of witnesses that the Select
16 Committee had interviewed.

17 Particularly, in my case, I was particularly but not exclusively focused on witnesses who are
18 also relevant to the work that I was doing and is obvious.

19 Q Okay. And to the extent there were conversations or communications that happened
20 between Mr. Smith's team and the January 6th Select Committee or the election interference
21 investigation prior to Smith's arrival, those communications did not involve you. Is that correct?

22 A To the best of my memory, I cannot say for certain, but I do not remember ever
23 speaking to anyone. I don't remember personally speaking to anyone on the January 6th
24 Committee. I do remember receiving the documents from the January 6th Committee.

25 Q And did you have any contact or communication with Fulton County District Attorney

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1 Fani Willis?

2 A No.

3 Q Are you aware of any contact that occurred between Mr. Smith's team and Ms. Willis?

4 A I am not.

5 Q And no contact with Nathan Wade, he was one of her prosecutors?

6 A No.

7 Q Did you have any contact or communication with Manhattan District Attorney Alvin

8 Bragg?

9 A No.

10 Q Are you aware of any contact that took place between Mr. Smith's team or the election

11 interference investigators?

12 A I'm not aware of that.

13 Q Any communication with Michael Colangelo after he went to Mr. Bragg's office?

14 A I don't know who that person is to tell you the truth.

15 Q Did you have any contact or communication with State Attorneys General?

16 A Yes. In that I -- I interviewed the Michigan -- not Michigan, I'm sorry. I interviewed

17 Georgia Attorney General Chris Carr.

18 Q Okay.

19 A I flew down to Atlanta and talked with him about -- but this was not -- maybe I should

20 clarify your question. I interviewed Chris Carr related to communications President Trump had had

21 with him in 2020. But, yeah, I did talk to Chris Carr.

22 Q Okay. Did you talk to any other State Attorneys General or anyone in their respective

23 offices?

24 A Let me go through the States. I don't remember doing so. And if you -- yeah, I don't

25 remember doing so.

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1 Q And when we had Assistant Attorney General Kenneth Polite -- I am sure you're familiar

2 with him --

3 A I do know him.

4 Q -- in for a transcribed interview, he discussed two calls that he had convened with

5 approximately 10 State Attorneys Generals. Do you remember if you were on those calls?

6 A Oh, that may have been -- I mean, I don't -- I don't remember. I don't think I would

7 have been. No, I don't. I don't know. I don't know.

8 Q And did you ever discuss what occurred on those calls with either Mr. Polite or Mr.

9 McQuaid?

10 A I'm not sure. Can you tell me what those calls related to that might jog my memory?

11 Q Yeah, I can tell you. I have Mr. Polite's testimony right here. He said: I can recall a

12 call that involved several State Attorneys General on it, and my recollection was that representatives

13 for the Attorney General or from the offices of Michigan, Nevada, Pennsylvania, Colorado were on

14 that call, but it may have been certainly more than that. My recollection was around 10.

15 A Colorado? You know, that's weird to me. I was thinking maybe there's a call about

16 the alternate electors, the fraudulent electors, or something, but no. I can sum it up this way real

17 easily. The communication I had like with Chris Carr, -- and if there was any others -- would have

18 been relevant to investigating what happened in the 2020 election, potentially as witnesses, right.

19 I don't recollect any conversations with people that were Attorneys General in their States at

20 the time we were doing the investigation about, you know, investigative steps that those offices

21 might be taking or anything like that.

22 Q Great.

23 A Does that distinction make sense?

24 Q That's helpful. Thank you. And in the January 2022 to January 2025 timeframe, did

25 you ever have any contact with the Biden White House?

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1 A No.

2 Q I want to talk about the use of FBI confidential human sources in that election

3 interference investigation. While you were working on that investigation, did you ever interact with

4 either FBI confidential human sources or information that was provided by FBI confident human

5 sources?

6 A I do not believe I ever used a confidential human source in this case. I have no

7 recollection of doing so. And I do not have any recollection of ever, you know, receiving

8 information from a confidential source in this case.

9 Q And we're aware of June 2023 payment from Mr. Smith's team -- for the FBI

10 rather -- but Mr. Smith and Mr. Holzer, I believe, okayed the payment of \$20,000 to a confidential

11 human source for review of video footage and photographic evidence in that case. Were you aware

12 of that payment or aware of how the confidential human source was used?

13 A No, not unless you -- if you can provide me with evidence -- with emails, you know, that

14 I was on it or something. But, no, I don't remember that, no.

15 Q Okay. So you weren't aware of any use of confidential human sources in this case?

16 A I don't remember right now being aware of that.

17

18 Q Do you know where Brian Burnett is currently? The IG official?

19 A No. Mr. Burnett have not -- I unfortunately have not maintained communication with

20 him. The last I heard he was still at DOJ OIG, but I haven't talked to him since probably some years.

21 Q Okay. We can go off the record.

22 [Whereupon, at 1:53 p.m., the interview was concluded.]

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1 Certificate of Deponent/Interviewee

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3

4 I have read the foregoing ____ pages, which contain the correct transcript of the answers made

5 by me to the questions therein recorded.

6

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10 _____
10 Witness Name

11

12

13

14 _____
14 Date

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5 COMMITTEE ON THE JUDICIARY,
6 U.S. HOUSE OF REPRESENTATIVES,
7 WASHINGTON, D.C.

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13 INTERVIEW OF: TIMOTHY DUREE

14

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16

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18 Thursday, March 5, 2026

19

20 Washington, D.C.

21

22

23 The interview in the above matter was held in room 2237, Rayburn House Office Building,
24 commencing at 10:00 a.m.

2

1 Appearances:

2

3 For the COMMITTEE ON THE JUDICIARY:

4

5 , DEPUTY DIGITAL DIRECTOR

6 , GENERAL COUNSEL

7 , PROFESSIONAL STAFF MEMBER

8 , LAW CLERK

9 , CHIEF COUNSEL FOR OVERSIGHT

10 , COUNSEL

11 , RESEARCH ASSISTANT

12 , MINORITY SPECIAL COUNSEL FOR INVESTIGATIONS AND SENIOR ADVISOR

13 , MINORITY GENERAL COUNSEL

14 , MINORITY FELLOW

15 , MINORITY LEGAL INTERN

16 , MINORITY STAFF ASSISTANT

17 , MINORITY SENIOR COUNSEL

18 , MINORITY LEGAL INTERN

19

20 For TIMOTHY DUREE:
21
22 ANDREW F. DAWSON
23 ELIZABETH A. HECKMANN
24 Keker, Van Nest & Peters LLP
25 We'll go on the record.

3

1 Good morning. This is a transcribed interview of Mr. Timothy Duree. Chairman Jordan has
2 requested this interview as part of the committee's oversight of Special Counsel Jack Smith and his
3 team.

4 Would the witness please state your name for the record?

5 Mr. Duree. My name is Timothy Duree.

6 . We encourage witnesses who appear before the committee to freely consult
7 with counsel if they so choose. And it is my understanding that you are appearing today with
8 personal counsel. Is that correct?

9 Mr. Duree. Yes, ma'am.

10 Would counsel please state your name for the record?

11 Mr. Dawson. Andrew Dawson and Elizabeth Heckmann of Keker, Van Nest & Peters.

12 Thank you.

13 On behalf of the committee, I want to thank you for appearing here today to answer our
14 questions. The chairman also appreciates your willingness to appear voluntarily.

15 My name is , and I'm with Chairman Jordan's staff. I'll now have everyone
16 else from the committee who is here in the room introduce themselves as well.

17 . .

18 with Ranking Member Raskin's staff.

19 with Ranking Member Raskin's staff.

20 with Ranking Member Raskin's staff.

21 with Ranking Member Raskin's staff.

22 with Chairman Jordan's staff.

23 with Chairman Jordan.

24 with Chairman Jordan's staff.

25 with Chairman Jordan's staff.

4

1 , Chairman Jordan's office.

2 I'd like to now go over the ground rules and guidelines that we'll follow during
3 today's interview. Our questioning will proceed in rounds. The majority will ask questions first for
4 1 hour, and then the minority will have an opportunity to ask questions for an equal period of time if
5 they choose. We will alternate back and forth until there are no more questions, and the interview
6 is over. Typically, we take a break at the end of each hour, but if you would like to take a break
7 apart from that, just let us know.

8 As you can see, there's an official court reporter taking down everything we say to make a
9 written record, so we ask that you give verbal responses to all questions. Do you understand?

10 Mr. Duree. Yes, ma'am.

11 . In addition, there is a committee videographer making a video record of this
12 proceeding.

13 So the court reporter can take down a clear record, we'll do our best to limit the number of
14 people directing questions at you during any given hour to just those people on the staff whose turn
15 it is. Please try and speak clearly so the court reporter can understand and so the folks down at the
16 end of table can hear you as well. It's important that we don't talk over one another or interrupt
17 each other, if we can help it, and that goes for everybody present at today's interview.
18 We want you to answer our questions in the most complete and truthful manner as possible,
19 so we will take our time. If you have any questions or if you do not understand one of our
20 questions, please just let us know. Our questions will cover a wide range of topics. So if you need
21 clarification at any point, just say so. If you honestly don't know the answer to a question or do not
22 remember, it is best not to guess. Please give us your best recollection, and it is okay to tell us if
23 you learned information from someone else; just indicate how you came to know the information.
24 If there are things you don't know or can't remember, just say so and please inform us who, to the
25 best of your knowledge, might be able to provide a more complete answer to the question.

5

1 You should also understand that by law you are required to answer questions from Congress
2 truthfully. Do you understand that?

3 Mr. Duree. Yes, ma'am, I do.

4 . This also applies to questions posed by congressional staff in an interview. Do
5 you understand this?

6 Mr. Duree. Yes, ma'am.

7 . Witnesses that knowingly provide false testimony could be subject to criminal
8 prosecution for making false statements under 18 U.S.C. Section 1001. Do you understand this?

9 Mr. Duree. I do.

10 Is there any reason you are unable to provide truthful answers to today's
11 questions?

12 Mr. Duree. No, ma'am. I intend to.

13 . Finally, I'd like to make note that the content of what we discuss here today is
14 confidential. We ask that you not speak about what we discuss in this interview to any outside
15 individuals to preserve the integrity of this investigation.

16 For the same reason, the marked exhibits that we will use today will remain with the court
17 reporter so that they can go in the official transcript, and any copies of those exhibits will be
returned

18 to us when we wrap up.

19 That's the end of my preamble. Is there anything my colleagues from the minority would
20 like to add?

21 . Just thank you for being here voluntarily. We look forward to hearing your
22 testimony today.

23 Mr. Duree. My pleasure to be here.

24 Mr. Dawson, I understand you have some words to say.

25 Mr. Dawson. Just very briefly, I sent a letter last night, apologies for the late hour, regarding

6

1 our understanding of the authorization from the Department of Justice and flagging a few issues just
2 to be aware of. The two I would just mention now in terms of the 6(e) restrictions under the
3 Federal Rules of Criminal Procedure, I don't anticipate those being an impediment to talk about what
4 I understand the committee intends to ask, but I may interject from time to time just to rephrase a

5 question to ensure that we protect Mr. Duree given some inconsistencies in the circuits in terms of
6 what those rules are. But, again, I don't anticipate those will prevent fruitful questioning.

7 And so I would like to kind of enter this into the record just so I don't go through it and chew
8 up time on the clock. So with your permission, I'd just put our letter into the record.

9 We'll mark that as exhibit No. 1.

10 And we can make more copies at the end of the hour if you need it.

11 . It's okay.

12 [Duree Majority Exhibit No. 1.

13 was marked for identification.]

14 . Okay. The clock now reads 10:04 a.m. We'll start our first hour of
15 questioning.

16 EXAMINATION

17 BY :

18 Q Mr. Duree, when you did you join the Department of Justice?

19 A June of 2012.

20 Q June of 2012. And can you walk us through the positions you held there?

21 A Yes, ma'am. can you tell me your last name one more time? I'm sorry.

22 Q

23 A Okay. Thank you, ma'am.

24 Q Of course.

25 A The positions I held. And I'll give you as much detail as you want. If you want to

7

1 speed me along, speed me along.

2 Q Okay.

3 A I joined -- I graduated law school in 2008, spent 4 years doing other things, and

4 then -- roughly 4 years. In 2012, I joined the Department of Justice as an assistant United States
5 attorney in beautiful Del Rio, Texas. It's in the western district of Texas. It's where I was already
6 living at the time and had the opportunity to be an AUSA there. Texas is where I grew up.

7 I was in Del Rio for roughly 4 years, I'll call it, prosecuting all manner of crimes that one
8 prosecutes on the border. So a lot of immigration crimes, alien smuggling, drug crimes, guns, that
9 kind of thing.

10 After those 4 years, I was interested in working white collar investigations, corporate crime,
11 that kind of thing, and was lucky enough to get an opportunity here in D.C. at the Fraud Section of
12 the Criminal Division. So I did white collar prosecutions, you know, bank fraud, corporate stuff, that
13 kind of thing. Some public corruption work as well that was assigned to me, even though it wasn't
14 strictly within the normal purview of the Fraud Section. And I did that for a while as a line attorney.
15 In, I want to say, 2020, I became the supervisor of a healthcare fraud strike force and then a
16 second one. So for a while, I supervised two teams of attorneys working healthcare fraud
17 cases and -- attorneys and paralegals working those healthcare fraud cases -- in Brooklyn and
18 Newark. So I was up and back to New York every week working those cases, and had a couple
19 spectacular teams there.

20 Then I was asked -- I can give you more details if you want -- I was asked in January 2022 to
21 join an investigation that ultimately evolved into and became part of the Special Counsel's Office.
22 So, functionally, from January '22 until beginning of January '25, I was working either in the Special
23 Counsel's Office or on similar investigative streams that preceded the Special Counsel's Office.

24 Q And when you left Del Rio, Texas, and started your work in the Fraud Section, was that
25 at Main Justice?

8

1 A It was. In Main Justice -- well, yes. I'll just stop there, yes.

2 Q And then when you supervised the two teams, you mentioned Brooklyn and Newark,

3 were you working out of one of the U.S. Attorney's office in New York?

4 A I was, technically, still -- this whole time I was technically still an employee of the Fraud
5 Section of the Criminal Division at Main Justice. The Fraud Section has a healthcare fraud unit, a
6 securities and financial fraud unit that has a different name now, but that's what it was, and a
7 Foreign Corrupt Practices Act unit. So both of those jobs were within the Fraud Section. I just
8 moved from the financial fraud unit to the healthcare fraud unit.

9 We did work closely with the U.S. Attorney's offices. So like when I went to Newark, I would
10 go sit in the office -- in the U.S. Attorney's Office on Broad Street; Brooklyn, same thing. But I was
a

11 Criminal Division Fraud Section employee the whole time.

12 Q Okay. And while you were at Main Justice, were you ever a political appointee?

13 A No.

14 Q So you were always a line attorney or a supervising attorney?

15 A Yes, ma'am, that's correct.

16 Q Okay. And you mentioned being asked to join an investigative team in January 2022.

17 What can you tell us about that investigative team?

18 A About the work that we did or about joining the team?

19 Q Let's start with joining the team.

20 A Okay. So I'm at home one evening, and I'm going to call it the back side of January --

21 Q Okay.

22 A -- and I get an email in the evening and then have a call with Nick McQuaid, who was the
23 principal deputy assistant attorney general of the Criminal Division. Basically the second in
24 command in Crim.

25 You know, I'd met Nick before, but getting a call from Nick was unusual because he was my

9

1 boss's boss's boss's boss, or maybe one more above that, right. So I knew him but, you know, we
2 didn't have a lot of day-to-day interaction.

3 He calls me -- and at that time I'm just prosecuting my cases and managing my teams in
4 Newark and Brooklyn. I'll paraphrase because it's been, you know, 4 years plus. But as best I can
5 remember, he says that the Criminal Division needs to look into whether there may have been some
6 misconduct within the Department of Justice relating to the transition of power after the 2020
7 election, and asked me if I would be willing, interested, in joining that team. And I said I would.
8 You know, I didn't for a second seek it out. In fact, if I'm completely candid with you, around
9 this period of time, I was kind of sort of considering maybe leaving the Department of Justice,
10 because it'd been years and years -- I have a family at home -- it'd been years of travel every week,
11 long hours, all that.

12 But when Nick presented the opportunity, right, your -- the boss asks you to do something,
13 you do it. I felt duty bound and honored to be asked. So I joined the team, and that was in
14 January of '22. My focus at that point was, as I mentioned, trying to determine whether there had
15 been misconduct within the Department of Justice relating to the transition of power.

16 Q And when Mr. McQuaid asked you to join this team, did he give -- it was going to be a
17 definite period of time, and then you would come back to your normal work, or were you going to

be

18 there indefinitely?

19 A It was unknown. It seemed real hazy and uncertain. I think -- and again, Nick maybe
20 has -- Mr. McQuaid might have a better recollection of this. But as I remember, as I -- we need to
21 look and see if there was any misconduct there. We don't know if there is anything or if there isn't.
22 So it could be that you kick the tires and a couple months you're back to your old job. It could be
23 that there are investigative leads that need to be followed, in which case you'll follow them.
24 So I didn't have a sense of timing at the -- I knew nothing other than, you know, the general
25 sort of impressions I was given from the call. And so I thought -- and I think Nick probably

10

1 thought -- could be a couple months and there's nothing there, could be a long time if the case
2 materializes, but I had no real idea.

3 Q And what was your understanding -- I know you said he had asked you about joining a
4 team. So was it your understanding that there was an investigation that was already underway in
5 terms of looking into alleged misconduct within the DOJ?

6 A I don't know if that was my impression on the call or if I developed that impression
7 shortly thereafter. But the impression that I had around that time --

8 Q Okay.

9 A -- was that there were maybe a couple of people already looking at either this issue or
10 sort of adjacent issues, right, but that the team was small. And so I was under the impression that
11 there had been a -- there was a workstream that was just beginning but was in its kind of embryonic
12 stages.

13 And if I remember precisely, I think that -- actually, I'm pretty confident that there were PIN
14 attorneys -- PIN is the Public Integrity Section of the Department of Justice. If it's all right with you
15 all, I'll just call it PIN, that's what we called it.

16 Q Of course.

17 A There were PIN attorneys originally assigned to this for about a cup of coffee, like couple
18 of weeks or something. I can't tell you the time. It seemed very short. But my understanding is
19 that PIN felt that it might want to recuse itself sort of proactively, and so they needed someone in
20 the Criminal Division to investigate these things. And there were two of us from Crim originally
21 assigned to do that. I was one of those two.

22 Q Okay. And when you joined the team, how many people were working on this specific
23 investigative stream?

24 A Once I joined -- I and my colleague joined, and I believe we doubled the size of the team
25 to four. I think there were two.

11

1 Q Okay. So who was the colleague that joined with you?

2 A That joined with me from the Criminal Division?

3 Q Yes, uh-huh.

4 A The brilliant and lovely Teresa McHenry --

5 Q Okay.

6 A -- who is a great attorney and has the benefit of being an all-around wonderful person.

7 Q And then who were the two people who were already there working on this?

8 A Other really great people as well. Alex Bogle, who at the time was -- she was

9 employed by the National Security Division. And Thomas Windom, who was technically, I

10 think -- was technically employed by the U.S. Attorney's Office for the District of Maryland but had
11 been detailed over to the D.C. U.S. Attorney's Office.

12 Q Okay. And did you ever work with the PIN attorneys on this investigation before they
13 recused themselves?

14 A No, not really. When Nick called me and I realized that there was going to be a PIN
15 recusal, and so -- sometime around there I realized -- and so I started working the case. I think -- I
16 couldn't remember their names.

17 Q Okay.

18 A I think that we had one or two phone calls just to kind of pass the time, learn what they
19 had done, so that we could, you know, pick up where they left off. But as I remember, that was, like
20 I said, only one, maybe two calls. And because the case was still new, there hadn't really been a lot
21 done yet. So I didn't work with those people necessarily.

22 Q And why did the PIN attorneys recuse themselves, if you know?

23 A I will tell you -- I'll tell you what I know.

24 Q Okay.

25 A Understanding that my information comes secondhand on this, and you might want to

12

1 go to sources if you want to get, you know, their stories as well. But PIN recused itself. So Corey
2 Amundson was the head of PIN at the time. And during the, what I'll call the post-election
3 period -- it'll probably come up during the day, and I don't know if, like, y'all have been using that
4 term -- but I generally refer to the post-election period as that period between election day and the
5 transition of power. In our case, it'd be 2020 and early 2021, right.

6 But everyone in this room, everyone who was in America probably remembers that there
7 were a lot of allegations of election misconduct being made by the President and people allied with
8 him.

9 Attorney General Barr, as I understand it, felt that it may be beneficial to look into some of
10 these allegations, you know, immediately in the post-election period. This was maybe either
11 dissonant with or at least uncommon under the election interference memos and other PIN
12 precedent. Essentially, you don't really bring -- I'm not a PIN attorney, but my understanding is that
13 you don't really investigate election issues like this during the pendency of, you know, the event
14 giving rise to the issue, I suppose, so as not to be seen as interfering with the election.

15 Anyway, I say all that to say, there was, I think, some back-and-forth between PIN, people in
16 higher levels in the Department of Justice, and maybe the U.S. Attorney's Office or FBI in Atlanta,
17 maybe. Like, I'm just trying to tell you what I remember as best I remember it. And because
18 Mr. Amundson had been involved in those emails and communications about whether or not it was
19 appropriate to investigate these cases in the short term, I think he felt that his office should recuse
20 itself. There was no mandate that they do it. But the idea was that PIN would be investigating a
21 case that hypothetically, conceptually could involve inquiry into PIN's own decision-making, I
guess.

22 But, again, I say all that with the caveat of I'm trying to be as transparent as I can, but I don't
23 mean to speak the gospel on this. Corey would be able to tell you more precisely.

24 Q And the four individuals that you worked with, did that team ever grow to more than
25 four individuals?

13

1 A Sure did.

2 Q And who else was added to that team, before Jack Smith was appointed? What kind of
3 end point is there? So he was appointed November 18th, 2022.

4 A That is correct. So, again -- and if you want me to stop, you know, giving this reminder,

5 I will. I just want to make sure it's clear. My memory might not be perfectly precise. It's been
6 4 years, but I'm going to try to tell you as best I can.

7 Q Okay.

8 A It was Teresa, Thomas, Alex, and I --

9 Q Okay.

10 A -- for a while. January into April, May?

11 Q Okay.

12 A Then we added, as I remember it, one more person from the D.C. U.S. Attorney's Office.

13 That was Ahmed Baset.

14 Q Okay.

15 A Then we were a slightly larger team for a period of time into the summer. And I guess

16 around Labor Day maybe, the team really grew in size. There was -- I can give you more detail on

17 this if you want it, but there was a point at which decisions were made by folks much higher up in

18 DOJ than me that it would be wise to grow this team into something bigger than just the five of us.

19 And so at that point, several other attorneys were added. Our size grew greatly. I mean, I would

20 guess -- I'm ballparking it now, but if we were five, we might have ended up 10, a dozen, something

21 like then -- something like that.

22 Q Okay. And this team, when it was just the four of you, was there anyone supervising

23 your work, or what was the chain of command there?

24 A Yes, it was a little -- there was a chain of command. It was a little bit fluid. We were

25 kind of a bit of a confederacy, right.

14

1 Q Okay.

2 A So I was in the criminal -- we had multiple chains of oversight, but we all worked

3 together. I was in the Criminal Division, Ms. Bogle was in NSD, Thomas was in the U.S. Attorney's

4 Office, Ahmed was in the U.S. Attorney's Office, Teresa was in Crim. So we had three different

5 offices supervising us. Functionally, Teresa and I reported up to folks in the front office of the

6 Criminal Division.

7 Q Okay.

8 A Alex -- Ms. Bogle reported to whoever was in the front office of the National Security

9 Division. Thomas and Ahmed reported to the top folks in the U.S. Attorney's Office. At the time,

10 the U.S. Attorney's Office was -- the U.S. Attorney was Matt Graves.

11 So each of us -- we -- the four of us worked, and then five of us worked closely together. We

12 were, you know, a team day to day. We would each report up our chains of command, but we

13 would also sort of harmonize back and forth. So there might be occasion where all of us would

14 meet to make sure we were eye to eye. There might be points where Crim took the lead or where

15 the U.S. Attorney's Office took the lead on different things. So we had sort of three different chains

16 of command all connecting together and talking to each other --

17 Q Okay.

18 A -- on case decisions.

19 Q And I know that Mr. Windom was working out of the D.C. U.S. Attorney's Office.

20 A He was.

21 Q Were you also stationed there or were you still at Main Justice?

22 A Real brief I was at the U.S. Attorney's Office. The way it worked was I was a Crim

23 Division employee -- I mean, I -- I was technically a Crim Division employee until the day I got fired.

24 Q Okay.

25 A I was on detail from Crim to different places. But from January until ballpark maybe

15

1 again in August, I was a -- I worked as a Criminal Division employee. If you look at my documents
2 from that time, I probably signed them on behalf of the Fraud Section, Criminal Division.

3 There was a period of maybe a couple of months before Mr. Smith came in where -- this is
4 that same time period where the team grew, right.

5 Q Yep.

6 A Because the growth of the team also coincided with the consolidation of the team under
7 one supervisory chain. So when the team -- the team both simultaneously grew and was then
8 placed under the supervision of the U.S. Attorney's Office.

9 Q Okay.

10 A When that happened, my day-to-day work didn't really change, but I then, for a brief
11 period of time, was detailed over to the D.C. U.S. Attorney's Office.

12 Q Okay.

13 A That was probably -- again, there's records that would show you precise dates, but I'm
14 going to say it feels Labor Day-ish up until Mr. Smith took over, and during that period of time, I
and

15 my colleagues worked out of the U.S. Attorney's Office. Like, I had an office there for like 2
months.

16 And before that, I had my whole office at the Criminal Division.

17 Q And were you reporting to J.P. Cooney at that point in time?

18 A That's a good question. Like, the reason that I'm hesitating, I don't know if I -- you
19 should ask J.P. I don't know if I was reporting to him at that time or not. I can tell you this: I
20 think I was. I probably was.

21 Q Okay. Was he leading the investigation at that point in time, or who was leading the
22 investigation?

23 A These are all real good questions. J.P., I -- again, you'll hear this refrain from many of
24 my colleagues. J.P. is a spectacular guy, someone I am proud to know. I did not know J.P. before
25 that summer. And when we first got to the D.C. U.S. Attorney's Office, I'm not -- I'm not sure one

16

1 way or the other whether J.P. was a person with whom I interacted at the U.S. Attorney's Office in
2 that very first period or if he was my supervisor from the start. I just don't really remember.

3 It was sort of a fluid period of sort of supervisory transition. I can tell you that most
4 definitely J.P. was a supervisor above me in the Special Counsel's Office. But I just don't remember
5 if like on day one in the U.S. Attorney's Office he was the guy or if it evolved to that.

6 Q Okay. And you had mentioned earlier that there were people who were, you know,
7 looking at the specific issue about misconduct within the DOJ and then adjacent issues. So who
8 worked on the misconduct within DOJ? Who worked on that issue with you?

9 A , you'll need to specify the time periods because it did change.

10 Q Okay. So when it was just the four of you in the beginning between January and April
11 and May, who was working on the misconduct within DOJ?

12 A Well, Teresa and I principally, but --

13 Q Okay.

14 A -- all of us to a lesser degree. In those early days, the workstreams were still
15 developing. So we didn't have ossified streams of work and teams particularly dedicated to one
16 thing to the exclusion of another. But functionally the way it worked is I understood my mandate to
17 be to investigate the work within -- the work related to misconduct from DOJ. So I took the lead on
18 that along with Teresa. We were sort of co-leads on it. But as needed, you know, if there was
19 work to do, Thomas or Alex would also participate in that workstream, just as, once we developed
20 additional workstreams, Teresa and I may participate in those.
21 But I would say the rough division in those previous U.S. Attorney's Office days was that it was
22 Teresa and I heading the DOJ stuff.

23 Q Okay. And did you ever get an understanding of what workstream Thomas Windom
24 was working on?

25 A Yeah, yeah. I mean --

17

1 Q What was his workstream?

2 A -- I knew what workstream he was working on; we worked together. We had -- they
3 evolved. It's not that I didn't know the workstream. I certainly did. It's that the investigation
4 was very new at the beginning, and as it matured, our investigative focus sharpened. So the
5 workstreams became more clearly defined.

6 But early on, I'd say -- you know, Thomas and I worked, you know, side by side on whole lot of
7 things. He maybe took more of a leading role on the fraudulent electors issue at the beginning as
8 that came up. You know, that is a workstream that changed personnel a lot over time. But he
9 maybe took lead on that. There were issues related to John Eastman and legal theories presented
10 to Mike Pence and all that. That wasn't a specific workstream, but that was the thing that came up.
11 In those early days, I wasn't really looking at the White House. Like, the President and the
12 White House were of interest to me only in that the President was a person like several others who
13 had interacted with Jeff Clark with DOJ. But as White House stuff came more into focus, Thomas
14 spent a good deal of time on that.

15 Q Okay. And when you say when the White House stuff came into focus, what White
16 House stuff came into focus, if you will?

17 A Well, again, this was a focus that developed over a long period of time. But what came
18 into focus over time was that President Trump may need to become a subject into which we inquired
19 in our investigation. And I'll pause right there before I go any further and say, when I say subject, I
20 mean -- like, I'm not a prosecutor anymore, I got fired, but I -- when I was, we would use the term
21 "subject" to basically mean anyone within the scope of an investigation who wasn't, you know,
22 essentially just like a witness, like an eyewitness, anyone who wasn't a target. So it's a whole lot of
23 people, right.

24 Q Okay.

25 A As we investigated the Jeff Clark components, the DOJ component that is, the

18

1 fraudulent elector stuff and that kind of thing, I felt like -- and this is sort of subjective. You know, if
2 you ask Thomas his opinion of how it evolved, might be a little different. But we kept seeing, you
3 know, investigative avenues that would lead us back toward President Trump and to the White
4 House.

5 Q Okay.

6 A And so naturally, this investigation, while it was, you know, kind of high profile, was no
7 different than any other that I'd ever -- that I had done in that you just -- you refine your investigation
8 and you follow the investigative leads where they go. And so when the investigative work started
9 to point us in the direction of the White House, we felt compelled to follow it in that way.
10 And so workstreams that developed from that were sort of generally, I guess ultimately, the
11 workstreams that people might associate with our election fraud case, the work that caused us to
12 inquire into whether President Trump and those allied with him had taken steps to corruptly impede
13 the transition of power through use of the fraudulent electors, through misstatements about, you
14 know, these completely unfounded allegations of fraud, through trying to unduly pressure Mike
15 Pence to change the outcome of the election, and to also, you know, cajole State and local leaders
16 and officials to do what they could to adjust electoral votes. I mean, that's -- so that's where the
17 White House work had developed.
18 I mean, the way I kind of describe it real simply is this: The DOJ case, you look up at the sky
19 and you see a star, and over time we backed out a little bit and saw it wasn't just one star, there was
20 a whole constellation, and they fit together. And seeing how all those stars sort of lined up with
21 each other took a lot of -- that was something that became clear as we investigated independently
22 our workstreams and sort of saw how things ran into each other, lined up with each other, and
23 realized that there might be -- and indeed to my belief and opinion based on the evidence was unity
24 to these workstreams that had not been immediately apparent to me and perhaps to anyone on the
25 team when we started the investigation.

19

1 Q And so did your work on specifically looking into misconduct at the DOJ, did that ever
2 end or did you continue to work on that between -- I'm talking in the timeframe January 2022 to
3 November of 2022?

4 A I worked on that throughout that time period. Wasn't the only thing I worked on, but
5 it was a main thing I worked on, yeah.

6 Q Okay. And can you just kind of list off what various investigative streams you worked
7 on? I know we have the misconduct at DOJ and then the White House streams. Were there
8 other --

9 A Do you mean -- do you mean during that early 2022 period or throughout my time as
10 special counsel?

11 Q I just mean in the 2022 period, the January to November.

12 A Okay. Yeah, yeah. You know, we -- I principally did the DOJ workstream. That
13 was --

14 Q Okay.

15 A That was my main focus. But like I said, we were a small team and we weren't siloed
16 off from each other. So if there was investigative work to do related to any other workstream, I
17 would -- there was a decent chance that I could be pulled into that. You know, we just -- we
18 all -- Thomas, Ahmed, Teresa, Alex, and I -- we would talk, you know, regularly. We knew what
19 each

19 other were do -- we each knew what the other was doing, mostly. And when one of our sort of
20 areas of focus needed more manpower or someone just, you know, we would jump onto the thing.
21 So I principally did the DOJ stuff, but I also helped broadly with just about anything during
22 that time period. You know, maybe we had subpoenas out to fraudulent electors; I could have had
23 some role in that. You know, issues related to the lawyers and stuff in the -- the Trump legal team,
24 stuff like that. It was a little bit of everything we did.

25 BY :

20

1 Q Can I ask you, the term "fraudulent electors," when did that come into focus as opposed
2 to alternative electors?

3 A You asking me?

4 Q Yes.

5 A I call them alternative electors to be diplomatic and nice. To me, they were fake
6 electors.

7 Q Okay.

8 A And we call them fake electors -- I mean, just like, as we're talking to each other, you
9 know, the team, we think they're fake electors, but we chose -- I think we -- you know, we use
10 different terminology -- fraudulent electors, alternative electors. There was nothing particularly,
11 like, intentional about it. It's just we realized -- we realized that an investigative piece we were
12 going to get a look at was these slates of electors that had, in fact, not been chosen by the voters
13 and -- by the voters in their respective States. And so we just had different ways to shorthand and
14 call them that.

15 Q Okay. But if, you know, President Trump had won one of those States, those electors
16 would have been the electors, correct?

17 A Probably. I mean --

18 Q So isn't it more, you know, precise to refer to them as the Trump electors or alternative
19 electors rather than fraudulent electors, because --

20 A Because?

21 Q Because, you know, there were a lot of -- a lot of very serious issues with a number of
22 States -- Georgia, Pennsylvania, Arizona, Michigan. And at the time, you know, during times
23 relevant, the President and his allies believed that they had won some of those States. And had
24 they won some of those States, wouldn't those electors have served as the official electors?

25 A A few points to try to respond to everything. I understand your question but disagree

21

1 substantially with the -- with some of the facts that you put in there as to whether there really were
2 problems in these States and what people might have believed. I said that --

3 Q Let me back up. Let me back up. I didn't say there were problems. What I said was

4 President Trump and his allies believed there were problems.

5 A Okay. I understand your question. I take the question. I am not addressing

6 whether I agree with that factual assertion, but what I will tell you is this. First, as we look through
7 today, the electors, I mean, is shorthand to me. You want to call them the Trump electors, you're
8 welcome to call them the Trump electors. I mean no offense to anybody in the nomenclature that
9 we choose.

10 There was certainly a theory that was, you know, that was something that we investigated in
11 our case that if the electoral votes had been sent back to the various States and, you know, through
12 litigation, President Trump was determined to have won the States and President Biden had not,
13 there was certainly a theory that these electors would then have become the duly appointed electors
14 from those States. That was a theme that was part of the case, yes.

15 Q Okay. So referring to them as fraudulent electors or fake electors is just -- I mean, it
16 just seems to me that, you know, it reveals a state of mind that the Justice Department, you know,
17 had concluded very, very early on that these were not the Trump electors, these were somehow
18 electors that were procured in a fraudulent manner.

19 A Is that a question to me?

20 Q Yes.

21 A What is the question?

22 Q The question is, don't you see that as an issue? You know, the investigators, especially

23 Justice Department criminal prosecutors, you're supposed to enter into these matters with an open

24 mind. And if right away at the outset your state of mind is that these electors are fraudulent

25 electors or fake electors, doesn't that cloud the whole investigation?

22

1 A No. And I disagree wholeheartedly and completely with the suggestion that we had

2 any predetermined ideas. When I got on this case -- and I'm going to speak for myself, but I also

3 think this is true of all my colleagues -- I was stunned to be asked to participate in the DOJ

4 investigation, stunned that I would be entrusted with something of that magnitude.

5 And from the day I started, I took seriously, deadly seriously, my obligation to be neutral and

6 fair and impartial. I recognized from the start, even before the investigation grew into the thing it

7 grew into, that this was a unique and potentially prominent and potentially very serious

8 investigation. The gravity of that humbled me and was never lost on me. And I made it my duty

9 throughout, as I did in every case, to have no preconceived notions, allow no personal feelings to

10 enter into decision-making but just, rather, proceed dispassionately and neutrally in the

11 investigation. And so that is what I did and what I saw every member of my team do.

12 If for the sake of today's conversation you want to refer to the electors as Trump electors,

13 alternate electors, that's fine. I consider it no value judgment, just shorthand to describe something

14 that would take a package of words to describe otherwise, but we had no preconceived notions.

15 In my mind, the fakeness wasn't a democratic -- or Democrat or Republican thing. Fake or

16 fraudulent or whatever was just simply, by the time we're investigating, the election had long been

17 over, the election had long been certified. And in each State certain electors had been identified as

18 legitimate ones and certain had not. It was as simple as that.

19 Q Okay.

20 BY :

21 Q While you were investigating the alleged misconduct within the DOJ, did you ever

22 interact with anyone from the DOJ'S Office of Inspector General?

23 A I did.

24 Q And what was their role in that specific piece of the investigation?

25 A So for sometime in those early days, we worked with DOJ OIG agents. It was a natural

23

1 fit early on because we were investigating potential misconduct within the Department of Justice.

2 And so the Inspector General's Office was a sort of normal landing spot for -- that took that case.

3 Q And how many DOJ OIG agents did you work with?

4 A There may have been other people sort of on the fringes adjacent to the case, you

5 know, analysts or back office people or someone else. But the ones I remember most prominently,

6 there were two agents with whom I worked, one named Brian Burnett --

7 Q Okay.

8 A -- and one named Jake Higley.

9 Q And what was Special Agent Burnett's role in the investigation?

10 A Well, over time in my interactions with the OIG, Mr. Higley, Jake, played a larger role --

11 Q Okay.

12 A -- and was -- to my mind, he was the agent with whom I ended up doing more work.

13 Q Okay.

14 A But early on, Mr. Burnett was the OIG agent assigned to our case. And so he would do
15 normal agent work -- investigating things, dealing with subpoenas, I mean, that kind of stuff.

16 Q And did the OIG ever stop helping with the investigation?

17 A In '22?

18 Q In '22.

19 A No. No. The OIG was -- I don't know if OIG ever formally separated from the
20 investigation, but by the end of the Special Counsel's Office, we weren't really working, you know,
21 with OIG on a day-to-day at all. In '22, before we were the Special Counsel's Office, I feel like -- I
22 feel like OIG stayed involved to some degree.

23 Q Okay. And were Agents Higley and Agents Burnett the primary agents that you worked
24 with or did you work with anyone else?

25 A If I worked with anyone else, and they ever read this transcript, I apologize if I'm not

24

1 remembering you. But Agent Higley and Agent Burnett were the two agents I remember working
2 with.

3 Q Okay. And did you ever interact or speak with Inspector General Michael Horowitz?

4 A I don't recall. I don't recall. I had some calls with -- maybe a couple call or two with
5 management-type people at OIG. I can't remember who they are. It's possible that I was on a call
6 with Mr. Horowitz, but I don't remember specifically.

7 Q Okay. And beyond --

8 A I'm going to say I doubt it, but I don't know for sure.

9 Q Okay. Did you ever work with -- just think of outside entities right now. Did you ever
10 work with the National Archives Inspector General?

11 A Our team did.

12 Q Okay.

13 A Our team did. I can't remember the NARA OIG agents' names.

14 Q Waleska McLellan, is she --

15 A That is a name that I remember.

16 Q Okay.

17 A Yeah. And I think we might have met once or twice. If you've got other names -- it's
18 been so long. There were maybe a couple other people, I was trying to remember their names.

19 But the bottom line is NARA OIG was, you know, attached to our team in some way at some point.

20 Q Okay.

21 A But to my recollection, if I -- while I'm sure I did interact with those folks some, I don't
22 remember specific interactions or agents really. That wasn't --

23 Q Okay.

24 A -- my thing.

25 Q They weren't part of the investigative stream for misconduct at DOJ?

25

1 A That's not to say they weren't, right.

2 Q Right.

3 A Because, again, one thing that I do want to convey is it was kind of fluid. If we

4 needed -- we were all -- it wasn't like -- you know, we're not running, playing football, and Thomas is

5 the wide receiver out this way, and I'm the wide receiver over here, and, you know, Alex, the
6 quarterback or something. We all would sort of shift on to doing things together. We were a
7 team more than like a group of siloed individuals.
8 So I can't tell you for certain that NARA OIG didn't help in some way. NARA OIG may
9 have -- may have -- done something ancillary to the DOJ stuff, but I do not remember that happening.
10 I don't have any recollection that they did.
11 Q Okay. What about the United States Postal Inspection Service?
12 A I think we did have a guy from Postal, but I don't remember who it was, and I don't
13 remember what his role was on the case, and I don't think he was on the -- I don't think Postal
14 participated very much in the case.
15 Q Okay.
16 A Just -- again, I don't recall. I can tell you that most of the work that I did from '22
17 through '25 was with the FBI and in the early stages with Jake and Brian at DOJ OIG.
18 Okay. I'm going to mark this as exhibit No. 2. It's a DAG briefing document.
19 [Duree Majority Exhibit No. 2.
20 was marked for identification.]
21 BY
22 Q And this is a seven-page document with bullet points. You should take your time to
23 review, but I'll point and refer to specific pages and bullets.
24 A Do you want me to sit and read the whole thing for a few minutes or you want to just
25 ask me?

26
1 Q It's up to you what you want to do. I'm going to refer you to specific bullets, so
2 whatever you'd like to do.
3 A Okay. Give me a second just to familiarize myself with it.
4 Q Yep.
5 A Okay.
6 Q Okay, great. Have you seen this document before we gave it to you today?
7 A I don't know.
8 Q Okay.
9 A This reminds me that there was a -- called DAG briefing. There was a briefing of
10 Deputy Attorney General Monaco --
11 Q Okay.
12 A -- in the U.S. Attorney's Office, and it would have been sometime in the fall-ish of '22.
13 Q Okay.
14 A I believe -- I know we did put papers together for that. So I feel like this is something
15 that I've seen, and I feel like this is probably that, but I can't tell you for sure.
16 Q Okay. And the DAG briefing that you're remembering in the fall of '22, did you
17 participate in that briefing?
18 A I did.
19 Q And who else went along to the briefing? Was it the whole team?
20 A Yeah, I think. I mean, I don't know if there was one person -- I don't know if someone
21 might have been absent that day or what. But, yeah, roughly. The team as constituted at that
22 time and the names on this -- this includes a lot of names that I didn't mention from those early
23 days -- this includes the people who have joined onto the team in that like post-Labor Day, around
24 Labor Day-type period when we grew.
25 But, yeah, as I remember it, most or all of us were there. We sat in the room in the U.S.

27

1 Attorney's Office and we briefed the DAG on the case.

2 Q And your name is down next to the -- on page 4, it's down next to the Jeffrey Clark
3 workstream. Did you present at the briefing on the status of the investigation?

4 A I did. I did. I don't think -- I don't know that I wrote this. There are parts of this
5 that made me think I didn't write it or someone else might have finalized it. But, yes, I did present
6 to Deputy Attorney General Monaco on the Jeff Clark/DOJ workstream.

7 Q Okay. And as part of the Jeff Clark workstream, it was Representative Scott Perry was
8 kind of involved in that area. And on here, on page 4, there's a bullet point that says, "The key
9 individuals in this investigation, including witnesses are" -- then it mentions several individuals --
and

10 it says, "Perry, subject light/intermediary." We had had a discussion about the use of "subject".

11 What can you tell us, what does subject light mean?

12 A I don't know. I don't think -- I say I don't know, but I'll tell you my best.

13 Q Okay.

14 A I don't think that I -- this is one of the things I was saying that made me think I didn't
15 probably write this exactly. I may have. I may have. But "subject light" isn't terminology I think I
16 would normally use.

17 But as I understand it, you know, as I described, there are three categories, right: witness,
18 target, and subject. But subject is the big one. Subject is like most people, right. You're
19 either -- anyone who might be within the scope of the investigation can be a subject. So it can be
20 useful at times, whether it's subject light or something else to denominate the same thing, can be
21 terminology to suggest that this person is a subject but is trending investigatively in one direction.
22 Q Okay.

23 A So I would say, you know, you could be a subject trending towards becoming a target if
24 the investigation's turning up a lot of evidence of your criminal culpability. You could be a subject
25 trending towards witness if the investigation is revealing that while you are within the scope of the

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1 investigation, you perhaps are not someone on whom we at that point are thinking we're going to
2 develop evidence to charge, but we don't know yet.

3 So I think subject light is just an effort to try to situate, if Perry is referring to Congressman
4 Perry, an effort to situate Congressman Perry within the broad spectrum of subject to understand
5 kind of, you know, how we viewed him at that point in the investigation.

6 Q Okay. So would subject light have been on subject trending toward target or subject
7 trending toward witness?

8 A I mean, I don't generally call people subject light. It seems like a diet drink. It's an
9 odd way to put it. But I would guess that subject to me, subject light means as we -- if we took a
10 snapshot of this day in time, we think that you are probably moving roughly in the direction towards
11 witness, but you are certainly not a witness. We don't know. We have a lot of investigation left to
12 do, but at this point what we are seeing is suggestive of you're basically sort of being downgraded
13 through the, you know, tiers of subject-dom.

14 Q Okay. And a few months before this, August 9th, 2022, the Justice Department seized
15 Representative Perry's cell phone. Were you involved in seeking the search warrant for Mr. Perry's
16 cell phone?

17 A I would -- yes. I was not involved in seizing the phone, like physically seizing it.

18 Q Okay.

19 A That's what the agents would do. I was involved in building the evidence for that
20 search warrant.

21 Q Okay. And who else was involved in building the evidence for the search warrant?

22 A I was. I mean, me.

23 Q Okay. Were you the --

24 A No, I would -- there's no universe in which I'm going to put together, no matter how
25 strong the evidence is, there's no universe in which I am going to put together and get a search

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1 warrant on a Congressman's cell phone without the input of others.

2 I would think that -- you know, Teresa was working -- Teresa was working the DOJ stuff with
3 me. Teresa would have been involved. But Thomas probably would have had some involvement.
4 And, you know, whether Alex or Ahmed did, I would think they certainly would know about it
5 because we were a small team, we talked about it. I would have, of course, run it through
6 supervisory chains and all that kind of thing.

7 But I would -- I would say that I was the person who did -- I would say -- I will say, I am saying,
8 I was the person who did the -- I was the person who did the most work to prepare that search
9 warrant.

10 Q Okay. And when did the idea come about that you thought you needed Mr. Perry's
11 cell phone?

12 A It came about as we were investigating the DOJ misconduct. I can't tell you when the
13 seed first planted in my head and then, you know, blossomed. But in that period from January till
14 beginning of August -- or probably -- I guess we probably wrote the warrant before August. So
15 January till, you know, prior -- before the search warrant, sometime in that range, as we developed
16 the evidence of what had happened within DOJ and the effort to elevate Jeff Clark to the attorney
17 general's role, Scott Perry featured significantly in that effort.

18 And so at some point -- and I can tell you more about how the investigation went if you want
19 to, but at some point in that period, I probably came to think that Scott Perry's phone would have
20 evidence that would be beneficial to that case and evidence of a crime.

21 Q And what evidence were you looking for? I mean, when they took the phone, they
22 took, as we understand it, like a full copy of the phone. They got like the photos of him and his
23 children and all of that. So, obviously, I didn't think you probably needed the photos of him and his
24 children, but what contents were you specifically looking for?

25 A Well, I mean, technically, you're looking for information that might exist on that phone

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1 that provides evidence of the criminal conduct you are investigating. So that could be text
2 messages, Signal, WhatsApp, you know, photos, in some cases, emails, whatever's on a phone. I'm
3 not saying that just specific to Scott Perry, when you seize a phone, you're looking for evidence that's
4 on that phone.

5 Congressman Perry was very -- again, you are testing my memory because this has been some
6 years. But what I came to understand about the DOJ scheme essentially is -- what I'm calling the
7 DOJ scheme right now -- was this effort to elevate Assistant Attorney General Jeff Clark, who had
8 previously been the Assistant Attorney General over the Environment and Natural Resources
9 Division, and then was the Acting Assistant Attorney General over the Civil Division -- it was an
effort

10 in late December and early January to elevate him to the Acting Attorney General role so that he
11 could -- and one result of that would have been, had he obtained the role, that he would have been
12 able to send a letter falsely telling State legislatures, including the legislature in Georgia, that there
13 was -- I forget the exact wording -- but evidence of -- significant evidence of fraud or misconduct,
or

14 something like that, that might warrant pulling back the electoral votes. And the whole, you know,
15 outcome of this, if all that would have happened, could have been to destabilize the elections in
16 those States to which he sent the letter and maybe even others where he didn't, with the end result
17 of potentially causing the electoral votes to be pulled back, I guess, hypothetically.

18 I say all that to say, Scott Perry was connected to that throughout. What we found was that
19 Congressman Perry had, it appeared, introduced Mr. Clark to President Trump around the 20th, 21st
20 of December, and that Congressman Perry was in close contact with Jeff Clark throughout the
period

21 of, like, that December 20th or 21st through January 3rd when the scheme climax had ended, more
22 or less.

23 So he was in close contact with Mr. Clark. He was in close contact with other -- a lot of other
24 people that were connected to both the DOJ scheme and the sort of overall effort to overturn the
25 election. We knew that he had text messages, Signal messages, other communications with Jeff

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1 Clark. We knew that he had been involved in, you know, looking at election fraud-type stuff in
2 Pennsylvania in December. We knew that -- so I guess I'll stop there --

3 Q Okay.

4 A -- and just end by saying, there were many factors, many points of contact, many pieces
5 of evidence indicating that Scott Perry was closely connected to the effort to install Jeff Clark as the
6 Acting Attorney General, which -- and we believed that we had probable cause to find evidence on
7 that phone related to that criminal scheme.

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1 [10:58 a.m.]

2 BY

3 Q And I think we can agree that seizing the phone of a sitting Member of Congress is a
4 pretty serious investigative step. Would you agree?

5 A I think seizing anyone's phone is a significant investigative step, and I recognize it as
6 such and take it seriously, yeah.

7 Q And you had mentioned your supervisory chain was involved. So what sign-offs did
8 you have to get in order to go after a search warrant for a -- or seek a search warrant for a sitting
9 Member of Congress' cell phone?

10 A I cannot remember the specific approval chain.

11 Q Uh-huh.

12 A I -- you know, I haven't seen those emails in years, and don't remember exactly emails
13 and calls we had.

14 That approval chain would have involved PIN, the Public Integrity Section. That would have
15 been important. That would have probably involved at least the knowledge and buy-in of my
16 supervisory chain, which at the time would have been Crim. Potentially, you know, the others, the
17 U.S. Attorney's Office might have known about it and buy-in as well. I just don't -- I don't
18 remember.

19 In some things -- I'm not saying that this was or wasn't -- but some things that were
20 particularly prominent required us to give notice to the Deputy Attorney General's Office as well.
21 Q Okay.
22 A So I know that's not a particularly precise answer, but it's just because it's been a long
23 time. I don't remember specifically, but I know that PIN, my supervisory chain, and Crim would
24 have definitely been involved and potentially those others as well.
25 Q And what conversations can you tell us about that took place regarding seeking consent

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1 to obtain his cell phone prior to obtaining a warrant?
2 A Seeking consent from whom?
3 Q From Mr. Perry or Mr. Perry's attorneys to search the cell phone.
4 A It would -- I don't remember doing that. It would be extremely abnormal in any
5 criminal case for -- for me to seek consent to just have someone hand their phone over when we
6 believe there is probable cause of a crime and they were a subject of the case and all that.
7 So I don't -- I don't remember having any conversations like that, and I don't think that I
8 would have.
9 Q And what conversations do you remember regarding the Speech or Debate Clause?
10 A A lot.
11 Q What can you tell us --
12 A A lot.
13 Q What conversations took place prior to seeking the warrant?
14 A I mean, we're getting on to the hour. Do you -- this could take me a little while.
15 Q Let's get started, yeah.
16 A Okay. The Speech or Debate Clause is something that we took incredibly seriously.
17 The Speech or Debate Clause protects from -- protects Congress -- Members of Congress from
18 prosecution for, you know, legislative acts within the scope of their job, roughly, for the sake of this
19 conversation.
20 In D.C. -- in D.C., there is specific case law named after this beautiful office building in which
21 we sit, called Rayburn that provides that in the D.C. Circuit not only are Speech or Debate protected
22 materials, things that can't be used in prosecution, but also that prosecutors can't take those
23 materials, can't have them, right?
24 Q Uh-huh.
25 A So --

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1 Q Were prosecutors concerned that there were Speech or Debate covered materials --
2 A Oh, yeah.
3 Q -- on Mr. Perry's cell phone?
4 A For sure. I mean, I was not concerned thinking, Oh, my goodness, there's Speech or
5 Debate materials or anything like that.
6 When I say concerned, I mean there is a recognition that when I'm dealing with a Member of
7 Congress, there is a possibility that that Member of Congress could have Speech or Debate protected
8 materials on their phone, and it is absolutely the best practice and the only practice I would endorse
9 to think that through on the front end and take steps to protect those materials from disclosure to
10 you for the sake of, you know, the Congressman and the legislative process, but also for the sake of
11 the prosecution and the team, just to keep everything as it should be under the law, right?

12 So yeah, we definitely -- we definitely knew that we had to be thoughtful about that, and we
13 implemented protocols that I can try to remember and describe to you, very thoughtful protocols to
14 ensure that there was a review process in place that made certain to the very best of our ability that
15 we would obtain relevant evidence that was not Speech or Debate protected and not accidentally
16 stumble into Speech or Debate materials.

17 Q And what can you tell us about the -- there was a DOJ OIG agent who went along to
18 serve the search warrant.

19 Do you remember if that was Mr. Higley or Mr. Burnett?

20 A I think it was Jake.

21 Q Okay.

22 A I think it was Mr. Higley, I should say.

23 Q And what was his involvement in seizing the cell phone? I know we have a minute left,
24 but --

25 A They had to get the phone. The physical location was somewhere on the Jersey Shore.

35

1 Because that's -- I guess Congressman Perry was in Jersey at the beach on vacation, and I was not
2 there. I did not go.

3 But my understanding is that Mr. Higley imaged the phone, that is, took the forensic copy of
4 it. And one thing that I remember being particularly careful about, right, is when you seize a phone,
5 you seize a phone.

6 It's -- you have -- I say you. I'm talking in the second person. The Federal Government,
7 having seized the phone, has the right to possess and extract the information from it.

8 In this particular case, I know I sure wanted, and I think the whole team wanted to image the
9 phone and get it back to Congressman Perry as quickly as possible. We were trying real hard to do
10 this in a way that was minimally disruptive, it was as respectful as it could be, and it didn't put
11 Congressman Perry in an awkward spot where we're seizing a phone right out on Independence in
12 front of the Rayburn Building or it's some big hubbub. So we tried to be very discreet, very
13 cautious, very careful.

14 And that goes to your question about Mr. Higley. My recollection is that Mr. Higley, upon
15 seizing the phone, that Mr. Higley and the other agent that was with him imaged that phone as
16 quickly as the data could be transmitted over, as quickly they could find a spot to do it and do it,
17 couple of hours, and then went and gave it -- gave the phone back to Congressman Perry.

18 So Mr. Higley's role was -- you can ask Mr. Higley -- but as I remember it, it was to image the
19 phone and get it back to the Congressman.

20 We're at the end of our hour, so we'll go off the record.

21 [Recess.]

22 We'll go back on the record at 11:12 a.m.

23 BY :

24 Q Just to reintroduce myself, I'm . I'm joined by . We're with

25 Mr. Raskin's staff. We'll take this hour to ask you questions just like the majority did last hour.

36

1 A Yes, sir.

2 Q But I do want to touch a little bit on your background just a little bit more.

3 Where did you go to undergrad? Where did you go to law school?

4 A I went to undergrad and law school at the University of Texas.

5 Q Okay. That describes the football analogy from the last hour.

6 And you started at DOJ, again, at 2012. Is that about right?

7 A Yes, sir.

8 Q And you stated about 4 years before graduating from law school and then starting at
9 DOJ. Is that about right?

10 A It was about -- are you asking me where I was for that 4 years?

11 Q The time -- yeah, I was about to. Sure. Can you let us know where you worked
12 before joining DOJ?

13 A Sure. I graduated from -- I grew up in Texas. I was in Austin for college and law
14 school. I graduated law school in 2008 and worked at a firm here in D.C. until 2010.

15 In the fall of 2010, I moved to Del Rio to clerk for a district judge on the Western District of
16 Texas. And I clerked for Judge Moses, the same judge, for, I guess, a little under 2 years, year and a
17 half --

18 Q Okay.

19 A -- until I joined DOJ.

20 Q So about the DOJ, I guess, what was your motivation in wanting to be a prosecutor and
21 wanting to work at DOJ? And this might be, like, an obvious question, but I just want to hear from
22 you what your motivation was.

23 A It's -- I believed it would be and it proved to be a job where I every day was able to go in
24 and do work of purpose, work of meaning where I felt like I got to do something that was good for
25 the world. You're helping to uphold the ideals of justice and equality and all those good principles.

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1 And there are few jobs out there where you're entrusted with the responsibility to ensure
2 that our legal system operates fairly, transparently, and equally for everybody. So it's -- it was a fun
3 job and a meaningful job, and that's why I did it.

4 Q Do you feel like you're able to live out those ideals you just described during your about
5 12 years at DOJ?

6 A Yeah. I mean, I outkicked my coverage. I certainly did. I was thrilled to get
7 the job in Del Rio, and I never expected that I would get to do anything -- I was honored and
8 surprised to get that job.

9 I never expected that I'd get to do the kind of work that I got to do at the Criminal Division. I
10 never expected that I would be able to supervise really talented prosecutors like I did in New Jersey
11 and New York, and I certainly never expected to be entrusted with a case as -- with a role on a case
12 as important as this one and to work with such brilliant and decent and good people as I was able to.
13 So yeah, like, I got -- getting -- having it end with getting fired is no fun, but I got to -- I feel
14 blessed and honored that I got to work at DOJ for a long time and do the things I did.

15 Q And thank you for your service. And despite how it ended, overall, looking back, are
16 you proud of the work even up to the last day? Are you proud of what you were able to do at DOJ?

17 A 100 percent. And that includes -- and I'll emphasize while we're talking about
18 everything -- at the special counsel's office, most definitely. Very proud of it.

19 Q So I'm familiar -- I am familiar with Del Rio and the Western District of Texas.

20 A Awesome.

21 Q So I do want to ask a few questions. I have a feeling it might be quite a few numbers.

22 But looking back all the way to the Western District to your time at Main Justice and Crim,
23 approximately how many investigations were you involved with or that you led? Just give us like an
24 approximate number over that time period.

25 A At least hundreds, if I include management and personal, you know, work on the line as

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1 well, yeah.

2 Q And going back again, similarly, about how many cases, going all the way back to your
3 days in the Western District of Texas do you imagine you might have tried in court? Every
4 prosecutor knows this answer, by the way.

5 A I wish I did. More than a dozen. I can't tell you specifically.

6 Q Okay. But more than a dozen. Is that a fair estimate?

7 A Yeah. I'd say at least around a dozen is right, yeah.

8 Q During your tenure in the Western District of Texas and at DOJ, did you receive any
9 awards for your work?

10 A I did. I did.

11 Q Can you describe some of those, and please do not be humble here. Can you share
12 some of the awards that you're most proud of?

13 A I don't know that I know the names of them.

14 Q You can just describe them, too.

15 A I mean, I did get -- I did get a few. A line of thinking is that you stick around DOJ long
16 enough, they'll give you an award for something, right? But I got -- I remember getting an award
17 from -- distinguished service award or something like that. That might be the wrong name. I don't
18 mean to act like I wasn't honored by getting the award. I just don't remember the exact name at
19 this point.

20 I got an award from the Attorney General for one case that we built. I got an award from
21 the Assistant Attorney General of Crim Division for some COVID-related cases; an award from, I
think,

22 the Inspector General's Office of -- at some point, or a group of Inspector General's Offices, yeah,
23 anyway.

24 Q And, look, I know you touched on this in the last hour, and so I just want to make sure
25 we understand the timeline. It sounds like you got the call from Mr. McQuaide to start working on

39

1 the Jan. 6 cases on the back end of January of 2022. Is that correct?

2 A That's correct.

3 Q And which investigations were you working on when you were assigned in January
4 2022?

5 And the way we've broken it out in our head is there's the rioter cases and then there's the
6 election conspiracy cases. I guess, which bucket were you working on?

7 A I worked on what became the election conspiracy cases. I did not work on the rioter
8 cases.

9 Q And what was your direction or your marching orders, per se, when you were assigned
10 to these January 6th cases -- or I think it was a DOJ-related case?

11 A So I wouldn't -- I'd be careful not to call them the January 6th cases --

12 Q Right.

13 A -- because I roughly consider those to be more rioter-related.

14 But the marching orders, as I described and can describe in more detail if you want, was to
15 look into whether there had been misconduct within the Department of Justice related to the
16 transfer of power after the 2020 election.

17 Q And can you describe in general what this conspiracy was or what the criminal acts you

18 were investigating related to the Department of Justice and misconduct within it?
19 A Yes. I mean, I guess, to put a statute on it, there are several that it could have been.
20 But I was thinking of this at times through a lens of 18 U.S.C. 1512.
21 The -- one theory that I had was that -- and that I think the evidence supported as to -- as to,
22 you know, the Jeff Clark and Department of Justice is that the attempt to install Jeff Clark as Acting
23 Attorney General was intended to destabilize the election results and cajole certain States into
24 reconsidering and maybe changing their electoral votes.
25 And so one criminal charge that that could lead to is a charge for corruptly interfering with a

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1 Federal proceeding.

2 Q Thank you. And we'll get into this a little bit more a little bit later.

3 I'm going to introduce an exhibit. I think it will be exhibit 3. It's going to be document 1,
4 which is the letter that this committee sent to you for those transcribed interviews.

5 [Duree Exhibit No. 3.

6 was marked for identification.]

7 BY

8 Q I'll give you a second to look over this. And, again, this is exhibit 3. It's a December

9 16, 2025, letter from this committee to Mr. Timothy Duree.

10 A Yes, sir. I've looked it over.

11 Q Okay. I'm going to read a few quotes from this, and then I want to get your impression
12 from it.

13 But in this letter to you for this interview, the chairman said that the committee has
14 been -- and this is a quote -- "investigating former Special Counsel Jack Smith's partisan
investigations

15 into President Trump and his associates following the 2020 election."

16 The letter continues by stating that your testimony is, quote, "vital to our investigation into
17 how the Biden-Harris administration weaponized the Justice Department for political purposes and
18 misused Federal law enforcement resources," end quote.

19 Now, just to make sure the record is clear, you were on the special counsel's team, correct?

20 A Yes, sir.

21 Q Was your investigation partisan, as the chairman's letter suggests?

22 A No, never.

23 Q Did you engage in partisan politics while investigating the crimes associated with the
24 conspiracy leading up to the January 6th certification?

25 A No, never.

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1 Q Did you take investigative steps simply because the target of the investigation was
2 associated with a certain political party?

3 A Absolutely not.

4 Q Did you investigate President Trump or any of his associates because they were
5 members of the Republican Party?

6 A Absolutely not.

7 Q Did you take investigative steps and request records because the subjects of those
8 requests were members of the Republican Party?

9 A No, I did not.

10 Q If a Democratic member would have been involved in the conspiracy to overturn the
11 2020 election, would you have taken the same investigative steps with them, too?

12 A Definitely.

13 Q In general, what is your response to this committee's assertion that you were part of a
14 DOJ that was weaponized for political purposes?

15 A That is entirely false. Our -- our team adhered to the highest principles of the
16 Department of Justice throughout. We took it as our mandate to be transparent, thoughtful,
17 honest, and evenhanded in everything that we did. There was not a single instance in which
18 partisan favoritism ever factored into any of our decision-making.

19 Q I'm going to take -- build upon your single instance language there.

20 It sounded like from the last hour, you know or worked with Mr. J.P. Cooney. Is that
21 correct?

22 A I did. I think highly of J.P.

23 Q And very high level, what was his role overall in this investigation?

24 A He was Mr. Smith's deputy.

25 Q And did you ever encounter or witness Mr. Cooney taking an investigative step in a

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1 partisan manner?

2 A Absolutely not. J.P. is a straight arrow, and one of the best prosecutors I've ever
3 known. He would not and did not do that.

4 Q And are you familiar with Molly Gaston?

5 A Yes.

6 Q How do you know Ms. Gaston?

7 A Ms. Gaston was also on the special counsel's team. She was a supervisor of our
8 election fraud case.

9 Q And did you ever encounter Ms. Gaston taking investigative steps or speaking in a
10 partisan manner while in the investigation?

11 A Never. Again, Ms. Gaston is a spectacular prosecutor and a spectacular person. And
12 I have never seen her do anything except act with the greatest respect for the traditions and norms
13 of the Department of Justice.

14 Q And what about Mr. Thomas Windom? You mentioned him in the last hour as well.

15 A The answer will sound familiar. I think Thomas is an amazing prosecutor and an
16 amazing person with an ethical compass that points to true north. I have never seen -- never seen
17 Thomas do anything other than act with the greatest integrity. He was -- he never acted with
18 partisan favoritism.

19 Q Okay. And last but certainly not least, Special Counsel Jack Smith, I'm assuming you
20 know Jack -- Mr. Smith?

21 A I do. I do.

22 Q And did you ever witness Mr. Smith taking investigative steps, or directing investigative
23 steps in a partisan manner?

24 A Absolutely not. It is my impression of Jack that he is one of the most unfailingly ethical
25 and disciplined people I ever have known, and I think he would be disgusted if anyone in our office

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1 ever considered for a second doing something like that. Jack would not permit it.

2 Q Did you ever encounter the special counsel targeting or directing an investigation

3 directly at President Trump because of Mr. Trump's affiliation with the Republican Party?

4 A Absolutely not.

5 Q So going back to the overall premise of the special counsel's indictments, of your team's
6 indictments, do you believe there was sufficient evidence to justify bringing charges -- the charges
7 that were brought against President Trump?

8 A Absolutely.

9 Q I'm going to actually -- I'm going to go a little off track. I want to go to the
10 Congressman Perry's cell phone discussion.

11 A Okay.

12 Q It sounds like you were involved in the investigation into Mr. Jeffrey Clark. Is that
13 correct?

14 A Yes, sir.

15 Q And through that investigation, is that what led you -- the facts led you to Congressman
16 Perry. Is that correct as well?

17 A They did.

18 Q Can you walk us through -- because I've heard a lot of prosecutors say you follow the
19 facts and the law. Is that what you did in this investigation?

20 A Yes, sir, it is.

21 Q So how did we get from investigating misconduct within the Department of Justice with
22 Mr. Jeffrey Clark to, you know, a court-authorized seizure of Mr. Perry's phone? And summarizing
23 is fine.

24 A Because the evidence indicated that Mr. Perry was involved with Mr. Clark and others to
25 advance the effort to have Jeff Clark installed as the Acting Attorney General. And we sought a

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1 search warrant for Congressman Perry's phone because the evidence we had developed to date led
2 us to believe that there was probable cause that on Congressman Perry's phone would be evidence
3 of the criminal conduct we were investigating.

4 Q And I guess, let's take a step back. What is a search warrant? We've used the term
5 frequently. I think all of us probably know what it is, but what is a search warrant?

6 A A search warrant is an investigative tool and legal process that allows -- allows
7 prosecutors and agents, upon a showing of probable cause, to access things to which they might
8 otherwise -- to which they would otherwise be unentitled to access, things like a cell phone in this
9 case. But a search warrant can also be used to permit access to a house, a locked car, all types of
10 things.

11 Q In layman's terms, what is probable cause? Sorry for the law school exam here, by the
12 way.

13 A Probable cause, I'll ask my attorneys to chime in if my criminal procedure is a little bit
14 messy.

15 But probable cause is, roughly, evidence more likely than not of the crime.

16 Q And it sounds like you were involved in seeking this court authorization to search
17 Congressman Perry's cell phone?

18 A I'm sorry. I spoke over you. Yes, sir, I was.

19 Q And you mentioned earlier that you would have never sought this step without, you
20 know, input from your teammates or even going to your superiors.

21 Can you just -- from what you remember, can you walk us through what that process would
22 have looked like before seeking this court authorization for Congressman Perry's cell phone?

23 A Well, I would have -- a lot of things would have happened. I would have pored over

24 the evidence that we had developed to date over those several months of the investigation to
25 determine whether it appeared there was probable cause, and in this case, satisfied myself that

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1 there was.

2 I would have needed to decide not only that there was probable cause, but that making that
3 showing of probable cause and getting the phone was something that I thought was going to be
4 investigatively productive and useful to the advancement of our cases.

5 I would have spent -- and believe I did spend -- a lot of time looking through evidence, looking
6 through records, tying the pieces together to, in the first instance, satisfy myself that the probable
7 cause was there and that this tool, which is powerful but also invasive and needs to be, you know,
8 wielded with caution, was one worth using.

9 After looking through the phone records, the -- you know, whatever else we may have had,
10 which was a lot, and convincing myself of that, I would have then written a draft of the affidavit.
11 I would have built this affidavit, along with the other members of my team, who were each
12 very smart, very seasoned, very ethical, and very thoughtful prosecutors. And I would have
13 solicited their input on whether we met the necessary standards, whether this was a good
14 investigative step, whether the evidence was articulated clearly, whether there were other things we
15 wanted to add and all that.

16 We would have all chimed in to create the best product possible.

17 Q You said -- it sounded like you had quite a bit of evidence even before requesting
18 Congressman Perry's cell phone or search of it. Is that correct?

19 A I believe so yeah.

20 Q So why then -- and I think I know why, but just for the sake of the record, why then
21 would you seek then to search Congressman Perry's cell phone if you already had a lot of evidence?

22 A Having a lot of evidence doesn't mean that you have all the evidence you want or all the
23 evidence you need. Investigations tend to proceed in phases.

24 And we, as investigators and as prosecutors, are constantly -- are building towards a
25 determination of whether we're able to get proof beyond a reasonable doubt. But more than just

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1 that, we want to be comprehensive and inclusive so we know that we have thoroughly considered
2 the evidence that may exist and the charges that we want to bring.

3 And so we had some evidence, but that doesn't mean we had all the evidence. And
4 moreover, just because we have some evidence against some people doesn't mean we have all the
5 evidence against all the people or even that we knew everybody that may have been involved.

6 And so obtaining all the evidence that you can in an investigation like this, I believe, is
7 necessary to being thorough, being comprehensive, ensuring that you understand the criminal
8 conduct correct, ensuring that you've included the right people in the case and excluded the right
9 people. It is -- it's the way that you are supposed to do your job diligently.

10 It is also, you know, fair to the defendants that you are -- the people being investigated
11 before they were defendants, that you are considering everything as diligently and thoroughly as you
12 can.

13 Q Is this a common investigative step in white collar investigations?

14 A A search warrant?

15 Q Search warrant for cell phone records, for -- to search a phone for communications?

16 A Yes, sir. I would say that it is.

17 Q Okay. And you mentioned beyond a reasonable doubt when you were talking about
18 the evidentiary standard and kind of describing why you would seek this type of evidence.
19 What is beyond a reasonable doubt?

20 A Beyond a reasonable doubt is evidence sufficient to satisfy you in the most serious of
21 your own personal affairs. Beyond a reasonable doubt is the standard you need to prove someone
22 guilty at trial, and it doesn't mean that there isn't some teeny tiny shred of possible doubt, but it
23 means, yeah, that you are satisfied to a degree that you would be in the most important of your
24 personal affairs.

25 Q Also in the last hour with the majority, they started on the discussion of Speech or

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1 Debate Clause issues. Do you recall that discussion?

2 A I do.

3 Q And it sounded like Speech or Debate issues were something that your team thought
4 about before going through Congressman Perry's cell phone materials. Is that correct?

5 A Yes, sir.

6 Q Can you walk us through just what that consideration looked like, and I think you even
7 mentioned that there were some thoughtful protocols, I think, is the term you used last hour.
8 Can you just walk us through what those protocols were? Like, what was your team trying
9 to figure out before going through with this investigative step with Congressman Perry?

10 A So we were fundamentally trying to ensure that we did not obtain evidence of
11 legislative acts to which we were not entitled and that we did not want to get. It can be challenging
12 to determine both what is -- it can be difficult to determine what a legislative act actually is, and it is
13 impossible to know what you are going to find on the phone before you find it.

14 So we implemented -- and if you ask me to tell you exactly what it is, I'm going to struggle on
15 the bit by bit. But we implemented filter processes that I believe involved Congressman Perry and
16 his lawyers, ultimately, that enabled us to have the assurance that we were going to properly exclude
17 evidence of legislative acts from things that we obtained.

18 Q So just to make sure I understand this, it sounds like Congressman Perry and his
19 attorneys were involved in this review prior to you all looking at the -- or using the materials?

20 A Yes. As I remember it -- this is to the best of my recollection -- our filter process did
21 involve, after we seized the phone, allowing them, his attorneys to look through the records, identify
22 things that they believed to be privileged, and then provided a mechanism by which disputes over
23 those privileged materials could be presented to the court for resolution.

24 Q And it actually -- these issues actually were presented to the court for resolution. Is
25 that correct?

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1 A They were.

2 Q Before I get to that, one thing that has come up in other instances of this investigation is
3 why didn't you all simply ask Congressman Perry to give over relevant materials from his cell phone?
4 Can you explain to us why you wouldn't have taken that step?

5 A That is not a step that I would -- that is not an approach I would take in any criminal
6 investigation. And it would -- I think that I am par for the course amongst prosecutors in that.
7 There are a lot of reasons why you wouldn't want to just ask someone for their phone.

8 Principally --

9 Q Sorry. Can I ask you to give us a few of those reasons?

10 A Yeah. Principally, it is because you want to obtain that evidence in unadulterated
11 form. And if I were to just ask someone to turn over their phone and give me evidence, they could
12 say no, they could delete things, they could modify things, they could add things, they could change
13 things. I would not have a clear and unvarnished picture of what was on that phone.
14 So there are a lot of reasons related to the preservation of evidence why you wouldn't want
15 to do that.
16 Q Would you say it's fair to say that by seeking a court authorization to search someone's
17 phone, it helps preserve the integrity of the investigation?
18 A I think that's fair, yes.
19 Q Okay. I'm going to introduce another exhibit. It will actually be a court opinion about
20 the Speech or Debate Clause issues.
21 [Duree Exhibit No. 4.
22 was marked for identification.]
23 BY :
24 Q So this will be exhibit 4. It is a December 19th, 2023, opinion out of the District Court
25 of D.C. I'll give you a second to look over that.

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1 A I'm familiar with this. Do you need me to read the whole thing?
2 Q Oh, no. I'll direct you to some pages as well as we go through this. Now, just to give
3 a little bit of procedural posture before this, please correct me if I misstate anything.
4 I believe there was a district court opinion that was initially entered over specific
5 communication by Judge Boasberg that went up to the circuit court, which then sent it back down to
6 Judge Boasberg to do a -- almost a document-by-document analysis under Gravel v. United States.
7 Is that what you recall as a summary of the procedural posture of this?
8 A One change. I think that the chief judge at the time this initially came before her was
9 Judge Howell. So it went from Judge Howell to the D.C. Circuit, and then to Judge Boasberg, who in
10 the time in between, had become the chief.
11 Q Thank you for that clarification. I appreciate that.
12 So let's start on page 1 on the bottom of the first paragraph. And just to add on to the
13 summary that I just kind of gave, specifically in your words, or in your opinion, why did the circuit
14 court or what was the reason for the circuit court remanding this case back down to district court?
15 I believe they talk about it at the end of the first paragraph.
16 A Yeah. I mean, it's -- the opinion sort of speaks for itself. And I would be hesitant to
17 say more about the circuit than I have to.
18 But essentially, yes, the D.C. Circuit wanted the district court to apply a fact-specific inquiry
19 that it believed the district court had not fully done the first time around.
20 Q Thank you. We'll go to page 11. So in general, I kind of just want to get a sense of
21 what the court ruled when it came to the actual records related to Congressman Perry and what he
22 had to disclose. Feel free to reference any part of this opinion.
23 I know that 11 and 12 talk about this. But can you give us a summary of what the court
24 ordered Congressman Perry to disclose?
25 A In summary, the court ordered Congressman Perry to disclose the vast majority of

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1 documents that were in dispute on the phone.
2 As I remember it, the court determined that many of the things that Congressman Perry was

3 claiming to be legislative act, materials were not, and so Congressman Perry was required to turn
4 over to us everything except certain, like, maybe legislative newsletters, things like that, that were
5 legislative acts.

6 Q Okay. And just to make sure it's clear for the record, from this opinion on the bottom
7 of page 11, it says that Congressman Perry must disclose to the Government 1,659 of the 2,055
8 records still at issue.

9 A Uh-huh.

10 Q Is that accurate with the opinion?

11 A I don't remember the exact -- that is what the opinion states, yes.

12 Q Okay. So additionally, the court said that Congressman Perry was only permitted to
13 withhold 396 documents under Speech or Debate Clause. Is that correct?

14 A That is what the opinion says.

15 Q So I guess taking a step back, would you say it was -- would you say or would you agree
16 with the assertion that Congressman Perry had the opportunity to litigate Speech or Debate Clause
17 issues before the Department of Justice was able to consider those messages or communications as
18 part of your investigation?

19 A He did, as evidenced by the fact that the litigation happened.

20 Q I think you also mentioned earlier when discussing investigative actions dealing with
21 Members of Congress or political leaders that you sought to, I guess, image the phone as quickly as
22 possible, I think, is the term you used. Do you recall saying that?

23 A I do.

24 Q I guess, why were you trying to image the phone as quickly as possible? You touched
25 on it a little bit, but I would love to hear why you were trying to image it as quickly as possible for

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1 Congressman Perry.

2 A To minimize the disruption to Congressman Perry, fundamentally.

3 Q And why was it important to minimize the disruption for Congressman Perry?

4 A We basically did not want to impede Congressman Perry's ability to use his phone and
5 live his life any more than we absolutely had to. We believed that we -- the court agreed that we
6 were entitled to the evidence on that phone.

7 We believed that we needed that phone -- that that evidence would be useful to advance our
8 case, but we also recognized that a search warrant is a powerful tool and invasive tool, so we wanted
9 to minimize the disruption.

10 Q Is this something, I guess -- and by "something," I mean, minimizing the disruption,
11 moving as quickly as possible when you image somebody's phone.

12 Did you do that with every subject of investigations during your career?

13 A I -- I tried to be as cautious as I could, and I always tried to remember not to allow
14 the -- I did my best not to allow the tools of criminal investigation to disrupt the lives of those who
15 were within the scope of the investigation any more than we had to.

16 This was probably quicker than a quicker-than-normal turnaround, but circumstances of cases
17 and facts of cases differ. I can't say that I turned many phones -- that I was on teams that turned
18 many phones around quite this quickly, but we tried to be fast and efficient when we could.

19 Q I'm going to introduce another exhibit. This will be exhibit 5, I believe, and it will be
20 the Volume 1 of the special counsel report.

21 A Okay.

22 [Duree Exhibit No. 5.

23 was marked for identification.]

24 BY :

25 Q Do you have a copy of volume -- are you familiar with this?

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1 A I should probably look at a copy.

2 Q Please take a second to refresh your recollection. We're going to start on page 53, just
3 because I want to continue a line of questioning from the last hour, but then we'll go back to the
4 beginning after that.

5 A I'll tell you this. I'm not -- it's a long document. I'm not going to sit and read

6 150-something pages.

7 Q Great.

8 A But if, like, this -- from the few seconds I've looked at it, this appears to be the report of
9 the election investigation that we prepared at the end of the special counsel's office. And if that is
10 this report, I'm familiar with it.

11 Q So to carry on what you just said -- and thank you for that summary -- did you assist in
12 the preparation of volume 1 of the special counsel's report related to the election interference?

13 A I believe that I did.

14 Q And so I believe you just said also you're familiar generally with the contents of this
15 report?

16 A Yes, sir.

17 Q Actually, let's go right to page 53. During the last hour there was a discussion about
18 fake or fraudulent electors.

19 And I guess what the President Trump might have believed to be outcome-determinative
20 fraud or issues in certain States. Do you recall that conversation last hour?

21 A Yes. Yes, sir.

22 Q Would you -- I guess, the notion of President Trump believing an
23 outcome-determinative fraud, did you all seek evidence to see whether that was a reasonable
24 conclusion for the President to come to during this relevant time period?

25 A Yes.

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1 Q And what evidence -- just give us an example -- and I think page 53 actually outlines
2 some of the evidence you found that should have made it or President Trump should have known or
3 a reasonable person would have known that there was no outcome-determinative fraud for the
4 election integrity that caused him to lose?

5 A I cannot in the time we have identify all the evidence on that point because there was a
6 lot.

7 But in broad summary, the President's advisers, people that were in positions close to him,
8 positions that appeared to be positions of trust, told him at various points throughout the
9 election -- the post-election period that the allegations he was making were not substantiated by the
10 evidence. That was people, you know, at high levels within the Federal Government, like the
11 Attorney General, people, as I recollect, within the White House counsel's office.

12 Then that was -- those same statements were made by State and -- by State and local leaders
13 on the ground in the various States. So a few that come to mind, among many others, Brad
14 Raffensperger in Georgia, prominently, let the President know that allegations of fraud being made
in

15 Georgia were false.

16 The Attorney General of Georgia, Chris Carr, told the President that they weren't seeing
17 evidence of what he was -- what he was saying -- what the President was saying had happened.
18 In Michigan, State -- a State legislative leader that I'm thinking of right now also conveyed that
19 they were not seeing what the President was saying.
20 And I'll pause there for just a second to say, in each instance, these were -- these State and
21 local leaders were Republicans, people of the same party as the President. And a theme that
22 developed throughout the case is that it appeared that President Trump may have been preying on
23 party loyalty and presuming that people within his party would bend their ethics and their morals
24 and their sense of truth based on their party affiliation.
25 And we found out, reassuringly, happily, that there were a good many people who would not

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1 do that. So those were parts of it, and I'll continue just a little bit longer to say, there was also
2 significant evidence that we developed about the overall structure of how the elections worked in
3 each contested State, Michigan, Georgia, Pennsylvania, all six or seven of them.
4 And the evidence we developed made it clear that not only had the fraud being alleged not
5 happened, but that in many, many, many instances, the allegations that were made would have been
6 virtually impossible to have happened, that the structures and redundancies set up in these systems
7 would not permit such things.
8 So that's a relatively broad overview of some of the evidence.
9 Q Thank you. And just taking what you said, that thread of, quote, "virtually impossible,"
10 is it fair to say that the office -- the Special Counsel's Office developed strong proof that Mr. Trump
11 should have known that his election fraud claims were false?
12 A Yes.
13 Q Thank you. Going back to just the special counsel's report in general -- and special
14 counsels' reports in general, not just the one led by Mr. Jack Smith but led by others, do you think
15 it's
16 important for the public to be aware of special counsel's investigative findings?
17 A I hesitate to answer that question because I -- I do think that, yes, the public should be
18 aware. I also think that the rights of the criminally accused are paramount, and I wouldn't want to,
19 you know, accuse people of things that -- for which they've not been convicted.
20 But generally, yes, I know that prior special counsels have spoken about their work, and I
21 think that is a worthwhile thing.
22 Q And so going through what you just said of past special counsels speaking about their
23 work, to the best of your knowledge, was Special Counsel Mueller's report or parts of it made public
24 when -- at the conclusion of his investigation?
25 A I think so. I'm probably the wrong person to ask. I don't know -- I don't much
anything about any special counsel's office other than Mr. Smith's.

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1 Q Okay. I'm just going to go through a few, and if you don't recall, that's fine.
2 Do you recall whether Special Counsel Hur's report was made public at the conclusion of his
3 investigation?
4 A Might have been.
5 Q And are you aware of whether Special Counsel Weiss's report was made public at the
6 conclusion of his investigation?
7 A I don't know.

8 Q Okay. In this report that you all drafted, volume 1 of Special Counsel Jack Smith's
9 report, it documents Donald Trump's crimes attempting to overturn the election results. So I want
10 to direct you to page 2 specifically here.

11 A Page 2 of the report?

12 Q Page 2 of the report. Not the cover letter, but actual page 2.

13 And on page 2, the special counsel writes -- and this is a quote -- "When it became clear that
14 Trump had lost the election and that lawful means of challenging the election results had failed, he
15 resorted to a series of criminal efforts to retain power." Do you see that quote?

16 A Yes, sir.

17 Q Do you agree and stand by this summary of Donald Trump's criminal conduct in general?

18 A Yes, sir.

19 Q On the next page -- so page 3 of the report -- it outlines some of those criminal acts that
20 President Trump engaged in after he lost the election and after President Trump had exhausted
21 lawful means.

22 Can you summarize what some of these acts were that your report details?

23 A Well, it lists them right here. I'll just read from it because this is a good summary.

24 It included attempts to induce State officials to ignore true vote counts, to manufacture
25 fraudulent slates of presidential electors in seven States that President Trump had lost, to force

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1 Department of Justice officials and his own Vice President, Mike Pence, to act in contravention of
2 their oaths, and to instead advance President Trump's personal interest. And on January 6, 2021, to
3 direct an angry mob to the U.S. Capitol to obstruct the congressional certification of the presidential
4 election and then leverage rioters' violence to further delay those --

5 Mr. Dawson. I'll just caution the witness, for the court reporter's benefiting, if you're
6 reading, to read slowly.

7 Mr. Duree. I'm sorry. My apologies. But, yes, I am only reading verbatim -- virtually
8 verbatim from the report.

9 BY

10 Q Thank you. And eventually, the Special Counsel's Office indicted Mr. Trump for his
11 actions leading up to the -- leading up to the certification of the 2020 election. Is that correct?

12 A That's correct.

13 Q For these charges stemming from Mr. Trump's efforts to overturn the 2020 election, do
14 you believe that you had sufficient evidence to prove the charges beyond a reasonable doubt?

15 A Yes.

16 Q And do you believe there were multiple -- or do you believe there was a Federal interest
17 in proceeding with prosecuting Mr. Trump after he attempted to overturn the 2020 election?

18 A Absolutely.

19 Q Page 3 of the special counsel's report writes -- and this is a quote -- "Indeed,
20 Mr. Trump's cases represented ones in which the offenses was the most flagrant and the public harm
21 the greatest and the proof most certain."

22 Do you agree with this statement?

23 A Yes.

24 Q And can you just summarize for us, what was the public harm that was so significant
25 with this criminal conduct?

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1 A It remains hard for me to articulate. Smarter people can do better.
2 But the public harm is that President Trump -- we developed -- I believe that we developed
3 proof beyond a reasonable doubt that President Trump had tried to undermine the results of the
4 2020 election, and to do so is to undermine the very foundation of our democratic system.
5 If the sanctity of our elections is called into question, every single piece of this government
6 crumbles right behind it. Our safety, our peace, our well-being, our faith in our institutions,
7 everything.
8 It is hard for me to imagine a crime that has a more significant Federal interest than using the
9 highest office in the land to try to undermine the results of a proper election.
10 Q Thank you. All right. We'll end our hour there. Thank you.
11 [Recess.]
12 We'll go back on the record. The time is now 12:01 p.m.
13 BY
14 Q Mr. Duree, when we ended our last hour, we were discussing procedure of
15 Congressman Perry's cell phone. I want to jump back to that topic.
16 Did you ever become aware that the FBI surveilled Mr. Perry for a week prior to executing the
17 search warrant?
18 A I may have been aware. I'm not exactly sure what you mean by surveillance, but I may
19 have been aware of that.
20 Q And what were you aware of in terms of surveillance?
21 A Now, did you say before executing the search warrant?
22 Q Correct.
23 A Or before we obtained the search warrant?
24 Q It was before executing the search warrant. This occurred in the late July 2022 time
25 frame.

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1 A Oh, I'm not sure I can speak to that. I don't know.
2 What I remember is that we did need to identify where Congressman Perry was to actually
3 take the phone from him --
4 Q Okay.
5 A -- and wanted to do that, ideally, in a discreet way. But to answer your question, I'm
6 not remembering offhand. Show me documents, maybe you can refresh me.
7 I'm not remembering offhand whether the FBI looked at Mr. Perry's locations before we
8 obtained the search warrant.
9 Q Okay. Okay. So are you aware of whether -- you said there was some surveillance
10 that occurred before executing the search warrant to identify daily patterns, where he worked, his
11 associates. That occurred in the late July 2022 time frame.
12 Was there other surveillance of Mr. Perry that you are aware of?
13 A No. I mean, it's been years, so my memory might be a little hazy. Everything -- I
14 don't have great specific memories of that.
15 But everything you're describing to me seems like something that we would normally do in
16 the course of any investigation when trying to execute a search warrant. So it doesn't surprise me.
17 I just don't have a lot of specific memories to offer you.
18 BY
19 Q Was Mr. Perry a target at this point?
20 A Again, using the subject target witness sort of categories, I would not have called
21 Mr. Perry a target at this point. A target --

22 Q So there's no evidence that he did anything wrong?

23 A I didn't say that. I said a target is essentially -- you can look to the justice manual for
24 the exact wording. A target is someone that is a presumptive defendant, basically. I believe
25 Mr. Perry, at this point, was a subject.

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1 Q Okay. And when you obtained his phone, you had to litigate with his team over the
2 Speech or Debate issues, correct?

3 A Yes, sir.

4 Q And how long did that last?

5 A A long time. We -- I mean, the litigation -- the records of litigation, which are public,
6 speak for themselves. I don't have those dates --

7 Q Right.

8 A -- at hand. But roughly from, you know, August or September of '22 until the case
9 went up to the D.C. Circuit and back and Judge Boasberg's opinion came down in December of '23.
10 So it would have been entangled in litigation over a year and a few months.

11 Q So wouldn't it have been easier if you simply asked Representative Perry's lawyers for
12 the communications you were looking for?

13 A I don't believe so no.

14 Q And why is that?

15 A Well, the number one -- a few things here. One, I can't really speculate. The fact is
16 we didn't do that. And to do that would have been an extraordinarily unusual prosecutorial step in
17 this case or any other. But I don't believe it would have been easier. For all the reasons that I
18 described in the last hour that I'm sure you were listening to, if you seek to obtain something
19 voluntarily, people can just choose not to give it to you. That's one obvious thing. But there are
20 myriad opportunities for evidence to be altered, tampered with, deleted, added to. And in this
21 search warrant, same as any others, as I just explained in the last hour, it was important to me and
22 our team to obtain the evidence in a way that was unadulterated.

23 Q Okay. So you had concerns that Congressman Perry would alter, tamper, delete,
24 otherwise obstruct your investigation?

25 A I didn't say that.

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1 Q Then what did you say?

2 A I answered your questions as to what the concerns are that motivate a person.

3 Q Well, when you're dealing with a Member of Congress, you're obviously dealing with a
4 different -- a different type of individual.

5 I mean, this is somebody that has constitutionally been elected by his 800,000 people, or
6 whatever it is, in the State of Pennsylvania, and so he's obviously a person presumed to have honesty
7 and integrity.

8 A It is that line of thinking that is so perniciously dangerous. I do not mean for a second
9 to impugn Congressman Perry's integrity. But I will say, I am never going to look at a Congressman,
10 a janitor, a President, or a person on the street and presume that one person is more likely to be
11 honest, more likely to have integrity, more likely to be truthful than the others. To believe that
12 would be to corrupt my role as a prosecutor.

13 My role as a prosecutor is not to make value judgments about whether one person seems
14 more honest based on their status in life. My role is to follow the facts dispassionately where they

15 may lead, irrespective of the power or money or status or title a person might hold.
16 So I endeavored throughout this process to treat Congressman Perry exactly as I would treat
17 every other individual who was in possession of a phone that we needed to search. The only
18 wrinkle that was added is that, because of his status as a Congressman, we needed to consider
19 Rayburn and Speech or Debate considerations, which we did.

20 Q What were you seeking on his phone?

21 A Evidence.

22 Q But specifically, what were you seeking? I mean, did you want pictures of him and his
23 family?

24 A I don't believe that pictures of him and his family would have been particularly valuable
25 to our investigation.

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1 Q But you took them anyway?

2 A That is the nature of how a search warrant works, yes.

3 Q So what were you looking for on his phone? Did you want call records of who he was
4 calling while he was considering his legislative duties?

5 A As I believe I have explained, if you're intimating that those calls would have been
6 Speech or Debate protected in some way -- I'm not agreeing that records of calls would be -- we were
7 not at any point attempting to get Speech or Debate materials.

8 Q But you did anyway?

9 A No. In fact, as I have explained at great length, probably in a way that's kind of
10 tiresome to everyone in this room, we implemented strict and rigorous protocols to ensure that we
11 did not obtain Speech or Debate-protected materials and that our actions --

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1 [12:10 p.m.]

2 BY

3 Q Well, you did take it. It's whether you looked at it or not, whether you looked at it, but
4 somebody in DOJ did. There had to be a filter team.

5 A I don't think that that is true. Again, if -- I'd encourage you to familiarize yourself with
6 our protocols, which did not permit -- for which we're very careful in the way that, you know, Speech
7 or Debate material, should they exist, were handled.

8 I can answer your question by saying, yeah, we did take his phone. And whatever was on
9 that phone is something that was imaged.

10 Q And, again, what exactly were you looking for on the phone? If you weren't looking for
11 pictures of his family, if you weren't looking for phone call records, what were you looking for?

12 A Evidence. And to be a little more specific --

13 Q So what was the evidence you were looking for?

14 A To be a little more specific, we were looking for evidence of criminal conduct by any
15 party, and more specifically than that, evidence related to the effort to install Jeff Clark as the Acting
16 Attorney General, which was an investigative stream in which I had a significant part.

17 Q Okay. But specifically, were you looking for telephone records or content of his emails
18 or text messages with -- with who?

19 A You, naturally, when you execute a search warrant on a phone, are going to be looking
20 for content, right? Like phone tolls, call logs. Those are things that can be obtained in a less
21 burdensome way through subpoenas and that sort of thing.

22 But yes, we did seek content, content of text messages with individuals with whom Mr. Perry
23 was communicating and, again, more specifically, text messages relevant to the effort to utilize the
24 Department of Justice potentially to help overturn the 2020 election.
25 Q Okay. And how long was Mr. Perry without the use of his telephone, do you know?

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1 A Few hours. Couldn't tell you exactly how many.

2 Q Would it surprise you if it was all day, 9 to 5?

3 A No. I mean, could have been, yeah.

4 Q Okay. So for one day, Mr. Perry was out -- was without the ability to have
5 communications with his chief of staff?

6 A Again, if you --

7 Q Members of Congress?

8 A Are you -- are you asking me a question or should I wait for you?

9 Q I'm asking you, did you understand that Mr. Perry, while his phone was in DOJ's
10 possession, he was unable to have communications with his chief of staff, with Members of
11 Congress,

12 and with other key people that he needed to do his constitutionally elected responsibilities?

12 A I understood that while we took Mr. Perry's -- while we were in possession of Mr.

13 Perry's personal phone, Mr. Perry was not able to access that personal phone.

14 Q Okay. Did you understand, for example, he didn't know his chief of staff's telephone
15 number? I mean, a lot of people nowadays don't know the numbers. You know, it's programmed
16 in your phone under a contact card.

17 A Did I know that Congressman Perry didn't know his chief of staff's phone number?

18 Q And was unable to contact his chief of staff during that time period.

19 A I don't -- I don't recall if that was anything I knew. I don't know why I would know that.

20 Q Okay.

21 BY

22 Q Were there any conversations that were had about depriving Mr. Perry of his ability to
23 conduct his legislative duties while you all had his cell phone?

24 A As I've said, we worked to return the cell phone to Congressman Perry as quickly as we
25 could. It is understood when you take someone's phone that they are going to be deprived of use

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1 of that phone for a while. That's Congressman Perry, that's you, that's me, that's anyone else's cell
2 phone.

3 We consider that deprivation of the use of a cell phone is a thing that can be burdensome,
4 and so we tried to get it back to him as quick as we could.

5 Q When did the idea that the team needed toll records for Members of Congress, when
6 did that idea first come about?

7 We know there are subpoenas for Members of Congress in 2022 and 2023. So when did
8 that first come about that you thought you needed Members' phone logs?

9 A I understand what you're asking me. I think there might be a couple of things
10 conflated. At no point were we out to just, you know, we want to get Members of Congress' phone.
11 This wasn't a thing, right.

12 We -- there were Members' phones that I -- there were toll records for certain Members'
13 phones that I believe were obtained at different times in the course of the investigation. And those

14 tolls, along with tolls for dozens of -- dozens and dozens of other people, were obtained when they
15 were investigatively necessary.

16 And so those points came about -- and I can address whatever specific you'd like. Those
17 points came about at different times.

18 Q Okay. We can take each Member individually.

19 Let's have -- this will be exhibit No. 6.

20 [Duree Majority Exhibit No. 6.

21 was marked for identification.]

22 BY

23 Q And this is an email between you and Ms. Jennifer Clarke from PIN discussing toll

24 records for Chairman Jordan, who was the ranking member at the time, the relevant time period

25 here.

65

1 A Okay.

2 I'm going to enter as exhibit No. 7 too the actual subpoena that was issued for

3 Mr. Jordan.

4 Mr. Duree. Okay.

5 [Duree Majority Exhibit No. 7.

6 was marked for identification.]

7 Mr. Dawson. And based on that description of the next exhibit, I just want to caution that

8 for grand jury subpoenas, I'm hoping we can keep the questions at a certain level of abstraction,

9 which I think will still allow you to get all the answers you need. But I don't want Mr. Duree to be

10 confirming that a particular document is a legitimate grand jury subpoena or not. But email

11 records, contemplations of what was in one's mind at a certain phase of the investigation, I think

12 that's all fine. And I'm hoping that that's a guardrail that will work for you.

13 Has it been released publicly?

14 This has been released publicly, correct.

15 It's been publicly released.

16 Mr. Dawson. It has. The rules governing a government attorney remain even if, you know,

17 the subpoena recipient can disclose it. They can talk about what they say in the grand jury. And

18 there are still restrictions. And, again, I think we can get you what you need, but 6(e) is a

19 notoriously tricky, inconsistently interpreted provision. And so my job is, of course, to keep Mr.

20 Duree safe.

21 Mr. Duree. , what would you like to ask me?

22

23 Q Yes. So if we can look at exhibit No. 6 first, which is the email exchange. I thought it

24 would just be helpful to have both the email and the subpoena itself.

25 A Okay.

66

1 Q So we'll start with the email from Ms. Clarke to you on April 26, 2022, at 11:29 a.m., just

2 so the record's clear. I'll read the first sentence. It says, "PIN concurs with the proposed covert

3 investigative step of issuing a grand jury subpoena for toll records for the personal telephone number

4 of Rep. Jim Jordan for the time period of August 1st, 2020 through January 30th, 2021, based on the

5 fact that you have evidence that this phone number was in communication with Perry and others

6 suspected to be involved in alleged obstruction of the congressional certification proceeding on

7 January 6, 2021, related to the 2020 election for President of the United States."

8 So first, I want to talk about the timeframe of August 1st, 2020 through January 30th, 2021.

9 Why was there such a broad timeframe at this point?

10 A Okay. So I'm not remembering -- like, I see the words on the email, right. I

11 remember being part of the process to get the subpoena for Mr. Jordan's phone. I don't remember

12 the exact timeframe as I sit here talking to you today, the start and end dates of those records. So

13 it's a little hard for me to speak to that, but I will say we did subpoena a period of, I guess, some

14 breadth. And the -- you're asking me the reason why.

15 Q That's correct.

16 A Okay. I can tell you that.

17 Q And just -- sorry. Just before you start, I just want to point out that there's a

18 discrepancy with the email and then what's actually in the subpoena is -- you are correct that it was

19 some breadth. It was 2-and-a-half years. It was January 1st, 2020 to April 25th, 2022, was

20 when -- was the timeframe for the subpoena. So there's quite a change between what PIN signed

21 off on and what was in the subpoena.

22 A Okay.

23 Q So first, if you want to touch on why 2-and-a-half years was requested, and then if you

24 want to touch on the discrepancy.

25 A Yeah. Maybe because it relates to the timeframe, I'll touch on the discrepancy first --

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1 Q Okay.

2 A -- as you've identified it.

3 I don't -- I remember being part of the process of getting Mr. Jordan's toll records. And I

4 don't remember right now whether the records that we actually have were for August 1st or January

5 30th, whether they were for a 2-and-a-half-year period or whether they were from -- whether they

6 were from some other period.

7 I don't know that this is a genuine copy of the subpoena. I'm just not sure. But I do

8 remember being part of that process.

9 I don't know that there is a discrepancy, and I'll tell you what I mean. If you're telling me

10 that there are dates on these -- the date on this email that is different than the date on the

11 subpoena, I can give you a few possibilities as to why. But I'll start with sort of the unspoken

12 implication, just to clear that one out of the room.

13 There is absolutely no chance that I would ever have sought to circumvent PIN or go against

14 the order -- the direction they gave me. I saw, as a prosecutor, and continue to see, the adherence

15 and fidelity to process as sacrosanct. If a prosecutor does not follow the processes and instead, you

16 know, does what she or he wants to do, then the integrity of the system is undercut. I did not do

17 that in this case. I would not do that. That just plain old did not happen, period.

18 Now, as to why there's a discrepancy, there are a few possibilities. I had -- I haven't been

19 able to go back and look at my old emails from this time period, and my memory is hazy anyway,

but

20 I do know that I had lots of communications with PIN in this timeframe, with Ms. Clarke and others.

21 We had several phone calls. We had emails. We might have had like a video meeting or

22 something from time to time. So I talked to these people fairly regularly in this time period and

23 kept them informed about what we were doing.

24 I do not know if there is additional communication that expands or extends this timeframe.

25 Maybe Ms. Clarke got it wrong and she corrected it in a future one -- a future email. I don't know.

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1 There are probably other communications out there that would shed light on this.

2 Another -- I mean, another possibility is that there was a mistake. You know, if this was the
3 subpoena that was sent out -- I see Special Agent Burnett -- I see an email indicating to me, as this
4 email reads, that Special Agent Burnett sent a subpoena for a longer time period to -- to Verizon.
5 And if that happened, it would have been a mistake. He could have been using an old copy of the
6 subpoena, a different thing. I'm not sure.

7 I'd like to think that if there was a mistake, we would have caught it because, again, my
8 commitment to doing what PIN asked was strong and certain. So we would have -- I would like to
9 think that if there was a mistake, which is a possibility, we would have corrected it, sought additional
10 guidance from PIN, whatever.

11 But the bottom line is, I can't tell you exactly what the discrepancy was or if there was a
12 discrepancy at all, because I do not have the benefit of the full records.

13 Q But, I mean, that's a pretty big mistake. You went from wanting records for 6 months
14 to 2-and-a-half years. So can you just help explain how could it have gone from 6 months to
15 2-and-a-half years?

16 A And I'll tell you again, I'm not saying that we made a mistake. I offered the possibilities
17 to you. One that I think is less likely is that there was a mistake. And if we would have made a
18 mistake because, you know, the wrong dates were on the subpoena we sent or something, I would
19 like to think we would have corrected that. I don't know if there was a mistake.

20 Another possibility is that, amongst all the many phone calls, emails, video meetings,
21 everything else I had with PIN, that PIN authorized a longer time period. I just -- I just don't know.
22 I don't know that there was a mistake.

23 Q So if the criminal conduct that you were investigating at the time was the Clark matter
24 and trying to have him installed at the Justice Department, that was happening in the November
25 2020 timeframe -- is that correct? -- or in the post-election I know you described earlier?

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1 A December. The DOJ scheme was principally in December 2020 into early January
2 2021.

3 BY

4 Q So what did you need August, September, October phone records for?

5 A I'll tell you. What we knew -- so toll records are one way to build out -- one tool you
6 can use to build out an investigation and understand the people communicating with each other in
7 the timeframe of relevance.

8 All toll records tell me is that some certain number communicated with some other certain
9 number, right. But it's use -- they are useful to establish contact between people so that you can
10 understand who the individuals who appear to be part of your investigation were talking with. You
11 can understand their networks. You can understand who might otherwise be involved. You can
12 often exclude people who are not involved.

13 So I'm coming to a more comprehensive answer for you but, basically, that is why you need
14 toll records. Something that you have to be careful of, particularly in a case like Mr. Clark's, where
15 we're investigating really a 2-week period more than anything else for the DOJ scheme, is that all
you

16 get is a relatively tiny snapshot of the communication patterns of a person. And so you want to
17 extend the scope of the subpoena long enough so that you can see if the communications that were
18 occurring within that time period are abnormal or are exactly consistent with what that person

19 always otherwise does.

20 So for instance, right, if you looked at a 2-week snapshot of my phone, you'd probably see a
21 lot of calls with my wife. You could pull out from that and take a larger snapshot of my phone to
22 see is this person someone with whom Tad regularly communicates or is this a sudden abnormal,
you

23 know, party with whom you never communicated before or after. Those things can help you
24 identify the nature of the relationship, the frequency and duration of the communications.
25 And, as I said, understanding better whether the frequency with which people talk over a

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1 slightly longer term can help you both include and exclude people from the scope of your
2 investigation. So that's why we need a longer period, to contextualize and better understand if the
3 frequency of the calls in this period was abnormal or not.

4 Q But it becomes a problem when some of the phone -- the toll records you're seeking are
5 the President's political adversaries, in terms of Speaker McCarthy and Chairman Jordan.

6 A Are you telling me --

7 Q Like, developing a pattern of who Speaker McCarthy or, you know, soon-to-be Speaker
8 McCarthy and Chairman Jordan, develop -- you know, developing a record of who their network is
9 and how frequently they call, I mean, that is a real big problem.

10 A Is that a question to me?

11 Q Yeah. How can you do that?

12 A How can I -- I'm sorry, how can I do what?

13 Q So how does the Justice Department justify collecting all of this data and information
14 about the President's political adversaries?

15 A I don't -- I'm not trying to be dense. I don't think -- I don't think Chairman Jordan is
16 President Trump's political adversary.

17 Q President Biden.

18 A Oh, okay. I will tell you what we did and why we did it. We subpoenaed phone
19 numbers, including of instance -- of relevance to this immediate conversation, a 937 number that I
20 know pertains to Congressman Jordan. We subpoenaed that number because that number was in
21 contact with other individuals who were within the scope of our investigation. And we were trying
22 to develop evidence of that investigation to include, you know, whether -- to include building out an
23 understanding of the people involved, potentially, in the effort to overturn the election and to
24 elevate Jeff Clark within DOJ.

25 So we sought those records just to build out the network, and that is a completely normal,

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1 standard step in any criminal investigation. It has nothing to do with Mr. Jordan's status as a
2 Congressman or anything else and everything to do with this 937 number was contacting other
3 people of interest to me, and that's what we wanted to figure out.

4 Q So it didn't matter to you that he was the top Republican on the House Judiciary
5 Committee with oversight of the Justice Department?

6 A It mattered to me in that that meant that that 9 -- to get the subpoena for that 937
7 number, I was going to need to go through PIN and add some additional process. It mattered to me
8 because --

9 Q Those were speed bumps for you, right?

10 A I'm not going to classify them that way. I think that the policies that DOJ has are

11 thoughtfully made, and I understand why they have them. Whether I agree or disagree with them,
12 I'm a line prosecutor. I was a line prosecutor. I didn't make the policies.
13 What I'm telling you is that this 937 number was different from some of the other numbers I
14 subpoenaed only in that understanding, as I came to understand, that it was a Congressman's phone
15 number, we had to go through PIN to get approval.
16 Q Did you tell Mr. Burnett that the phone numbers included a Member of Congress when
17 you sought the subpoena?
18 A I would -- I don't recall what I specifically said to Mr. Burnett.
19 Q Would Mr. Burnett know that, know who the telephone numbers belonged to?
20 A Mr. Burnett was part of the investigative team at the time. I would have kept him, like
21 other members of the investigative team, apprised of investigative steps, of parties involved, and of
22 other things. So it is totally reasonable that I might have told Mr. Burnett who these phone
23 numbers were for, but I don't have a specific recollection of discussing this 937 number with
24 Mr. Burnett one way or the other.
25 Q So in the ordinary course, you think you probably would let him know whose numbers

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1 are involved?

2 A I'm -- I mean, I'm not saying that, right. Like, I certainly -- there would certainly be
3 nothing abnormal about letting my agents know the numbers we were subpoenaing. And given
4 that they are investigators, I think it would make sense.

5 Q Okay. And did he raise any issues that, you know, the Justice Department Inspector
6 General's Office has a special relationship with Congress, a special relationship with the Judiciary
7 Committee, that there presents a conflict there?

8 A I don't recall that.

9 Q Was that discussed?

10 A Again, I don't -- as I've told you, I don't recall discussing specifically this 937 number with
11 Special Agent Burnett, whether I did or whether I didn't. I don't recall a discussion on the point you
12 are describing.

13 Q Okay. And when you seek a nondisclosure order before the judge, you didn't let the
14 court know that you were seeking a nondisclosure order for a congressional telephone number. Is
15 that correct? A Member of Congress' phone?

16 A The NDOs would speak for themselves. I don't remember the specific wording of the
17 NDOs, but I do not think in 2022 that we were required to provide that information. We just did as
18 policy and law required us to do.

19 Q Do you understand that DOJ is required to do that now under their policy?

20 A I mean, you're telling me that. I don't -- I don't -- I don't dispute what you're telling
21 me. I don't work at DOJ anymore, and I haven't been keeping up to speed with developments on
22 the justice manual recently as much as I should.

23 At the time I was there, I was certainly cognizant of policies that affected the work I was
24 doing. I take your word. I don't know.

25 BY

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1 Q And looking back at the email here, the second full paragraph says, "PIN also concurs
2 with sending a preservation request to Google for the account -- redacted -- which is the personal
3 email account used by Jordan. There are numerous emails between this account and Perry's

4 personal account in December 2020 and early January 2021." Are you aware of whether you sent a
5 preservation request to Google for Mr. Jordan's email?

6 A I am not aware of if I did or I didn't, but if PIN concurred with it, I can see why you would
7 think that I did.

8 Q And with the preservation request, were you looking for the content of the emails, or
9 what were you --

10 A We don't get --

11 Q -- looking for there?

12 A I'm sorry, You don't get the content of an email with a preservation request.

13 A preservation request does just exactly what it says to do and basically nothing more. It causes the
14 email provider, in this case Google, to preserve it, to just not delete it.

15 So we didn't get anything. You don't -- you don't get anything from a provider through a
16 preservation request. You just have a request that they not destroy it or delete it.

17 Q And do you know if you ever got records from Google for Mr. Jordan's personal
18 account?

19 A You asking me if I got a subpoena for Jim Jordan's email?

20 Q Yes. Are you aware of --

21 A I'm sorry, a search warrant for Jim Jordan's email? I don't remember doing that. No,
22 I don't think so.

23 Q What about just a subpoena?

24 A I don't recall.

25 Q I want to turn to Ms. Clarke's Speech or Debate analysis here in the email.

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1 Can I just back up one second? I'm sorry.

2

3 Q If you had obtained a subpoena for the content of Mr. Jordan's emails -- the content,
4 not toll records, the content -- don't you think you would have remembered that?

5 A Yes, because that would be a terribly strange and procedurally -- like, it never happened.

6 You can't get a subpoena for content.

7 Q Okay.

8 A So I would --

9 Q So we're only talking about metadata here?

10 A No. I would -- I would never have sought a subpoena for content because the Fourth
11 Amendment and all the rules that apply do not allow you to get content through a subpoena, period.

12 Q Okay. So what you don't remember about Mr. Jordan's email account is whether you
13 sought metadata?

14 A Can you -- I don't know that I'm following the question exactly. I did not -- I guess I
15 don't know.

16 Q So you do remember getting a subpoena for Mr. Jordan's toll records, for his --

17 A I do, yes.

18 Q -- his Verizon telephone number?

19 A That's the 937 number. Yes, sir, I do.

20 Q Okay. But you don't remember if you did anything with respect to Google?

21 A I -- correct. I do not. I have no specific recollection that I took any action as to

22 Congressman Jordan's, you know, Google accounts beyond potentially this preservation request, but
23 I just don't remember. It was a long time ago.

24 Q Okay.

25 Looking to Ms. Clarke's Speech or Debate analysis, just reading the last

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1 paragraph on the page there, it says, "As we've previously discussed, obtaining these types of records
2 from a third-party provider for the personal email address of a Member of Congress arguably does
3 not violate the Speech or Debate Clause, even under an interpretation that the clause provides a
4 privilege against disclosure, as the disclosure of the records is not compelled from the Member
5 directly and the records are for the Member's personal email account rather than a congressional
6 email account. That position is not without litigation risk as the D.C. Circuit does not interpret the
7 privilege as one of nondisclosure."

8 Mr. Dawson. I'll just -- I guess, "the D.C. Circuit does interpret."

9 "Does," excuse me.

10 Mr. Dawson. Just for clarity on the record.

11 "Does interpret" -- thank you -- "the privilege as one of nondisclosure."

12 The paragraph --

13 I would just add that it's never been litigated whether the toll -- to the extent

14 the toll records are implicated in the Speech or Debate realm.

15 Mr. Dawson. I don't dispute that.

16 So I don't think it would surprise you that the House lawyers and Members of

17 Congress and their staff believe that the toll record content is protected by Speech or Debate.

18 Mr. Dawson. I have no doubt.

19

20 Q The paragraph mentions "previously discussed." Do you remember having any

21 conversations with Ms. Clarke prior to her memorializing all of this concurrence and analysis in the
22 email?

23 A Like I said, I do remember having phone calls with Ms. Clarke. The exact timing of
24 them I can't tell you.

25 Q And did you understand -- she mentions a lot in here the personal email account. Did

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1 you understand that this analysis also applied to the toll records as well?

2 A Where she writes about an email account, I presume that to apply to an email account.

3 Q Okay. So you didn't know if this applied to the toll records as well?

4 A Whether her statements about an email account applied to toll records?

5 Q Correct.

6 A I guess I don't.

7 Q And did it concern you that there was some litigation risk in issuing the subpoena for toll
8 records?

9 A It did not.

10 Q It did not. So you did not think that any of the toll records would be covered by the
11 Speech or Debate Clause?

12 A I do not and did not, but I will tell you a little more. We throughout this case did take
13 seriously and spend a lot of time thinking about the Speech or Debate Clause. There is the Rayburn
14 decision in the D.C. Circuit, which prohibits the disclosure of legislative materials, as those are
15 defined. There is no case law, that I'm aware of, supporting the idea that toll records, basically
16 records of one phone communicating with another, are themselves legislative acts.

17 So I understood that the Speech or Debate Clause was a thing that we need to consider.

18 And I understood that the exact question of whether toll records were legislative acts maybe had not
19 been squarely and decisively addressed, but I believed that this subpoena was appropriate and the
20 Speech or Debate concerns attendant thereto did not dissuade me from taking this investigative step.
21 I did not think then and do not think now that toll records are protected by the Speech or
22 Debate Clause, but I'm not a Supreme Court Justice or a D.C. Circuit judge.
23 And one of the huge upsides of this is that Mr. Jordan would never know and
24 the Members of Congress who you're seeking the toll records who have standing to bring this type
of
25 litigation would never know. Isn't that one of the upsides when calculating litigation risk?

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1 Mr. Duree. No. I'm not -- as is evidenced by our protocols and our work with Scott Perry's
2 phone and generally the way we approached and -- we approach litigation generally, I am not at all
3 afraid and I don't think anyone on my team was afraid of standing behind our legal arguments and
4 legal principles and allowing a judge to adjudicate the issues. We believed that what we were doing
5 was right under the law. And I would welcome the opportunity to, you know, have any sort of
6 clarity on any issue that existed.

7 But, you know -- yeah, a nondisclosure order does prohibit someone from, you know, having
8 the opportunity to intervene, I guess. I take your point on that.

9 Mr. Dawson. Did you have authority to draw your own Speech or Debate lines within the
10 Department?

11 Mr. Duree. No. No, I did not. I was doing what I was told.

12 BY

13 Q And when you all received the records of Mr. Jordan's phone calls for the
14 2-and-a-half-year timeframe, were those received by the DOJ OIG or did those get delivered to the
15 Justice Department?

16 A So again, I don't know that we got toll records for a 2-and-a-half-year timeframe. I
17 know that you've got the subpoena right here. I'm not sure what was actually returned or if this
18 was the operative subpoena. But I -- I'm not sure where those toll records would have first gone.
19 I presume, normally, the agent would -- an agent will download toll records from a law enforcement
20 internet site that Verizon has, something like that, but I don't -- I don't remember in this instance.

21 Q And how were those toll records that you did receive from Mr. Jordan's phone, how
22 were those used in the investigation?

23 A The same -- the same way that we use the dozens and dozens and dozens of other toll
24 records that we received, which is we looked at those toll records to determine parties with
25 whom -- people with whom parties, you know, we were looking at were talking, the frequency of

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1 those communications, the duration of those communications, the timing of those communications.

2 Q And wouldn't, if -- you know, before a big vote, who's calling a Representative, before
3 the big vote or after the big vote, what can you tell us of what was the analysis of the Justice
4 Department?

5 I understand we have different analyses of what's covered under Speech or Debate Clause.

6 What was the Justice Department's analysis of how that was not a legislative act of who a
7 Congressman is calling before and after a vote?

8 A My understanding of the Justice Department's position is what's encapsulated in this
9 email, that I as a line prosecutor had to seek approval for the search warrant -- not search warrant,

10 I'm sorry. I had to seek approval for this subpoena from PIN. I did seek approval from PIN. PIN
11 authorized the subpoena. And so I participated in obtaining that subpoena. That's it.

12 Q Was there ever a discussion that if you were able to map out who a Member was
13 calling -- who the Member was calling or who was calling a Member before and after a big vote,
14 how

14 that could be considered part of their legislative duty?

15 A I don't remember conversations on that, but I'll say that would have been of absolutely
16 zero interest to me or anyone on my team to map out people's congressional activities. We were
17 looking at the effort to overturn the 2020 election and specifically the DOJ scheme I described.

18 BY

19 Q Before we move on, the last two sentences of the Clarke email, she indicates, "You
20 should also notify ODAG via urgent report about legal process related to Jordan."

21 A Okay.

22 Q Did you need ODAG to okay or was this just simply a notification to ODAG?

23 A I don't remember. If she told us to notify ODAG, then I feel confident that

24 we -- someone on my team, I or someone else, would have notified ODAG. I'm basing only on the
25 words that I see here. I don't know.

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1 Q And who in Lisa Monaco's office would you have notified?

2 A I'm not sure I -- I'm not sure I remember who we had to notify for --

3 Q Was there a particular associate, deputy attorney general, that was keeping tabs on this
4 case?

5 A There may have been. I remember once or twice having communications with a
6 gentleman named Rush Atkinson, but I don't remember that, sir.

7 Q Okay. And do you remember contacting ODAG or notifying ODAG for any other
8 Member toll records subpoena?

9 A I don't remember whether I was the one who notified ODAG about this. I don't have a
10 specific recollection. But I'll tell you, if I obtained any other Members' toll records and if I was told
11 to notify ODAG, I notified ODAG. But I don't have a specific recollection.

12 Q Okay.

13 Mr. Dawson. It may be helpful. Do you know urgent reports more broadly, what an urgent
14 report is?

15 Mr. Duree. A little bit. I mean, I want to say at one point during this case -- and maybe this
16 was it -- I had to ask someone what an urgent report to ODAG was, because I didn't usually deal
17 with

17 that sort of thing.

18 But my understanding is it's a -- my understanding is it's a notification to the Office of the
19 Deputy Attorney General of a investigative step or other thing that's going to be taken that might be,
20 you know, prominent or notable to ODAG, I guess.

21 Okay. We'll move on to another Member's toll records subpoena.

22 Mr. Dawson. It's a hard line to draw, but I'll just caution Mr. Duree to remember to discuss
23 the contemplated subpoenas, your intent, your planning, confine yourself not to address a particular
24 document as a legitimate or not subpoena. But, again, I don't think that'll impede the questioning.

25 . And this will be exhibit No. 8. It's an email exchange, again, between Ms.

1 Clarke and Mr. Duree. This is on May 19, 2022, at 5:21 p.m. in regards to Chip Roy's toll records.

2 Mr. Duree. Okay.

3 [Duree Majority Exhibit No. 8.

4 was marked for identification.]

5 BY

6 Q And I'm sure you're familiar, but Chip Roy serves on the Judiciary Committee. He's a

7 Member from Texas.

8 Do you remember this email exchange at all or conversations surrounding getting Mr. Roy's

9 toll records?

10 A I don't really. I'm not doubting that it happened if you're telling me it did, but I don't

11 particularly remember this.

12 Q Okay. And do you remember figuring out what time period you needed Mr. Roy's

13 records? Here it's October 1st, 2020 through January 30th, 2021. Do you remember any

14 discussions about the timeframe?

15 A I don't. I'm sorry.

16 Q Do you remember if the approval process for the subpoena, you know, going through

17 PIN, having to notify the DAG's office, did any of that differ between April when you were issuing

18 Mr. Jordan's subpoena and this subpoena in May for Mr. Roy's records?

19 A I have no reason to believe that it did, but, again, I'll be as helpful as I can while telling

20 you I don't have a particular memory of the circumstances surrounding this.

21 Q Okay. And in looking at Ms. Clarke's email in the second paragraph in the middle after

22 the parenthetical, it says, "Should a court find that these election-fraud related calls involving

23 Members of Congress constituted legislative fact-finding and thus privileged legislative acts, under

24 Rayburn, you could be in violation of the privilege by even obtaining and possessing this
information

25 if the Member objected to the disclosure."

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1 Did you have any further discussions with Ms. Clarke about this specific sentence?

2 A I don't -- I don't remember. I see that sentence. I don't remember.

3 Q Were you concerned that you could be violating the Speech or Debate privilege by even

4 obtaining and possessing this information?

5 A I was -- I mean, she emailed this so I was aware of this as a possibility, but I don't

6 remember the level of concern, if any, I had about it.

7 Q Okay. And then, again, there was an NDO that was sought with this specific subpoena.

8 So Mr. Roy wouldn't have known about the subpoena to his service provider. Is that correct?

9 A If you're telling me there was an NDO, an NDO does stop notification, but I don't

10 remember that.

11 Q So how would he have been able to litigate this privilege issue had he not known about

12 the subpoena?

13 A Again, I don't -- I don't remember this email. I don't -- I don't remember this email, but

14 if there was an NDO as you're telling me, an NDO will prohibit a person who holds that phone

15 number from litigating issues surrounding the subpoena.

16 Q And this is a pretty unique privilege that's unique to Members of Congress, that's

17 embedded in the Constitution. There was no concern that you could be violating this privilege and

18 Members wouldn't be able to litigate their privilege underneath the Constitution?

19 A Like I said, I didn't say there was no concern. I certainly didn't say that there was no

20 consideration of this. I said -- I'm saying that I don't particularly remember the degree of concern, if

21 any, that we had over this.

22 I agree with you that Speech or Debate is -- the Speech or Debate Clause does provide
23 protections to Members of Congress.

24 Q And what remedy did these Members have to avail themselves of the Speech or Debate
25 Clause with these specific subpoenas?

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1 A I suppose that if there is a nondisclosure order in place, they are not able to challenge
2 the subpoenas.

3 Q So they had no remedy prior to their records being disclosed to the Justice Department.
4 Is that correct?

5 A I don't -- I mean, I don't know, strictly speaking, if that's entirely correct or not. I can
6 tell you if there was NDO, they're not going to be able to -- they're not -- the subpoena is not going to
7 be disclosed to them and so they wouldn't be able to challenge it. I agree with you on that.

8 Q Okay. On January 24th, 2023, a subpoena was issued for Speaker McCarthy's toll
9 records. What can you tell us about your involvement with that?

10 A I don't know if I was involved with it or not.

11 Q Okay. We -- you signed the subpoena.

12 A Okay.

13 Q So just wondering if you have any recollection of seeking process for Mr. -- Speaker
14 McCarthy's phone records?

15 A I don't. If you want to show me some documents, that could be helpful. I'll tell you
16 everything I remember. But I don't particularly remember that.

17 And it's a subpoena, but we will mark that as exhibit No. 9 I think we're up to.

18 [Duree Majority Exhibit No. 9.

19 was marked for identification.]

20 Mr. Dawson. And, of course, you're welcome to read the document and see if it refreshes
21 your memory.

22 Mr. Duree. Sure.

23 I'm sorry, ma'am. Where are you -- where are you seeing that this has my name on it?

24

25 Q So at the bottom of -- I think yours should be Bates stamped too. At 18. It's

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1 redacted, but in speaking with AT&T, it's your name that's underneath the redaction. It says
2 Timothy Duree.

3 A Okay.

4 Q So just wanted to know what you remember about any conversations you had about
5 subpoenaing toll records for the Speaker of the House.

6 A I don't -- I don't particularly remember -- I don't remember. I'll say that, you know, it
7 doesn't surprise me that I don't remember because over the course of this investigation, we did have
8 to get so many subpoenas. And part of investigating wherever the facts lead, part of proceeding
9 impartially in your investigation is that you -- you need to obtain evidence relevant to your
10 investigation irrespective of where you might find that evidence.

11 And in this case, there were contacts with Members of Congress by parties relevant to our
12 investigation. So it doesn't surprise me that my office would have sought this subpoena, but I also
13 don't know that this would have struck me as a particularly, you know, huge thing.

14 And in context, we certainly would have sought the proper approvals. We certainly would
15 have done it the right way, but I just don't remember it.
16 Q And in this time period -- you know, January 23rd, 2023, is when the subpoena is dated.
17 Kevin McCarthy became Speaker January 7th, 2023, so couple weeks earlier.
18 Did any of the analysis change after he was elected Speaker of the House?
19 A As I said, I don't remember this, so I don't -- I don't remember.
20 Q Okay. So you don't remember signing a subpoena for the toll records of the Speaker of
21 the House of Representatives?
22 A I don't -- I don't dispute that I did. I just -- I don't remember one way or the other if I
23 did. And as I said, it would not have been -- and I understand why that might seem like a
24 particularly notable thing. But in the course of this investigation, given the topics we were
25 investigating and the magnitude of things being investigated, this doesn't strike me and I suppose

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1 didn't strike me as particularly abnormal. So I just -- I would love to be able to remember more and
2 tell you, but I just do not remember this.
3 Q And why wait until after he was elected Speaker? You sought Mr. Jordan's records in
4 April of 2022, Mr. Roy's records in May of 2022, and then waited until after McCarthy was elected
5 Speaker to send the subpoena for his records.
6 A I think that question might be based on a faulty premise. There was no -- there was no
7 intent to time the subpoena. I couldn't imagine that there was any intent to time the subpoena
8 related to, you know, when he occupied one role or another. I can't tell you why we issued the
9 subpoena on January 23rd, because I don't particularly remember this subpoena.
10 Q Okay. And so there were no extra approvals or anything that you had to get since this
11 was the Speaker's records?
12 A I don't remember. I can tell you just structurally one thing that may have been
13 different. By January 23rd, we're in the -- did you say it's January 23rd of 2023?
14 Q That's correct.
15 A By January 23rd, we're housed in the Special Counsel's Office. And so there was a
16 more rigid management structure. Things were a bit more solidified than they were in the early
17 days. So once Jack was in charge, the structure was, you know, Jack's at the top, J.P. below him,
18 filtering down through various people to me.
19 And I say that to tell you my -- my personal involvement with PIN may have been different at
20 this point.
21 Q Okay.
22 A I may no longer have been the person who needed to contact PIN. I'm not -- I'm not
23 sure if I did or I didn't, but it wouldn't surprise me if someone else in Special Counsel's Office
24 management was handling PIN-related communications at that point.
25 Q Okay. And the NDO that accompanied Speaker McCarthy's subpoena is Bates stamped

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1 19 at the bottom, if that's helpful.
2 A Okay.
3 Q It says, "the Court finds reasonable grounds to believe that such disclosure" -- of the
4 subpoena -- "will result in flight from prosecution, destruction of or tampering with evidence,
5 intimidation of potential witnesses, and serious jeopardy to the investigation."
6 What was the concern, that Speaker McCarthy was going to flee from prosecution?

7 A Now, it says that the court finds reasonable grounds to believe these things, not that
8 anyone on my team thought Kevin McCarthy was going to, you know, flee from prosecution.
9 This -- as I've explained already, we as prosecutors wanted to obtain evidence in its purest,
10 most complete, and most unadulterated form. And notification -- I'm not speaking about Kevin
11 McCarthy. I'm speaking generally about the NDOs and how it might apply in this instance.

12 Q But the NDO is specific to this subpoena. Is that correct?

13 A Yes. There is -- yeah, there is an NDO specific to the subpoena. What I'm saying to
14 you is NDOs are necessary -- are useful and helpful and necessary to investigations for a lot of
15 reasons, one being that even if a per -- you know, you're not accusing the person who has the phone
16 of being a criminal, but you are recognizing that if the fact of the subpoena or the fact of an
17 investigation becomes public, that that information can be spread about everywhere, that your
18 investigation could be compromised, that evidence could be manipulated or adjusted or something.
19 These are all concerns.

20 But as to what the -- what the specific concern was as to Mr. McCarthy, I do not know. I can
21 only tell you that, while I don't remember the specific subpoena or NDO, getting a subpoena like
this,

22 getting an NDO was absolutely par for the course in so many subpoenas that I have issued in my
23 career and that we issued in the Special Counsel's Office.

24 Q And how many other subpoenas were you involved with that sought records of
25 Members of Congress?

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1 A I -- beyond the ones we've talked about today?

2 Q Uh-huh.

3 A I don't -- I don't recall. I don't -- I don't specifically recall any. If you show me
4 documents that I was involved in subpoenas directed to the phone numbers of other Members of
5 Congress, that might jog my memory, but I can't name anybody else for you right now.

6 Q Yeah, we don't see your name anywhere when it comes to the subpoena that was
7 issued in May 2023 for the -- it was like nine Senators and Representative Kelly.

8 Do you remember any conversations about subpoenaing nine Senators and a Representative
9 all at once?

10 A I don't recall that.

11 Q You don't recall it? Okay.

12 A I don't know.

13 Mr. Dawson. One clarifying question. Would you have been involved in getting toll
14 records for Scott Perry? I'm not sure we talked about that specific --

15 Mr. Duree. Yes. You know, I believe that we did have toll records for Scott Perry, and
16 those would have proceeded via the same sort of, you know, procedural approval mechanism
17 through PIN as the others. I would've -- I would've been involved in that.

18 Mr. Dawson. Okay.

19

20 Q So did you stick with investigating the alleged misconduct at DOJ once you went over to
21 the special counsel's team or did your role broaden?

22 A My role broadened and then shifted. I did -- I did stick with the DOJ effort. That
23 remained a large part of what I did. But when we got to the Special Counsel's Office, there were
24 also a significant number of additional investigative workstreams that needed to be addressed and
25 developed.

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1 So I can tell you what they were if you want, but I do remember in the early part of '23
2 spending more of my time on investigative workstreams other than the DOJ one.

3 Q And what were those workstreams at that point in time, in the early 2023 timeframe?

4 A So a few things that I did. I was involved in the workstream to -- I'm not going to
5 remember if these workstreams even had specific names, but I was involved in the work to -- do you
6 need me to stop?

7 Q No, you can go ahead. We have 2 more minutes.

8 A I was involved in the workstream to figure out whether President Trump had pressured
9 officials at the State level to help overturn the vote or get the election decertified or assist him in
10 making, you know, unsubstantiated fraud allegations.

11 I participated in the workstream that involved going from State to State to understand the
12 election processes. And I remember being involved at times in the fraudulent elector workstream,
13 or you might want to call it the alternate elector workstream.

14 I remember doing some work on that and, you know, whatever else -- whatever else the
15 needs of the office dictated, but those are the -- those are the main things I'm remembering offhand.

16 Okay. We can go off the record.

17 [Recess.]

18 We'll go back on the record at 1:05 p.m. Eastern Time.

19 BY

20 Q I just want to pick up on some of the questions that were asked in the last hour, and
21 let's start with the chairman, Chairman Jordan.

22 A Okay.

23 Q I guess, what led you during the investigation, that you recall, to even, you know,
24 requesting the toll records of Chairman Jordan?

25 A Mr. Jordan -- the 937 number that I now know to be Chairman Jordan's was in contact

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1 with other phones held by people of relevance to our investigation.

2 Q Can you describe in more detail some of the other folks of relevance that Mr. Jordan
3 might have been in contact with which would have led to the request for the toll records?

4 A You're testing my memory now, but I remember Scott Perry for sure. I think Mark
5 Meadows. Mr. Jordan may have had communications with President Trump. I'm not sure if that
6 would have been on a cell phone or not. But I -- I don't remember the full cast at this point.

7 Q And I'll direct you to exhibit 6 that the majority entered in during their hour.

8 Look, I'll state the obvious, and I know I've heard some of our majority colleagues make this
9 point before, right, you mentioned President Trump, you mentioned Congressman Perry calling the
10 chairman. These are other congressional members.

11 I guess, what specifically about those calls from congressional Members to Chairman Jordan
12 stood out to you all during the course of your investigation? And I think it's referenced in PIN's
13 email back to you in exhibit 6.

14 A Okay. Yeah, as I look at this pretty -- give me just a second.

15 Q Please take your time.

16 A Yeah, this jogs my memory a little bit. And I should say, to be really clear, I

17 just -- I'm -- as to exactly who Mr. Jordan was contacting, I -- you know, I tried to offer a couple
18 names to be helpful. I really don't remember offhand -- it's just been so long -- which -- you know,
19 who was in that set of people. I really don't.

20 But what I do remember is this: As I've said, I was looking to understand as
21 comprehensively as I could what happened in the, roughly, 2-week period in which there was this
22 effort to elevate Jeff Clark to the acting attorney general's role. And in that time period, Mr. Clark
23 and Scott Perry were in very frequent communication.
24 One of the steps that I took in the early days of the commun- -- in the early days of the case,
25 in April '22 was, you know, relatively early on, is we were trying to build out our understanding of

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1 who was talking with whom and who may have been involved, understanding that not every person
2 with whom another person might talk is necessarily involved in one thing or another. It's just that,
3 you know, understanding the nature of the communications provides you a bit of evidence that's
4 useful.
5 So I sought subpoenas for many numbers that were in contact with Mr. Clark and many
6 numbers that were in contact with Mr. Perry. A thing that I remember doing in general is that once
7 we would get those subpoenas back, we would look through the toll records to identify if there were
8 any common numbers called between that number we'd subpoenaed and the other people we had
9 already -- that are already falling within the scope of our investigation.
10 We would look at the frequency of those calls. We would try to better understand who was
11 talking to whom so that we could build out things like, you know, on date X Jeff Clark called person
12 A.
13 Person B called person C. As soon as that call was over, person B called person -- called Jeff Clark
14 again. So understanding the play-by-play of how it happened.
15 So what brought -- I don't want to say that it brought Congressman Jordan to my attention.
16 What brought the 937 area code phone number to my attention was that that phone number was in
17 contact at relevant times with parties that were pertinent to our investigation.
18 Q And are these types of toll records, the way you just described it, are they helpful in
19 corroborating witness testimony as you're doing your investigation?
20 A They certainly can be.
21 Q And would this type of evidence typically or could it be used to corroborate the witness
22 testimony at trial if it would have gotten to that point?
23 A Yes, sir.
24 Q And is this type of evidence used to build chronologies like you just described, a series of
25 events or a timeline of events?
26 A Yes. That was -- that was one of the key things I was envisioning, yes.

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1 Q Going back as well, I think within the last hour we mentioned Congressman Roy as well.
2 Do you recall Congressman Roy's relevance to the investigation?
3 A Not really. If you want to show me some records, you can jog my memory, but I know
4 that he was a name that came up. But exactly how and the context, I'm struggling to pull those
5 specifics.
6 Q Okay. There was also questions in the last hour about collecting information about
7 President Biden's adversaries I think was -- do you remember those questions?
8 A I do. I do.
9 Q At any point during your investigation, were you collecting information for the benefit of
10 President Biden?
11 A Never.

12 Q Were you collecting information of individuals that you perceived to be adversaries to
13 the Democratic Party?

14 A No, we were not collecting any information for any political purpose.

15 Q Were you collecting information at the direction of President Biden or Vice President
16 Kamala Harris?

17 A Absolutely not.

18 Q Were you collecting information at the direction of Attorney General Merrick Garland?

19 A No, not that I know of.

20 Q You discussed as well and we've seen the emails of you going through PIN before
21 collecting these types of information. Can we -- and I think you've touched on this before, but just
22 to make sure it's clear, what role did PIN play? Why were you going to PIN when requesting these
23 types of records?

24 A So PIN has consulting authority on investigative actions taken in relation to Members of
25 Congress. So even though PIN wasn't, you know, my supervisor or anything -- I didn't have a

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1 supervisor in PIN. PIN's job was to -- PIN had a duty under the Justice manual to be the entity with
2 which we consulted when taking investigative steps relevant to Congress people. So we followed
3 the Justice manual.

4 Q So let's take another investigation, not, for example, the election conspiracy
5 investigation. Let's take a -- say you're investigating another Member of Congress or public official.
6 Would you have to consult PIN in those situations as well?

7 A I presume so yes. I would do -- if I were investigating a Member of Congress or I were
8 investigating a case that in which I needed evidence from a Member of Congress, I would do exactly
9 as the Justice manual requires. And at the time, that required consultation with PIN.

10 Q And I do want to go back to kind of the earlier one I was talking about, and I think the
11 majority might have mentioned this as well, Chairman Jordan's role on Judiciary and the
12 Department

13 of Justice requesting his toll records with him having that role.

14 Had Mr. Jeffrey Clark or Congressman Scott Perry called Ranking Member Nadler about
15 elevating Mr. Clark within the Department of Justice, would you have requested Mr. Nadler's
16 records

17 as well?

18 A Yes. I want to emphasize here on that point, the records -- what was relevant to me
19 was the 937 phone number that was communicating with parties of interest. I had no particular
20 focus on the titles or professional positions held by the people owning those phones at the moment.

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1 [1:13 p.m.]

2 BY :

3 Q Going back to PIN, are you aware if there's been broad personnel changes at Public
4 Integrity since President Trump assumed office in 2025?

5 A It is my understanding that there has. I'm not a DOJ anymore, so I can't speak too
6 much to --

7 Q Is it your understanding that many folks have been fired from PIN since President Trump
8 assumed office in January 2025?

9 A I honestly am not sure. I have read the news and understand through, you know,

10 colleagues that there had been broad personnel changes. I don't know how the personnel changes
11 came about exactly.
12 Q Is it your belief that gutting PIN, you know, could lead to more or less potential missteps,
13 right, in sensitive investigations? Like how would gutting PIN actually impact the issues that both
14 the majority and minority seem to be asking about today?
15 A So I was only a line prosecutor on this case, but what I will tell you is this: My
16 experience with PIN, PIN attorneys were professionals, seasoned, and the work that they did -- and I
17 personally have found PIN'S guidance to be valuable.
18 Q Okay. Going back to your time as well on the special counsel's Office, in the special
19 counsel's Office investigating these claims in 2022 and moving forward, I guess, how has, you
20 know,
21 being a member of this team and maybe some of the attacks about your investigation, how has that
22 impacted your life, if at all?
23 A How the attacks on the team affect my life or being part of the team?
24 Q Yeah, the attacks on the team that you were a part of, how has that impacted your life?
25 A I personally have found it disappointing that the work of our team has been called into
question or politicized in a way that I as someone on the team believe to be completely unfounded

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1 and completely unfair.
2 But at the same time, I am grateful for the opportunity to do things like be here today and
3 clarify some of that, so that I can hopefully help people understand the nature of the work that we
4 did. And although it's not exactly the question, I do want to emphasize, I felt then and feel now so
5 immensely lucky to have been able to work with the spectacular people on that team that I will
6 consider the time that I spent working with that team on a case of this magnitude to be, you know, a
7 great professional highlight.
8 Q And while we thank you for your service of engaging in this investigation, right, to
9 preserve, right, the election and the transfer, the peaceful transfer of power, we've heard from
10 others, they might have had to take additional steps for their safety, for their family's safety, things
11 of that nature of being a part of this team. Have you had to take similar steps in your own personal
12 life?
13 A You know, we definitely -- I definitely was cautious, but, you know, nothing. Do you
14 want me to identify specific things that we've done?
15 Q Whatever you're comfortable. I think I'm just trying to get a sense of how the
16 politicization of this investigation has impacted the civil servants' life afterward -- lives afterwards?
17 A I did feel like it was prudent to be more cautious and to, you know, take certain steps to
18 minimize the availability of my -- of putting my personal information online, and that kind of thing.
19 I
20 have taken a few steps.
21 Q Has it impacted your family -- I know you mentioned you wife earlier -- has it impacted
22 our family as well?
23 A You would have to ask my wife.
24 Q I am not going to speculate on your wife. I hear you on that. Has this committee's
25 investigation brought more attention specifically to you than what you might have envisioned or
appreciated?

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1 A Well, "appreciate" is hard to say. If I wasn't here today, I would be at work doing my
2 other job, my day job, and this has taken time away from that. But as I said, I am proud of the work
3 that we did. I believe wholeheartedly that we did the right things for the right reason. And I am
4 grateful to have the opportunity to talk to y'all and explain some of that.
5 Q And just a little bit of housekeeping. I know we've shown you a series of documents
6 today from your emails to PIN, subpoenas for toll records. I just want to do some level setting.
7 Have you had a chance to review your records at the Department of Justice from this time period?
8 A I have not reviewed my records at the Department of Justice.
9 Q Has the Department of Justice reached out to you about helping them identify records
10 that they have produced to this committee?
11 Mr. Dawson. Are you aware.
12 Mr. Duree. I have not received any reach-out.
13 BY
14 Q In, fact I'm just using exhibit 6 because it's the one I have in front of me as an example.
15 Are there any Bates numbers on this exhibit that you see?
16 A Which one is exhibit 6?
17 Q Exhibit 6 is your email with PIN from April 26, 2022.
18 A No, there's no Bates numbers.
19 Q So sitting here today, are you aware of whether you know, this committee has received
20 a complete set of emails between the special counsel's Office and PIN, for example?
21 A I have no idea.
22 Q Okay. I think that's all we have. We'll go off the record now. Thanks.
23 [Discussion off the record.]
24 BY
25 Q We'll go back on the record. It's now 1:25 p.m. During the break, we passed out

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1 what will be exhibit 10, which is a lengthy document, and it includes an email exchange between
2 Molly Gaston, J.P. Cooney, Thomas Windom, and they're discussing toll record subpoena for
3 Senators' records.
4 I am going to specifically draw your attention to -- it's page 7 of the packet, and there is an
5 email exchange between Ms. Gaston and John Keller, who was the Principal Deputy Chief of the
6 Public Integrity section.
7 Now, I know in the previous hour you had mentioned that quite possibly when the special
8 counsel took over the investigation, you may have not been the one that was interacting with the
9 Public Integrity Section. Is that correct?
10 A That's correct.
11 Q Do you ever remember discussing interacting with the Public Integrity Section with
12 Molly Gaston?
13 A Do I remember discussing interacting with Molly Gaston or discussing with Molly
14 interactions with PIN?
15 Q Correct. The latter.
16 A It could have come up, but I don't have a specific recollection of any conversations
17 about PIN with Ms. Gaston.
18 Q And do you know if she was designated an individual to reach out to PIN?
19 A I don't know. I don't know.
20 Q And during our last hour together we had discussed whether or not you remembered
21 subpoenas for Senators' records, and I believe you said you did not. Is that correct?

22 A I did not participate in -- I do not remember participating in those at all.
23 Q Okay. Do you remember participating in any discussions regarding the Speech or
24 Debate Clause in that context?
25 A In the context of those Senators --

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1 Q Correct.

2 A -- no, because, as I said, I don't think I was part of those conversations. And if I was, I
3 don't remember it.

4 Q Okay. And I want to walk through Mr. Keller's email just giving your knowledge of the
5 case as well as having prior interaction with PIN and just kind of walk through what was going on
6 here.

7 So looking at the paragraph, it says: Based on the email below in our conversation, PIN
8 concurs in the subpoenas for toll records for identified Members of Congress from January 4th, 2021,
9 through January 7, 2021. As you are aware, there is some litigation risk regarding whether
10 compelled disclosure of toll records of a Member's legislative calls violates the Speech or Debate
11 Clause in the D.C. circuit. Then the next parenthetical states, The bar on compelled disclosure is
12 absolute. And that is quoting from a case.

13 I want to break this down just a little bit. But the toll records for the Senators were only
14 requested between January 4th, 2021, and January 7th, 2021. Can you help explain why the
15 timeframe was so narrow in comparison to what was requested for, you know, Mr. Jordan and Mr.
16 Roy?

17 A Sure. So I can't tell you precisely -- I can't tell you without speculating as to why these
18 3 days were requested because I wasn't on these emails' prior conversations. But I can tell you why
19 the scope narrowed. This is completely normal and standard in a criminal investigation.

20 At the beginning of an investigation -- and I'll tell you generally and apply it to this case.

21 At the beginning of investigation, you know some information, but you're trying to build out
22 your understanding. You want to know the parties involved and all that, and you're trying to build
23 out contacts and understand the folks involved at a broad level. As you build your understanding of
24 the case, you've laid your foundation and understand what the facts are and who the people
25 involved might be, then you start digging in more, refining your focus so that ideally if you've done

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1 your investigation thoroughly, you've done your investigation well, you're going to go from spot at
2 the beginning where you're looking broadly to sort of learn the landscape to a spot at the end where
3 you were laser-focused on developing evidence of specific criminal conduct. And I believe that
4 is -- without speculating or why these 3 days exactly were the ones chosen -- I believe that that is
5 what happened here. That in 2022 when I am beginning to run in the early stages of investigating
6 the DOJ stuff, we were trying to build out our understanding of who may or may not have been
7 involved and understand the universe myriad investigation.

8 By this point in 2023 which is a few months before we did the grand jury returned an
9 indictment against the President in our election case, our investigative focus had refined greatly so
10 that we could specifically target real narrow date ranges, knowing we needed specific information
11 about individual things. And that is a function of a -- that's a particularly normal thing that
12 happens -- in a function of the investigation narrowing if the work is done well as the investigation
13 develops.

14 Q And in speaking with the other prosecutors who have been involved in these subpoenas,

15 you know, they have stated they needed the Senators' toll records. And I'm using Senators, but
16 Representative Kelly was in that subpoena as well -- but Senators' toll records was -- because they
17 had the President's phone records, and they had Mayor Giuliani's phone records, and they were
18 tracking who was calling who, but they needed the Senators' phone records to nail down a timeline
19 of who the President was communicating with. Do you remember any discussions along that line?
20 A I remember generally that being -- that being -- I remember generally there being
21 interest in understanding who was called in the late afternoon, early evening hours of January 6th.
22 Q Okay. And do you know why they still needed the Senators' records even though they
23 had all of these other returns from toll records?
24 A I don't know the specific rationale. I could hazard a guess to reasons, but I don't think
25 that would be productive. I wasn't part of these conversations.

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1 Q And turning back to the email I read the couple sentences of: As you are aware, there
2 is some litigation risk regarding whether compelled disclosure of toll records of a Member's
3 legislative calls violates the Speech or Debate Clause in the D.C. Circuit. Then Mr. Keller quotes
4 some D.C. Circuit cases. One is the bar on compelled disclosure is absolute. Further down, it says:
5 The caselaw is clear that a legislator asserting the invasion of the Speech or Debate Clause privilege
6 by use of the grand jury subpoena to a third party may intervene and oppose such use.
7 Would you agree that a legislator should be able to intervene if the subpoena is to a third
8 party to a service provider to litigate their rights under the Speech or Debate Clause?
9 A First, could you point me to where you're reading.
10 Q Yes, the specific to third party is right after the member?
11 A 594.
12 Q 594. And then it says: The caselaw is clear that a legislator asserting the invasion of
13 the Speech or Debate Clause privilege by use of a grand jury subpoena to a third party may
intervene
14 and oppose such use."
15 A Okay.
16 Q I guess, first of all, was there any discussion of this specific caselaw where the subpoena
17 is to a third party, such as a service provider for a Members' records?
18 A In this context specifically, I don't know, because I wasn't party to these conversations.
19 Q Did this case ever come up in the previous subpoenas that you were involved with.
20 A I can't say I can remember every Speech or Debate Clause case that we analyzed or
21 considered. Just looking at this as it is, the case that you cited, that Mr. Keller is referencing here is
22 a Third Circuit case. The D.C. Circuit, where we were, is a different circuit and has its own
particular
23 and unique Speech or Debate laws.
24 So it's possible that this case would have come up in prior research. I don't doubt it, but I
25 don't have a particular memory. And I'll note that this will be an opinion from outside the most

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1 pertinent --
2 Q So were prosecutors just unconcerned that even records from a third party for a
3 Member of Congress could be privileged under the Speech or Debate Clause?
4 A I wouldn't say that a second. I would say we were hyper vigilant and extremely aware
5 of the contours of the Speech or Debate Clause. We knew that Speech or Debate was something

6 that we had to navigate. We treated it seriously. There are portions of the Speech or Debate
7 caselaw that might, in different circuits, be a little bit underdeveloped, such that the guidance is not
8 entirely clear. But we were very much aware of Speech or Debate, the Speech or Debate Clause
9 and committed to following the law that pertained to us relating to the Speech or Debate Clause, and
10 did the very best we could to navigate and resolve any uncertainty that may have existed therein.
11 We were not unconcerned about the Speech or Debate Clause.

12 Q The last clause here says: Given my understanding of the low likelihood that any of the
13 Members listed below would be charged, the litigation risk should be minimal here.

14 Were you aware that there was, indeed, some sort of litigation risk involved with issuing
15 these subpoenas? I know this is specific to the Senators, but this is a more in-depth Speech or
16 Debate analysis than what went on in the other PIN emails?

17 A I was aware that -- at some point I became aware that certain of the specific issues that
18 we were addressing, or what we were running into were arguably not fully resolved by the existing
19 caselaw on Speech or Debate. And that's a common thing, particularly in complex investigation, to
20 run into the corners of the law that aren't fully built out.

21 Yeah, I was aware that, you know, there was some lack of clarity on certain points. And we
22 did the very best we could to proceed as thoughtfully and intelligently as possible.

23 Q And, just again, I'll represent to you that there was an NDO signed by Judge Boasberg
24 that accompanies this subpoena. So with the NDO, you have mentioned there's a lack of clarity of
25 what, you know, the full spectrum of the rights are underneath the Speech or Debate Clause, and

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1 there's a lack of clarity. But what remedy did Members have to litigate this lack of clarity, if you
2 will?

3 A Are you asking me what ability Members of Congress have to?

4 Q In the context of these subpoenas, what remedies did Members have to litigate this lack
5 of clarity that's apparent from this email?

6 A So a quick clarifying point. I am not saying that there is particularly a lack of clarity in
7 my mind as to whether toll records are protected by the Speech or Debate Clause. I feel pretty
8 confident that toll records are not under D.C. Circuit caselaw. But, you know, again, I am not a
9 judge.

10 But to get to your question what remedy they have, a nondisclosure order does prohibit
11 disclosure of the subpoena. So if the nondisclosures orders follow, the subscriber would not
12 receive that subpoena.

13 Q And do you know if there was any discussion of -- it's a code that protects Senate phone
14 records. It's 2 USC Section 6628. And it says, you know, if a third party receives some sort of legal
15 process for a Senate phone line, they have to notify the Senate office or the Senate Sergeant at Arms.
16 Do you remember any of those conversations occurring at that specific statute?

17 A I don't remember, but I don't remember being part of any conversations about
18 subpoenaing Senators' numbers.

19 Q I am going to jump around a little bit.

20 A As you wish, sure.

21 Q Did you know Jack Smith before joining the special counsel's team?

22 A No.

23 Q And who asked you to join the special counsel's team?

24 A I think Jack. I think Jack. I think I was -- I think he called and asked me to join.

25 Q And you had never worked with Mr. Smith prior to joining?

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1 A I had not.

2 Q And you didn't work at all on the document piece of his investigation, correct?

3 A That wasn't where my work was. I may have, you know, at some point over the three
4 something years have -- touched in a way I am not particularly remembering. But, no, that wasn't
5 what I worked on.

6 Q Okay. And then the President is indicted August 1st, 2023, in D.C. for the election case.

7 A Yes, ma'am.

8 Q And then a gag order was sought against the President on September 15th, 2023.

9 Did you have any -- did you do any work in relation to the filings for this?

10 A If you show me my emails, that could help me a little bit, but I don't remember
11 participating in the gag order really at all.

12 Q And were you aware that it was narrowed at one point by the Appeals Court?

13 A If that happened, I may have been made aware of it. I am not -- I don't think I worked
14 on the gag order stuff. And if I did, I don't remember it, so I don't really recall.

15 Q Were you aware of any violation of 18 USC Section 1512, the Witness Tampering Statute
16 by President Trump?

17 A When?

18 Q At the time of the gag order that was sought in September 15th, 2023?

19 A I don't know one way or the other. I do know that over the course of our investigation,
20 there was a whole lot of evidence that President Trump sought to cajole people to say things that he
21 wanted them to say even if those things didn't bear much relationship to the truth as we understood
22 it. But to your exact question, I don't particularly know.

23 Q And then did you play any role in the appellate process for the Presidential immunity
24 question?

25 A No, we had really great appellate attorneys. They didn't need me.

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1 Q And so after the superseding indictment is handed on August 27th, 2024, did you play
2 any role in the superseding indictment?

3 A Probably some role. I just don't -- you know, I don't remember exactly what I did, but I
4 assume that I probably, you know, reviewed it, participated in some way. I just don't remember
5 what my role was.

6 Q And did you have any role in setting the trial date for when it would start in D.C.?

7 A No.

8 Q After the immunity decision and the superseding indictment on August 2nd, 2024,
9 Smith's office filed a 165-page brief that was styled as like an immunity determinations brief. Are
10 you aware of this brief?

11 A Yeah, I am. It was pretty big, yeah.

12 Q And what was your role in the brief?

13 A I don't remember honestly. Like I probably had some role in reviewing it, addressing
14 some factual issues. I just -- I remember it being a big brief that our office did, but I am a bit hazy as
15 to exactly what work I was doing at that point and if that was something I spent much time on. I
16 don't remember what my particular role was.

17 Q And what can you tell us about any discussions you were party to regarding the timing
18 of the brief. You know, it came out August 2nd, 2024. The defense hadn't even responded to the
19 superseding indictment yet. So it's just kind of out of order. Were you party to any discussions of

20 timing?

21 A Not that I remember other than generally and historically we wanted to move quickly.

22 In this case, the same as any other, you don't want to just leave an indictment hanging out over
23 someone's head. You want to get it resolved. You want to move fast. But I don't remember
24 specific conversations.

25 Q Were there any concerns about the proximity to the November 2024 election?

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1 A We had absolutely zero desire to do anything at any point ever that would have
2 impacted the, you know, the 2024 election. We were as a team aware of the election interference
3 policy, so it was something about which we knew. That's about it.

4 Q Do you know if it was within the Election Interterm Policy? I think it's called, like, a
5 60-day election sensitivities policy.

6 A I'm not remembering how any sort of policies on election interference might have
7 impacted our decisionmaking.

8 Q Do you know if there was any correspondence with the Public Integrity Section given
9 that this was clearly within 60 days of the November 2024, election?

10 A Is that communication I was on that you can show me?

11 Q I don't have any of that communication. I am just trying to see if you remember any
12 communications or discussions?

13 A I am happy to look at whatever you want to show me, but I don't remember anything.

14 Q So if there were discussions with public integrity, you don't remember being party to
15 those just as you sit here today?

16 A I don't.

17 Q I want to talk about our interactions with various other individuals outside of the special
18 counsel's office?

19 A Yes.

20 Q While you were on the special counsel's team, and even prior to joining the special
21 counsel's team, so from January 2022 to January 2025, did you ever have any interactions with the
22 House's January 6th Select Committee?

23 A I don't believe I ever did. I don't think so.

24 Q Were you ever a party to any discussions about receiving information from the January
25 6th Select Committee?

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1 A There may have been in May-ish of 2022. I said, I want you to understand, I'm doing
2 my best on the date, but don't hold me to May.

3 Q Okay.

4 A In May, around that time of 2022, there might have been an opportunity for those of us
5 on the team to review certain transcripts that they had of people that they had interviewed. I don't
6 remember how many transcripts it was, or anything like that, but I have a vague recollection of this.
7 And I think I might have been out of town, and so I wasn't able to participate in any review that might
8 have happened. I sort of vaguely remember that.

9 Q At any point in time, did you ever review materials that were provided by the January
10 6th Select Committee?

11 A Yes.

12 Q And what do you remember reviewing?

13 A I remember that at some point, we were provided a bunch of -- a tranche of documents,
14 and we had things like transcripts. I specifically remember transcripts. I don't know if there was
15 anything other than transcripts. But I remember reviewing transcripts of witnesses that the Select
16 Committee had interviewed.

17 Particularly, in my case, I was particularly but not exclusively focused on witnesses who are
18 also relevant to the work that I was doing and is obvious.

19 Q Okay. And to the extent there were conversations or communications that happened
20 between Mr. Smith's team and the January 6th Select Committee or the election interference
21 investigation prior to Smith's arrival, those communications did not involve you. Is that correct?

22 A To the best of my memory, I cannot say for certain, but I do not remember ever
23 speaking to anyone. I don't remember personally speaking to anyone on the January 6th
24 Committee. I do remember receiving the documents from the January 6th Committee.

25 Q And did you have any contact or communication with Fulton County District Attorney

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1 Fani Willis?

2 A No.

3 Q Are you aware of any contact that occurred between Mr. Smith's team and Ms. Willis?

4 A I am not.

5 Q And no contact with Nathan Wade, he was one of her prosecutors?

6 A No.

7 Q Did you have any contact or communication with Manhattan District Attorney Alvin
8 Bragg?

9 A No.

10 Q Are you aware of any contact that took place between Mr. Smith's team or the election
11 interference investigators?

12 A I'm not aware of that.

13 Q Any communication with Michael Colangelo after he went to Mr. Bragg's office?

14 A I don't know who that person is to tell you the truth.

15 Q Did you have any contact or communication with State Attorneys General?

16 A Yes. In that I -- I interviewed the Michigan -- not Michigan, I'm sorry. I interviewed
17 Georgia Attorney General Chris Carr.

18 Q Okay.

19 A I flew down to Atlanta and talked with him about -- but this was not -- maybe I should
20 clarify your question. I interviewed Chris Carr related to communications President Trump had had
21 with him in 2020. But, yeah, I did talk to Chris Carr.

22 Q Okay. Did you talk to any other State Attorneys General or anyone in their respective
23 offices?

24 A Let me go through the States. I don't remember doing so. And if you -- yeah, I don't
25 remember doing so.

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1 Q And when we had Assistant Attorney General Kenneth Polite -- I am sure you're familiar
2 with him --

3 A I do know him.

4 Q -- in for a transcribed interview, he discussed two calls that he had convened with
5 approximately 10 State Attorneys Generals. Do you remember if you were on those calls?

6 A Oh, that may have been -- I mean, I don't -- I don't remember. I don't think I would
7 have been. No, I don't. I don't know. I don't know.
8 Q And did you ever discuss what occurred on those calls with either Mr. Polite or Mr.
9 McQuaid?
10 A I'm not sure. Can you tell me what those calls related to that might jog my memory?
11 Q Yeah, I can tell you. I have Mr. Polite's testimony right here. He said: I can recall a
12 call that involved several State Attorneys General on it, and my recollection was that representatives
13 for the Attorney General or from the offices of Michigan, Nevada, Pennsylvania, Colorado were on
14 that call, but it may have been certainly more than that. My recollection was around 10.
15 A Colorado? You know, that's weird to me. I was thinking maybe there's a call about
16 the alternate electors, the fraudulent electors, or something, but no. I can sum it up this way real
17 easily. The communication I had like with Chris Carr, -- and if there was any others -- would have
18 been relevant to investigating what happened in the 2020 election, potentially as witnesses, right.
19 I don't recollect any conversations with people that were Attorneys General in their States at
20 the time we were doing the investigation about, you know, investigative steps that those offices
21 might be taking or anything like that.
22 Q Great.
23 A Does that distinction make sense?
24 Q That's helpful. Thank you. And in the January 2022 to January 2025 timeframe, did
25 you ever have any contact with the Biden White House?

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1 A No.
2 Q I want to talk about the use of FBI confidential human sources in that election
3 interference investigation. While you were working on that investigation, did you ever interact with
4 either FBI confidential human sources or information that was provided by FBI confident human
5 sources?
6 A I do not believe I ever used a confidential human source in this case. I have no
7 recollection of doing so. And I do not have any recollection of ever, you know, receiving
8 information from a confidential source in this case.
9 Q And we're aware of June 2023 payment from Mr. Smith's team -- for the FBI
10 rather -- but Mr. Smith and Mr. Holzer, I believe, okayed the payment of \$20,000 to a confidential
11 human source for review of video footage and photographic evidence in that case. Were you aware
12 of that payment or aware of how the confidential human source was used?
13 A No, not unless you -- if you can provide me with evidence -- with emails, you know, that
14 I was on it or something. But, no, I don't remember that, no.
15 Q Okay. So you weren't aware of any use of confidential human sources in this case?
16 A I don't remember right now being aware of that.
17
18 Q Do you know where Brian Burnett is currently? The IG official?
19 A No. Mr. Burnett have not -- I unfortunately have not maintained communication with
20 him. The last I heard he was still at DOJ OIG, but I haven't talked to him since probably some years.
21 Q Okay. We can go off the record.
22 [Whereupon, at 1:53 p.m., the interview was concluded.]

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1 Certificate of Deponent/Interviewee

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I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

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COMMITTEE ON THE JUDICIARY,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: TIMOTHY DUREE

Thursday, March 5, 2026
Washington, D.C.

21
22

The interview in the above matter was held in room 2237, Rayburn House Office Building, commencing at 10:00 a.m.

2
1 Appearances:
2

3 For the COMMITTEE ON THE JUDICIARY:

4

5 , DEPUTY DIGITAL DIRECTOR

6 , GENERAL COUNSEL

7 , PROFESSIONAL STAFF MEMBER

8 , LAW CLERK

9 , CHIEF COUNSEL FOR OVERSIGHT

10 , COUNSEL

11 , RESEARCH ASSISTANT

12 , MINORITY SPECIAL COUNSEL FOR INVESTIGATIONS AND SENIOR ADVISOR

13 , MINORITY GENERAL COUNSEL

14 , MINORITY FELLOW

15 , MINORITY LEGAL INTERN

16 , MINORITY STAFF ASSISTANT

17 , MINORITY SENIOR COUNSEL

18 , MINORITY LEGAL INTERN

19

20 For TIMOTHY DUREE:

21

22 ANDREW F. DAWSON

23 ELIZABETH A. HECKMANN

24 Keker, Van Nest & Peters LLP

25 We'll go on the record.

3

1 Good morning. This is a transcribed interview of Mr. Timothy Duree. Chairman Jordan has
2 requested this interview as part of the committee's oversight of Special Counsel Jack Smith and his
3 team.

4 Would the witness please state your name for the record?

5 Mr. Duree. My name is Timothy Duree.

6 . We encourage witnesses who appear before the committee to freely consult

7 with counsel if they so choose. And it is my understanding that you are appearing today with

8 personal counsel. Is that correct?

9 Mr. Duree. Yes, ma'am.

10 Would counsel please state your name for the record?

11 Mr. Dawson. Andrew Dawson and Elizabeth Heckmann of Keker, Van Nest & Peters.

12 Thank you.

13 On behalf of the committee, I want to thank you for appearing here today to answer our
14 questions. The chairman also appreciates your willingness to appear voluntarily.

15 My name is , and I'm with Chairman Jordan's staff. I'll now have everyone

16 else from the committee who is here in the room introduce themselves as well.

17 . .

18 with Ranking Member Raskin's staff.

19 with Ranking Member Raskin's staff.

20 with Ranking Member Raskin's staff.

21 with Ranking Member Raskin's staff.

22 with Chairman Jordan's staff.

23 with Chairman Jordan.

24 with Chairman Jordan's staff.
25 with Chairman Jordan's staff.

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1 , Chairman Jordan's office.

2 I'd like to now go over the ground rules and guidelines that we'll follow during
3 today's interview. Our questioning will proceed in rounds. The majority will ask questions first for
4 1 hour, and then the minority will have an opportunity to ask questions for an equal period of time if
5 they choose. We will alternate back and forth until there are no more questions, and the interview
6 is over. Typically, we take a break at the end of each hour, but if you would like to take a break
7 apart from that, just let us know.

8 As you can see, there's an official court reporter taking down everything we say to make a
9 written record, so we ask that you give verbal responses to all questions. Do you understand?

10 Mr. Duree. Yes, ma'am.

11 . In addition, there is a committee videographer making a video record of this
12 proceeding.

13 So the court reporter can take down a clear record, we'll do our best to limit the number of
14 people directing questions at you during any given hour to just those people on the staff whose turn
15 it is. Please try and speak clearly so the court reporter can understand and so the folks down at the
16 end of table can hear you as well. It's important that we don't talk over one another or interrupt
17 each other, if we can help it, and that goes for everybody present at today's interview.

18 We want you to answer our questions in the most complete and truthful manner as possible,
19 so we will take our time. If you have any questions or if you do not understand one of our
20 questions, please just let us know. Our questions will cover a wide range of topics. So if you need
21 clarification at any point, just say so. If you honestly don't know the answer to a question or do not
22 remember, it is best not to guess. Please give us your best recollection, and it is okay to tell us if
23 you learned information from someone else; just indicate how you came to know the information.
24 If there are things you don't know or can't remember, just say so and please inform us who, to the
25 best of your knowledge, might be able to provide a more complete answer to the question.

5

1 You should also understand that by law you are required to answer questions from Congress
2 truthfully. Do you understand that?

3 Mr. Duree. Yes, ma'am, I do.

4 . This also applies to questions posed by congressional staff in an interview. Do
5 you understand this?

6 Mr. Duree. Yes, ma'am.

7 . Witnesses that knowingly provide false testimony could be subject to criminal
8 prosecution for making false statements under 18 U.S.C. Section 1001. Do you understand this?

9 Mr. Duree. I do.

10 Is there any reason you are unable to provide truthful answers to today's
11 questions?

12 Mr. Duree. No, ma'am. I intend to.

13 . Finally, I'd like to make note that the content of what we discuss here today is
14 confidential. We ask that you not speak about what we discuss in this interview to any outside
15 individuals to preserve the integrity of this investigation.

16 For the same reason, the marked exhibits that we will use today will remain with the court

17 reporter so that they can go in the official transcript, and any copies of those exhibits will be returned

18 to us when we wrap up.

19 That's the end of my preamble. Is there anything my colleagues from the minority would like to add?

21 . Just thank you for being here voluntarily. We look forward to hearing your testimony today.

23 Mr. Duree. My pleasure to be here.

24 Mr. Dawson, I understand you have some words to say.

25 Mr. Dawson. Just very briefly, I sent a letter last night, apologies for the late hour, regarding

6

1 our understanding of the authorization from the Department of Justice and flagging a few issues just
2 to be aware of. The two I would just mention now in terms of the 6(e) restrictions under the
3 Federal Rules of Criminal Procedure, I don't anticipate those being an impediment to talk about what
4 I understand the committee intends to ask, but I may interject from time to time just to rephrase a
5 question to ensure that we protect Mr. Duree given some inconsistencies in the circuits in terms of
6 what those rules are. But, again, I don't anticipate those will prevent fruitful questioning.

7 And so I would like to kind of enter this into the record just so I don't go through it and chew
8 up time on the clock. So with your permission, I'd just put our letter into the record.

9 We'll mark that as exhibit No. 1.

10 And we can make more copies at the end of the hour if you need it.

11 . It's okay.

12 [Duree Majority Exhibit No. 1.

13 was marked for identification.]

14 . Okay. The clock now reads 10:04 a.m. We'll start our first hour of
15 questioning.

16 EXAMINATION

17 BY :

18 Q Mr. Duree, when you did you join the Department of Justice?

19 A June of 2012.

20 Q June of 2012. And can you walk us through the positions you held there?

21 A Yes, ma'am. can you tell me your last name one more time? I'm sorry.

22 Q

23 A Okay. Thank you, ma'am.

24 Q Of course.

25 A The positions I held. And I'll give you as much detail as you want. If you want to

7

1 speed me along, speed me along.

2 Q Okay.

3 A I joined -- I graduated law school in 2008, spent 4 years doing other things, and

4 then -- roughly 4 years. In 2012, I joined the Department of Justice as an assistant United States
5 attorney in beautiful Del Rio, Texas. It's in the western district of Texas. It's where I was already
6 living at the time and had the opportunity to be an AUSA there. Texas is where I grew up.

7 I was in Del Rio for roughly 4 years, I'll call it, prosecuting all manner of crimes that one

8 prosecutes on the border. So a lot of immigration crimes, alien smuggling, drug crimes, guns, that

9 kind of thing.

10 After those 4 years, I was interested in working white collar investigations, corporate crime,
11 that kind of thing, and was lucky enough to get an opportunity here in D.C. at the Fraud Section of
12 the Criminal Division. So I did white collar prosecutions, you know, bank fraud, corporate stuff, that
13 kind of thing. Some public corruption work as well that was assigned to me, even though it wasn't
14 strictly within the normal purview of the Fraud Section. And I did that for a while as a line attorney.
15 In, I want to say, 2020, I became the supervisor of a healthcare fraud strike force and then a
16 second one. So for a while, I supervised two teams of attorneys working healthcare fraud
17 cases and -- attorneys and paralegals working those healthcare fraud cases -- in Brooklyn and
18 Newark. So I was up and back to New York every week working those cases, and had a couple
19 spectacular teams there.

20 Then I was asked -- I can give you more details if you want -- I was asked in January 2022 to
21 join an investigation that ultimately evolved into and became part of the Special Counsel's Office.
22 So, functionally, from January '22 until beginning of January '25, I was working either in the Special
23 Counsel's Office or on similar investigative streams that preceded the Special Counsel's Office.
24 Q And when you left Del Rio, Texas, and started your work in the Fraud Section, was that
25 at Main Justice?

8

1 A It was. In Main Justice -- well, yes. I'll just stop there, yes.

2 Q And then when you supervised the two teams, you mentioned Brooklyn and Newark,
3 were you working out of one of the U.S. Attorney's office in New York?

4 A I was, technically, still -- this whole time I was technically still an employee of the Fraud
5 Section of the Criminal Division at Main Justice. The Fraud Section has a healthcare fraud unit, a
6 securities and financial fraud unit that has a different name now, but that's what it was, and a
7 Foreign Corrupt Practices Act unit. So both of those jobs were within the Fraud Section. I just
8 moved from the financial fraud unit to the healthcare fraud unit.

9 We did work closely with the U.S. Attorney's offices. So like when I went to Newark, I would
10 go sit in the office -- in the U.S. Attorney's Office on Broad Street; Brooklyn, same thing. But I was
a

11 Criminal Division Fraud Section employee the whole time.

12 Q Okay. And while you were at Main Justice, were you ever a political appointee?

13 A No.

14 Q So you were always a line attorney or a supervising attorney?

15 A Yes, ma'am, that's correct.

16 Q Okay. And you mentioned being asked to join an investigative team in January 2022.

17 What can you tell us about that investigative team?

18 A About the work that we did or about joining the team?

19 Q Let's start with joining the team.

20 A Okay. So I'm at home one evening, and I'm going to call it the back side of January --

21 Q Okay.

22 A -- and I get an email in the evening and then have a call with Nick McQuaid, who was the
23 principal deputy assistant attorney general of the Criminal Division. Basically the second in
24 command in Crim.

25 You know, I'd met Nick before, but getting a call from Nick was unusual because he was my

1 boss's boss's boss's boss, or maybe one more above that, right. So I knew him but, you know, we
2 didn't have a lot of day-to-day interaction.
3 He calls me -- and at that time I'm just prosecuting my cases and managing my teams in
4 Newark and Brooklyn. I'll paraphrase because it's been, you know, 4 years plus. But as best I can
5 remember, he says that the Criminal Division needs to look into whether there may have been some
6 misconduct within the Department of Justice relating to the transition of power after the 2020
7 election, and asked me if I would be willing, interested, in joining that team. And I said I would.
8 You know, I didn't for a second seek it out. In fact, if I'm completely candid with you, around
9 this period of time, I was kind of sort of considering maybe leaving the Department of Justice,
10 because it'd been years and years -- I have a family at home -- it'd been years of travel every week,
11 long hours, all that.
12 But when Nick presented the opportunity, right, your -- the boss asks you to do something,
13 you do it. I felt duty bound and honored to be asked. So I joined the team, and that was in
14 January of '22. My focus at that point was, as I mentioned, trying to determine whether there had
15 been misconduct within the Department of Justice relating to the transition of power.
16 Q And when Mr. McQuaid asked you to join this team, did he give -- it was going to be a
17 definite period of time, and then you would come back to your normal work, or were you going to
be
18 there indefinitely?
19 A It was unknown. It seemed real hazy and uncertain. I think -- and again, Nick maybe
20 has -- Mr. McQuaid might have a better recollection of this. But as I remember, as I -- we need to
21 look and see if there was any misconduct there. We don't know if there is anything or if there isn't.
22 So it could be that you kick the tires and a couple months you're back to your old job. It could be
23 that there are investigative leads that need to be followed, in which case you'll follow them.
24 So I didn't have a sense of timing at the -- I knew nothing other than, you know, the general
25 sort of impressions I was given from the call. And so I thought -- and I think Nick probably

10

1 thought -- could be a couple months and there's nothing there, could be a long time if the case
2 materializes, but I had no real idea.

3 Q And what was your understanding -- I know you said he had asked you about joining a
4 team. So was it your understanding that there was an investigation that was already underway in
5 terms of looking into alleged misconduct within the DOJ?

6 A I don't know if that was my impression on the call or if I developed that impression
7 shortly thereafter. But the impression that I had around that time --

8 Q Okay.

9 A -- was that there were maybe a couple of people already looking at either this issue or
10 sort of adjacent issues, right, but that the team was small. And so I was under the impression that
11 there had been a -- there was a workstream that was just beginning but was in its kind of embryonic
12 stages.

13 And if I remember precisely, I think that -- actually, I'm pretty confident that there were PIN
14 attorneys -- PIN is the Public Integrity Section of the Department of Justice. If it's all right with you
15 all, I'll just call it PIN, that's what we called it.

16 Q Of course.

17 A There were PIN attorneys originally assigned to this for about a cup of coffee, like couple
18 of weeks or something. I can't tell you the time. It seemed very short. But my understanding is
19 that PIN felt that it might want to recuse itself sort of proactively, and so they needed someone in
20 the Criminal Division to investigate these things. And there were two of us from Crim originally

21 assigned to do that. I was one of those two.

22 Q Okay. And when you joined the team, how many people were working on this specific
23 investigative stream?

24 A Once I joined -- I and my colleague joined, and I believe we doubled the size of the team
25 to four. I think there were two.

11

1 Q Okay. So who was the colleague that joined with you?

2 A That joined with me from the Criminal Division?

3 Q Yes, uh-huh.

4 A The brilliant and lovely Teresa McHenry --

5 Q Okay.

6 A -- who is a great attorney and has the benefit of being an all-around wonderful person.

7 Q And then who were the two people who were already there working on this?

8 A Other really great people as well. Alex Bogle, who at the time was -- she was
9 employed by the National Security Division. And Thomas Windom, who was technically, I
10 think -- was technically employed by the U.S. Attorney's Office for the District of Maryland but had
11 been detailed over to the D.C. U.S. Attorney's Office.

12 Q Okay. And did you ever work with the PIN attorneys on this investigation before they
13 recused themselves?

14 A No, not really. When Nick called me and I realized that there was going to be a PIN
15 recusal, and so -- sometime around there I realized -- and so I started working the case. I think -- I
16 couldn't remember their names.

17 Q Okay.

18 A I think that we had one or two phone calls just to kind of pass the time, learn what they
19 had done, so that we could, you know, pick up where they left off. But as I remember, that was, like
20 I said, only one, maybe two calls. And because the case was still new, there hadn't really been a lot
21 done yet. So I didn't work with those people necessarily.

22 Q And why did the PIN attorneys recuse themselves, if you know?

23 A I will tell you -- I'll tell you what I know.

24 Q Okay.

25 A Understanding that my information comes secondhand on this, and you might want to

12

1 go to sources if you want to get, you know, their stories as well. But PIN recused itself. So Corey
2 Amundson was the head of PIN at the time. And during the, what I'll call the post-election
3 period -- it'll probably come up during the day, and I don't know if, like, y'all have been using that
4 term -- but I generally refer to the post-election period as that period between election day and the
5 transition of power. In our case, it'd be 2020 and early 2021, right.

6 But everyone in this room, everyone who was in America probably remembers that there
7 were a lot of allegations of election misconduct being made by the President and people allied with
8 him.

9 Attorney General Barr, as I understand it, felt that it may be beneficial to look into some of
10 these allegations, you know, immediately in the post-election period. This was maybe either
11 dissonant with or at least uncommon under the election interference memos and other PIN
12 precedent. Essentially, you don't really bring -- I'm not a PIN attorney, but my understanding is that
13 you don't really investigate election issues like this during the pendency of, you know, the event

14 giving rise to the issue, I suppose, so as not to be seen as interfering with the election.
15 Anyway, I say all that to say, there was, I think, some back-and-forth between PIN, people in
16 higher levels in the Department of Justice, and maybe the U.S. Attorney's Office or FBI in Atlanta,
17 maybe. Like, I'm just trying to tell you what I remember as best I remember it. And because
18 Mr. Amundson had been involved in those emails and communications about whether or not it was
19 appropriate to investigate these cases in the short term, I think he felt that his office should recuse
20 itself. There was no mandate that they do it. But the idea was that PIN would be investigating a
21 case that hypothetically, conceptually could involve inquiry into PIN's own decision-making, I
guess.
22 But, again, I say all that with the caveat of I'm trying to be as transparent as I can, but I don't
23 mean to speak the gospel on this. Corey would be able to tell you more precisely.
24 Q And the four individuals that you worked with, did that team ever grow to more than
25 four individuals?

13

1 A Sure did.

2 Q And who else was added to that team, before Jack Smith was appointed? What kind of
3 end point is there? So he was appointed November 18th, 2022.

4 A That is correct. So, again -- and if you want me to stop, you know, giving this reminder,
5 I will. I just want to make sure it's clear. My memory might not be perfectly precise. It's been
6 4 years, but I'm going to try to tell you as best I can.

7 Q Okay.

8 A It was Teresa, Thomas, Alex, and I --

9 Q Okay.

10 A -- for a while. January into April, May?

11 Q Okay.

12 A Then we added, as I remember it, one more person from the D.C. U.S. Attorney's Office.

13 That was Ahmed Baset.

14 Q Okay.

15 A Then we were a slightly larger team for a period of time into the summer. And I guess
16 around Labor Day maybe, the team really grew in size. There was -- I can give you more detail on
17 this if you want it, but there was a point at which decisions were made by folks much higher up in
18 DOJ than me that it would be wise to grow this team into something bigger than just the five of us.
19 And so at that point, several other attorneys were added. Our size grew greatly. I mean, I would
20 guess -- I'm ballparking it now, but if we were five, we might have ended up 10, a dozen, something
21 like then -- something like that.

22 Q Okay. And this team, when it was just the four of you, was there anyone supervising
23 your work, or what was the chain of command there?

24 A Yes, it was a little -- there was a chain of command. It was a little bit fluid. We were
25 kind of a bit of a confederacy, right.

14

1 Q Okay.

2 A So I was in the criminal -- we had multiple chains of oversight, but we all worked
3 together. I was in the Criminal Division, Ms. Bogle was in NSD, Thomas was in the U.S. Attorney's
4 Office, Ahmed was in the U.S. Attorney's Office, Teresa was in Crim. So we had three different
5 offices supervising us. Functionally, Teresa and I reported up to folks in the front office of the

6 Criminal Division.

7 Q Okay.

8 A Alex -- Ms. Bogle reported to whoever was in the front office of the National Security
9 Division. Thomas and Ahmed reported to the top folks in the U.S. Attorney's Office. At the time,
10 the U.S. Attorney's Office was -- the U.S. Attorney was Matt Graves.

11 So each of us -- we -- the four of us worked, and then five of us worked closely together. We
12 were, you know, a team day to day. We would each report up our chains of command, but we
13 would also sort of harmonize back and forth. So there might be occasion where all of us would
14 meet to make sure we were eye to eye. There might be points where Crim took the lead or where
15 the U.S. Attorney's Office took the lead on different things. So we had sort of three different chains
16 of command all connecting together and talking to each other --

17 Q Okay.

18 A -- on case decisions.

19 Q And I know that Mr. Windom was working out of the D.C. U.S. Attorney's Office.

20 A He was.

21 Q Were you also stationed there or were you still at Main Justice?

22 A Real brief I was at the U.S. Attorney's Office. The way it worked was I was a Crim
23 Division employee -- I mean, I -- I was technically a Crim Division employee until the day I got
fired.

24 Q Okay.

25 A I was on detail from Crim to different places. But from January until ballpark maybe

15

1 again in August, I was a -- I worked as a Criminal Division employee. If you look at my documents
2 from that time, I probably signed them on behalf of the Fraud Section, Criminal Division.
3 There was a period of maybe a couple of months before Mr. Smith came in where -- this is
4 that same time period where the team grew, right.

5 Q Yep.

6 A Because the growth of the team also coincided with the consolidation of the team under
7 one supervisory chain. So when the team -- the team both simultaneously grew and was then
8 placed under the supervision of the U.S. Attorney's Office.

9 Q Okay.

10 A When that happened, my day-to-day work didn't really change, but I then, for a brief
11 period of time, was detailed over to the D.C. U.S. Attorney's Office.

12 Q Okay.

13 A That was probably -- again, there's records that would show you precise dates, but I'm
14 going to say it feels Labor Day-ish up until Mr. Smith took over, and during that period of time, I
and

15 my colleagues worked out of the U.S. Attorney's Office. Like, I had an office there for like 2
months.

16 And before that, I had my whole office at the Criminal Division.

17 Q And were you reporting to J.P. Cooney at that point in time?

18 A That's a good question. Like, the reason that I'm hesitating, I don't know if I -- you
19 should ask J.P. I don't know if I was reporting to him at that time or not. I can tell you this: I
20 think I was. I probably was.

21 Q Okay. Was he leading the investigation at that point in time, or who was leading the
22 investigation?

23 A These are all real good questions. J.P., I -- again, you'll hear this refrain from many of

24 my colleagues. J.P. is a spectacular guy, someone I am proud to know. I did not know J.P. before
25 that summer. And when we first got to the D.C. U.S. Attorney's Office, I'm not -- I'm not sure one

16

1 way or the other whether J.P. was a person with whom I interacted at the U.S. Attorney's Office in
2 that very first period or if he was my supervisor from the start. I just don't really remember.

3 It was sort of a fluid period of sort of supervisory transition. I can tell you that most
4 definitely J.P. was a supervisor above me in the Special Counsel's Office. But I just don't remember
5 if like on day one in the U.S. Attorney's Office he was the guy or if it evolved to that.

6 Q Okay. And you had mentioned earlier that there were people who were, you know,
7 looking at the specific issue about misconduct within the DOJ and then adjacent issues. So who
8 worked on the misconduct within DOJ? Who worked on that issue with you?

9 A , you'll need to specify the time periods because it did change.

10 Q Okay. So when it was just the four of you in the beginning between January and April
11 and May, who was working on the misconduct within DOJ?

12 A Well, Teresa and I principally, but --

13 Q Okay.

14 A -- all of us to a lesser degree. In those early days, the workstreams were still
15 developing. So we didn't have ossified streams of work and teams particularly dedicated to one
16 thing to the exclusion of another. But functionally the way it worked is I understood my mandate to
17 be to investigate the work within -- the work related to misconduct from DOJ. So I took the lead on
18 that along with Teresa. We were sort of co-leads on it. But as needed, you know, if there was
19 work to do, Thomas or Alex would also participate in that workstream, just as, once we developed
20 additional workstreams, Teresa and I may participate in those.

21 But I would say the rough division in those previous U.S. Attorney's Office days was that it was
22 Teresa and I heading the DOJ stuff.

23 Q Okay. And did you ever get an understanding of what workstream Thomas Windom
24 was working on?

25 A Yeah, yeah. I mean --

17

1 Q What was his workstream?

2 A -- I knew what workstream he was working on; we worked together. We had -- they
3 evolved. It's not that I didn't know the workstream. I certainly did. It's that the investigation
4 was very new at the beginning, and as it matured, our investigative focus sharpened. So the
5 workstreams became more clearly defined.

6 But early on, I'd say -- you know, Thomas and I worked, you know, side by side on whole lot of
7 things. He maybe took more of a leading role on the fraudulent electors issue at the beginning as
8 that came up. You know, that is a workstream that changed personnel a lot over time. But he
9 maybe took lead on that. There were issues related to John Eastman and legal theories presented
10 to Mike Pence and all that. That wasn't a specific workstream, but that was the thing that came up.
11 In those early days, I wasn't really looking at the White House. Like, the President and the
12 White House were of interest to me only in that the President was a person like several others who
13 had interacted with Jeff Clark with DOJ. But as White House stuff came more into focus, Thomas
14 spent a good deal of time on that.

15 Q Okay. And when you say when the White House stuff came into focus, what White
16 House stuff came into focus, if you will?

17 A Well, again, this was a focus that developed over a long period of time. But what came
18 into focus over time was that President Trump may need to become a subject into which we inquired
19 in our investigation. And I'll pause right there before I go any further and say, when I say subject, I
20 mean -- like, I'm not a prosecutor anymore, I got fired, but I -- when I was, we would use the term
21 "subject" to basically mean anyone within the scope of an investigation who wasn't, you know,
22 essentially just like a witness, like an eyewitness, anyone who wasn't a target. So it's a whole lot of
23 people, right.

24 Q Okay.

25 A As we investigated the Jeff Clark components, the DOJ component that is, the

18

1 fraudulent elector stuff and that kind of thing, I felt like -- and this is sort of subjective. You know, if
2 you ask Thomas his opinion of how it evolved, might be a little different. But we kept seeing, you
3 know, investigative avenues that would lead us back toward President Trump and to the White
4 House.

5 Q Okay.

6 A And so naturally, this investigation, while it was, you know, kind of high profile, was no
7 different than any other that I'd ever -- that I had done in that you just -- you refine your investigation
8 and you follow the investigative leads where they go. And so when the investigative work started
9 to point us in the direction of the White House, we felt compelled to follow it in that way.

10 And so workstreams that developed from that were sort of generally, I guess ultimately, the
11 workstreams that people might associate with our election fraud case, the work that caused us to
12 inquire into whether President Trump and those allied with him had taken steps to corruptly impede
13 the transition of power through use of the fraudulent electors, through misstatements about, you
14 know, these completely unfounded allegations of fraud, through trying to unduly pressure Mike
15 Pence to change the outcome of the election, and to also, you know, cajole State and local leaders
16 and officials to do what they could to adjust electoral votes. I mean, that's -- so that's where the
17 White House work had developed.

18 I mean, the way I kind of describe it real simply is this: The DOJ case, you look up at the sky
19 and you see a star, and over time we backed out a little bit and saw it wasn't just one star, there was
20 a whole constellation, and they fit together. And seeing how all those stars sort of lined up with
21 each other took a lot of -- that was something that became clear as we investigated independently
22 our workstreams and sort of saw how things ran into each other, lined up with each other, and
23 realized that there might be -- and indeed to my belief and opinion based on the evidence was unity
24 to these workstreams that had not been immediately apparent to me and perhaps to anyone on the
25 team when we started the investigation.

19

1 Q And so did your work on specifically looking into misconduct at the DOJ, did that ever
2 end or did you continue to work on that between -- I'm talking in the timeframe January 2022 to
3 November of 2022?

4 A I worked on that throughout that time period. Wasn't the only thing I worked on, but
5 it was a main thing I worked on, yeah.

6 Q Okay. And can you just kind of list off what various investigative streams you worked
7 on? I know we have the misconduct at DOJ and then the White House streams. Were there
8 other --

9 A Do you mean -- do you mean during that early 2022 period or throughout my time as

10 special counsel?

11 Q I just mean in the 2022 period, the January to November.

12 A Okay. Yeah, yeah. You know, we -- I principally did the DOJ workstream. That

13 was --

14 Q Okay.

15 A That was my main focus. But like I said, we were a small team and we weren't siloed

16 off from each other. So if there was investigative work to do related to any other workstream, I

17 would -- there was a decent chance that I could be pulled into that. You know, we just -- we

18 all -- Thomas, Ahmed, Teresa, Alex, and I -- we would talk, you know, regularly. We knew what each

19 other were do -- we each knew what the other was doing, mostly. And when one of our sort of

20 areas of focus needed more manpower or someone just, you know, we would jump onto the thing.

21 So I principally did the DOJ stuff, but I also helped broadly with just about anything during

22 that time period. You know, maybe we had subpoenas out to fraudulent electors; I could have had

23 some role in that. You know, issues related to the lawyers and stuff in the -- the Trump legal team,

24 stuff like that. It was a little bit of everything we did.

25 BY :

20

1 Q Can I ask you, the term "fraudulent electors," when did that come into focus as opposed

2 to alternative electors?

3 A You asking me?

4 Q Yes.

5 A I call them alternative electors to be diplomatic and nice. To me, they were fake

6 electors.

7 Q Okay.

8 A And we call them fake electors -- I mean, just like, as we're talking to each other, you

9 know, the team, we think they're fake electors, but we chose -- I think we -- you know, we use

10 different terminology -- fraudulent electors, alternative electors. There was nothing particularly,

11 like, intentional about it. It's just we realized -- we realized that an investigative piece we were

12 going to get a look at was these slates of electors that had, in fact, not been chosen by the voters

13 and -- by the voters in their respective States. And so we just had different ways to shorthand and

14 call them that.

15 Q Okay. But if, you know, President Trump had won one of those States, those electors

16 would have been the electors, correct?

17 A Probably. I mean --

18 Q So isn't it more, you know, precise to refer to them as the Trump electors or alternative

19 electors rather than fraudulent electors, because --

20 A Because?

21 Q Because, you know, there were a lot of -- a lot of very serious issues with a number of

22 States -- Georgia, Pennsylvania, Arizona, Michigan. And at the time, you know, during times

23 relevant, the President and his allies believed that they had won some of those States. And had

24 they won some of those States, wouldn't those electors have served as the official electors?

25 A A few points to try to respond to everything. I understand your question but disagree

21

1 substantially with the -- with some of the facts that you put in there as to whether there really were

2 problems in these States and what people might have believed. I said that --

3 Q Let me back up. Let me back up. I didn't say there were problems. What I said was

4 President Trump and his allies believed there were problems.

5 A Okay. I understand your question. I take the question. I am not addressing

6 whether I agree with that factual assertion, but what I will tell you is this. First, as we look through

7 today, the electors, I mean, is shorthand to me. You want to call them the Trump electors, you're

8 welcome to call them the Trump electors. I mean no offense to anybody in the nomenclature that

9 we choose.

10 There was certainly a theory that was, you know, that was something that we investigated in

11 our case that if the electoral votes had been sent back to the various States and, you know, through

12 litigation, President Trump was determined to have won the States and President Biden had not,

13 there was certainly a theory that these electors would then have become the duly appointed electors

14 from those States. That was a theme that was part of the case, yes.

15 Q Okay. So referring to them as fraudulent electors or fake electors is just -- I mean, it

16 just seems to me that, you know, it reveals a state of mind that the Justice Department, you know,

17 had concluded very, very early on that these were not the Trump electors, these were somehow

18 electors that were procured in a fraudulent manner.

19 A Is that a question to me?

20 Q Yes.

21 A What is the question?

22 Q The question is, don't you see that as an issue? You know, the investigators, especially

23 Justice Department criminal prosecutors, you're supposed to enter into these matters with an open

24 mind. And if right away at the outset your state of mind is that these electors are fraudulent

25 electors or fake electors, doesn't that cloud the whole investigation?

22

1 A No. And I disagree wholeheartedly and completely with the suggestion that we had

2 any predetermined ideas. When I got on this case -- and I'm going to speak for myself, but I also

3 think this is true of all my colleagues -- I was stunned to be asked to participate in the DOJ

4 investigation, stunned that I would be entrusted with something of that magnitude.

5 And from the day I started, I took seriously, deadly seriously, my obligation to be neutral and

6 fair and impartial. I recognized from the start, even before the investigation grew into the thing it

7 grew into, that this was a unique and potentially prominent and potentially very serious

8 investigation. The gravity of that humbled me and was never lost on me. And I made it my duty

9 throughout, as I did in every case, to have no preconceived notions, allow no personal feelings to

10 enter into decision-making but just, rather, proceed dispassionately and neutrally in the

11 investigation. And so that is what I did and what I saw every member of my team do.

12 If for the sake of today's conversation you want to refer to the electors as Trump electors,

13 alternate electors, that's fine. I consider it no value judgment, just shorthand to describe something

14 that would take a package of words to describe otherwise, but we had no preconceived notions.

15 In my mind, the fakeness wasn't a democratic -- or Democrat or Republican thing. Fake or

16 fraudulent or whatever was just simply, by the time we're investigating, the election had long been

17 over, the election had long been certified. And in each State certain electors had been identified as

18 legitimate ones and certain had not. It was as simple as that.

19 Q Okay.

20 BY :

21 Q While you were investigating the alleged misconduct within the DOJ, did you ever

22 interact with anyone from the DOJ'S Office of Inspector General?

23 A I did.

24 Q And what was their role in that specific piece of the investigation?

25 A So for sometime in those early days, we worked with DOJ OIG agents. It was a natural

23

1 fit early on because we were investigating potential misconduct within the Department of Justice.

2 And so the Inspector General's Office was a sort of normal landing spot for -- that took that case.

3 Q And how many DOJ OIG agents did you work with?

4 A There may have been other people sort of on the fringes adjacent to the case, you

5 know, analysts or back office people or someone else. But the ones I remember most prominently,

6 there were two agents with whom I worked, one named Brian Burnett --

7 Q Okay.

8 A -- and one named Jake Higley.

9 Q And what was Special Agent Burnett's role in the investigation?

10 A Well, over time in my interactions with the OIG, Mr. Higley, Jake, played a larger role --

11 Q Okay.

12 A -- and was -- to my mind, he was the agent with whom I ended up doing more work.

13 Q Okay.

14 A But early on, Mr. Burnett was the OIG agent assigned to our case. And so he would do

15 normal agent work -- investigating things, dealing with subpoenas, I mean, that kind of stuff.

16 Q And did the OIG ever stop helping with the investigation?

17 A In '22?

18 Q In '22.

19 A No. No. The OIG was -- I don't know if OIG ever formally separated from the

20 investigation, but by the end of the Special Counsel's Office, we weren't really working, you know,

21 with OIG on a day-to-day at all. In '22, before we were the Special Counsel's Office, I feel like -- I

22 feel like OIG stayed involved to some degree.

23 Q Okay. And were Agents Higley and Agents Burnett the primary agents that you worked

24 with or did you work with anyone else?

25 A If I worked with anyone else, and they ever read this transcript, I apologize if I'm not

24

1 remembering you. But Agent Higley and Agent Burnett were the two agents I remember working
2 with.

3 Q Okay. And did you ever interact or speak with Inspector General Michael Horowitz?

4 A I don't recall. I don't recall. I had some calls with -- maybe a couple call or two with

5 management-type people at OIG. I can't remember who they are. It's possible that I was on a call

6 with Mr. Horowitz, but I don't remember specifically.

7 Q Okay. And beyond --

8 A I'm going to say I doubt it, but I don't know for sure.

9 Q Okay. Did you ever work with -- just think of outside entities right now. Did you ever

10 work with the National Archives Inspector General?

11 A Our team did.

12 Q Okay.

13 A Our team did. I can't remember the NARA OIG agents' names.

14 Q Waleska McLellan, is she --

15 A That is a name that I remember.

16 Q Okay.

17 A Yeah. And I think we might have met once or twice. If you've got other names -- it's
18 been so long. There were maybe a couple other people, I was trying to remember their names.

19 But the bottom line is NARA OIG was, you know, attached to our team in some way at some point.

20 Q Okay.

21 A But to my recollection, if I -- while I'm sure I did interact with those folks some, I don't
22 remember specific interactions or agents really. That wasn't --

23 Q Okay.

24 A -- my thing.

25 Q They weren't part of the investigative stream for misconduct at DOJ?

25

1 A That's not to say they weren't, right.

2 Q Right.

3 A Because, again, one thing that I do want to convey is it was kind of fluid. If we
4 needed -- we were all -- it wasn't like -- you know, we're not running, playing football, and Thomas is
5 the wide receiver out this way, and I'm the wide receiver over here, and, you know, Alex, the
6 quarterback or something. We all would sort of shift on to doing things together. We were a
7 team more than like a group of siloed individuals.

8 So I can't tell you for certain that NARA OIG didn't help in some way. NARA OIG may
9 have -- may have -- done something ancillary to the DOJ stuff, but I do not remember that happening.
10 I don't have any recollection that they did.

11 Q Okay. What about the United States Postal Inspection Service?

12 A I think we did have a guy from Postal, but I don't remember who it was, and I don't
13 remember what his role was on the case, and I don't think he was on the -- I don't think Postal
14 participated very much in the case.

15 Q Okay.

16 A Just -- again, I don't recall. I can tell you that most of the work that I did from '22
17 through '25 was with the FBI and in the early stages with Jake and Brian at DOJ OIG.
18 Okay. I'm going to mark this as exhibit No. 2. It's a DAG briefing document.

19 [Duree Majority Exhibit No. 2.

20 was marked for identification.]

21 BY

22 Q And this is a seven-page document with bullet points. You should take your time to
23 review, but I'll point and refer to specific pages and bullets.

24 A Do you want me to sit and read the whole thing for a few minutes or you want to just
25 ask me?

26

1 Q It's up to you what you want to do. I'm going to refer you to specific bullets, so
2 whatever you'd like to do.

3 A Okay. Give me a second just to familiarize myself with it.

4 Q Yep.

5 A Okay.

6 Q Okay, great. Have you seen this document before we gave it to you today?

7 A I don't know.

8 Q Okay.

9 A This reminds me that there was a -- called DAG briefing. There was a briefing of
10 Deputy Attorney General Monaco --
11 Q Okay.
12 A -- in the U.S. Attorney's Office, and it would have been sometime in the fall-ish of '22.
13 Q Okay.
14 A I believe -- I know we did put papers together for that. So I feel like this is something
15 that I've seen, and I feel like this is probably that, but I can't tell you for sure.
16 Q Okay. And the DAG briefing that you're remembering in the fall of '22, did you
17 participate in that briefing?
18 A I did.
19 Q And who else went along to the briefing? Was it the whole team?
20 A Yeah, I think. I mean, I don't know if there was one person -- I don't know if someone
21 might have been absent that day or what. But, yeah, roughly. The team as constituted at that
22 time and the names on this -- this includes a lot of names that I didn't mention from those early
23 days -- this includes the people who have joined onto the team in that like post-Labor Day, around
24 Labor Day-type period when we grew.
25 But, yeah, as I remember it, most or all of us were there. We sat in the room in the U.S.

27

1 Attorney's Office and we briefed the DAG on the case.
2 Q And your name is down next to the -- on page 4, it's down next to the Jeffrey Clark
3 workstream. Did you present at the briefing on the status of the investigation?
4 A I did. I did. I don't think -- I don't know that I wrote this. There are parts of this
5 that made me think I didn't write it or someone else might have finalized it. But, yes, I did present
6 to Deputy Attorney General Monaco on the Jeff Clark/DOJ workstream.
7 Q Okay. And as part of the Jeff Clark workstream, it was Representative Scott Perry was
8 kind of involved in that area. And on here, on page 4, there's a bullet point that says, "The key
9 individuals in this investigation, including witnesses are" -- then it mentions several individuals --
and
10 it says, "Perry, subject light/intermediary." We had had a discussion about the use of "subject".
11 What can you tell us, what does subject light mean?
12 A I don't know. I don't think -- I say I don't know, but I'll tell you my best.
13 Q Okay.
14 A I don't think that I -- this is one of the things I was saying that made me think I didn't
15 probably write this exactly. I may have. I may have. But "subject light" isn't terminology I think I
16 would normally use.
17 But as I understand it, you know, as I described, there are three categories, right: witness,
18 target, and subject. But subject is the big one. Subject is like most people, right. You're
19 either -- anyone who might be within the scope of the investigation can be a subject. So it can be
20 useful at times, whether it's subject light or something else to denominate the same thing, can be
21 terminology to suggest that this person is a subject but is trending investigatively in one direction.
22 Q Okay.
23 A So I would say, you know, you could be a subject trending towards becoming a target if
24 the investigation's turning up a lot of evidence of your criminal culpability. You could be a subject
25 trending towards witness if the investigation is revealing that while you are within the scope of the

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1 investigation, you perhaps are not someone on whom we at that point are thinking we're going to
2 develop evidence to charge, but we don't know yet.

3 So I think subject light is just an effort to try to situate, if Perry is referring to Congressman
4 Perry, an effort to situate Congressman Perry within the broad spectrum of subject to understand
5 kind of, you know, how we viewed him at that point in the investigation.

6 Q Okay. So would subject light have been on subject trending toward target or subject
7 trending toward witness?

8 A I mean, I don't generally call people subject light. It seems like a diet drink. It's an
9 odd way to put it. But I would guess that subject to me, subject light means as we -- if we took a
10 snapshot of this day in time, we think that you are probably moving roughly in the direction towards
11 witness, but you are certainly not a witness. We don't know. We have a lot of investigation left to
12 do, but at this point what we are seeing is suggestive of you're basically sort of being downgraded
13 through the, you know, tiers of subject-dom.

14 Q Okay. And a few months before this, August 9th, 2022, the Justice Department seized
15 Representative Perry's cell phone. Were you involved in seeking the search warrant for Mr. Perry's
16 cell phone?

17 A I would -- yes. I was not involved in seizing the phone, like physically seizing it.

18 Q Okay.

19 A That's what the agents would do. I was involved in building the evidence for that
20 search warrant.

21 Q Okay. And who else was involved in building the evidence for the search warrant?

22 A I was. I mean, me.

23 Q Okay. Were you the --

24 A No, I would -- there's no universe in which I'm going to put together, no matter how
25 strong the evidence is, there's no universe in which I am going to put together and get a search

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1 warrant on a Congressman's cell phone without the input of others.

2 I would think that -- you know, Teresa was working -- Teresa was working the DOJ stuff with
3 me. Teresa would have been involved. But Thomas probably would have had some involvement.
4 And, you know, whether Alex or Ahmed did, I would think they certainly would know about it
5 because we were a small team, we talked about it. I would have, of course, run it through
6 supervisory chains and all that kind of thing.

7 But I would -- I would say that I was the person who did -- I would say -- I will say, I am saying,
8 I was the person who did the -- I was the person who did the most work to prepare that search
9 warrant.

10 Q Okay. And when did the idea come about that you thought you needed Mr. Perry's
11 cell phone?

12 A It came about as we were investigating the DOJ misconduct. I can't tell you when the
13 seed first planted in my head and then, you know, blossomed. But in that period from January till
14 beginning of August -- or probably -- I guess we probably wrote the warrant before August. So
15 January till, you know, prior -- before the search warrant, sometime in that range, as we developed
16 the evidence of what had happened within DOJ and the effort to elevate Jeff Clark to the attorney
17 general's role, Scott Perry featured significantly in that effort.

18 And so at some point -- and I can tell you more about how the investigation went if you want
19 to, but at some point in that period, I probably came to think that Scott Perry's phone would have
20 evidence that would be beneficial to that case and evidence of a crime.

21 Q And what evidence were you looking for? I mean, when they took the phone, they

22 took, as we understand it, like a full copy of the phone. They got like the photos of him and his
23 children and all of that. So, obviously, I didn't think you probably needed the photos of him and his
24 children, but what contents were you specifically looking for?

25 A Well, I mean, technically, you're looking for information that might exist on that phone

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1 that provides evidence of the criminal conduct you are investigating. So that could be text
2 messages, Signal, WhatsApp, you know, photos, in some cases, emails, whatever's on a phone. I'm
3 not saying that just specific to Scott Perry, when you seize a phone, you're looking for evidence that's
4 on that phone.

5 Congressman Perry was very -- again, you are testing my memory because this has been some
6 years. But what I came to understand about the DOJ scheme essentially is -- what I'm calling the
7 DOJ scheme right now -- was this effort to elevate Assistant Attorney General Jeff Clark, who had
8 previously been the Assistant Attorney General over the Environment and Natural Resources
9 Division, and then was the Acting Assistant Attorney General over the Civil Division -- it was an
effort

10 in late December and early January to elevate him to the Acting Attorney General role so that he
11 could -- and one result of that would have been, had he obtained the role, that he would have been
12 able to send a letter falsely telling State legislatures, including the legislature in Georgia, that there
13 was -- I forget the exact wording -- but evidence of -- significant evidence of fraud or misconduct,
or

14 something like that, that might warrant pulling back the electoral votes. And the whole, you know,
15 outcome of this, if all that would have happened, could have been to destabilize the elections in
16 those States to which he sent the letter and maybe even others where he didn't, with the end result
17 of potentially causing the electoral votes to be pulled back, I guess, hypothetically.

18 I say all that to say, Scott Perry was connected to that throughout. What we found was that
19 Congressman Perry had, it appeared, introduced Mr. Clark to President Trump around the 20th, 21st
20 of December, and that Congressman Perry was in close contact with Jeff Clark throughout the
period

21 of, like, that December 20th or 21st through January 3rd when the scheme climax had ended, more
22 or less.

23 So he was in close contact with Mr. Clark. He was in close contact with other -- a lot of other
24 people that were connected to both the DOJ scheme and the sort of overall effort to overturn the
25 election. We knew that he had text messages, Signal messages, other communications with Jeff

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1 Clark. We knew that he had been involved in, you know, looking at election fraud-type stuff in
2 Pennsylvania in December. We knew that -- so I guess I'll stop there --

3 Q Okay.

4 A -- and just end by saying, there were many factors, many points of contact, many pieces
5 of evidence indicating that Scott Perry was closely connected to the effort to install Jeff Clark as the
6 Acting Attorney General, which -- and we believed that we had probable cause to find evidence on
7 that phone related to that criminal scheme.

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1 [10:58 a.m.]

2 BY

3 Q And I think we can agree that seizing the phone of a sitting Member of Congress is a
4 pretty serious investigative step. Would you agree?

5 A I think seizing anyone's phone is a significant investigative step, and I recognize it as
6 such and take it seriously, yeah.

7 Q And you had mentioned your supervisory chain was involved. So what sign-offs did
8 you have to get in order to go after a search warrant for a -- or seek a search warrant for a sitting
9 Member of Congress' cell phone?

10 A I cannot remember the specific approval chain.

11 Q Uh-huh.

12 A I -- you know, I haven't seen those emails in years, and don't remember exactly emails
13 and calls we had.

14 That approval chain would have involved PIN, the Public Integrity Section. That would have
15 been important. That would have probably involved at least the knowledge and buy-in of my
16 supervisory chain, which at the time would have been Crim. Potentially, you know, the others, the
17 U.S. Attorney's Office might have known about it and buy-in as well. I just don't -- I don't
18 remember.

19 In some things -- I'm not saying that this was or wasn't -- but some things that were
20 particularly prominent required us to give notice to the Deputy Attorney General's Office as well.

21 Q Okay.

22 A So I know that's not a particularly precise answer, but it's just because it's been a long
23 time. I don't remember specifically, but I know that PIN, my supervisory chain, and Crim would
24 have definitely been involved and potentially those others as well.

25 Q And what conversations can you tell us about that took place regarding seeking consent

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1 to obtain his cell phone prior to obtaining a warrant?

2 A Seeking consent from whom?

3 Q From Mr. Perry or Mr. Perry's attorneys to search the cell phone.

4 A It would -- I don't remember doing that. It would be extremely abnormal in any
5 criminal case for -- for me to seek consent to just have someone hand their phone over when we
6 believe there is probable cause of a crime and they were a subject of the case and all that.

7 So I don't -- I don't remember having any conversations like that, and I don't think that I
8 would have.

9 Q And what conversations do you remember regarding the Speech or Debate Clause?

10 A A lot.

11 Q What can you tell us --

12 A A lot.

13 Q What conversations took place prior to seeking the warrant?

14 A I mean, we're getting on to the hour. Do you -- this could take me a little while.

15 Q Let's get started, yeah.

16 A Okay. The Speech or Debate Clause is something that we took incredibly seriously.

17 The Speech or Debate Clause protects from -- protects Congress -- Members of Congress from
18 prosecution for, you know, legislative acts within the scope of their job, roughly, for the sake of this
19 conversation.

20 In D.C. -- in D.C., there is specific case law named after this beautiful office building in which
21 we sit, called Rayburn that provides that in the D.C. Circuit not only are Speech or Debate protected
22 materials, things that can't be used in prosecution, but also that prosecutors can't take those

23 materials, can't have them, right?

24 Q Uh-huh.

25 A So --

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1 Q Were prosecutors concerned that there were Speech or Debate covered materials --

2 A Oh, yeah.

3 Q -- on Mr. Perry's cell phone?

4 A For sure. I mean, I was not concerned thinking, Oh, my goodness, there's Speech or

5 Debate materials or anything like that.

6 When I say concerned, I mean there is a recognition that when I'm dealing with a Member of

7 Congress, there is a possibility that that Member of Congress could have Speech or Debate protected

8 materials on their phone, and it is absolutely the best practice and the only practice I would endorse

9 to think that through on the front end and take steps to protect those materials from disclosure to

10 you for the sake of, you know, the Congressman and the legislative process, but also for the sake of

11 the prosecution and the team, just to keep everything as it should be under the law, right?

12 So yeah, we definitely -- we definitely knew that we had to be thoughtful about that, and we

13 implemented protocols that I can try to remember and describe to you, very thoughtful protocols to

14 ensure that there was a review process in place that made certain to the very best of our ability that

15 we would obtain relevant evidence that was not Speech or Debate protected and not accidentally

16 stumble into Speech or Debate materials.

17 Q And what can you tell us about the -- there was a DOJ OIG agent who went along to

18 serve the search warrant.

19 Do you remember if that was Mr. Higley or Mr. Burnett?

20 A I think it was Jake.

21 Q Okay.

22 A I think it was Mr. Higley, I should say.

23 Q And what was his involvement in seizing the cell phone? I know we have a minute left,

24 but --

25 A They had to get the phone. The physical location was somewhere on the Jersey Shore.

35

1 Because that's -- I guess Congressman Perry was in Jersey at the beach on vacation, and I was not

2 there. I did not go.

3 But my understanding is that Mr. Higley imaged the phone, that is, took the forensic copy of

4 it. And one thing that I remember being particularly careful about, right, is when you seize a phone,

5 you seize a phone.

6 It's -- you have -- I say you. I'm talking in the second person. The Federal Government,

7 having seized the phone, has the right to possess and extract the information from it.

8 In this particular case, I know I sure wanted, and I think the whole team wanted to image the

9 phone and get it back to Congressman Perry as quickly as possible. We were trying real hard to do

10 this in a way that was minimally disruptive, it was as respectful as it could be, and it didn't put

11 Congressman Perry in an awkward spot where we're seizing a phone right out on Independence in

12 front of the Rayburn Building or it's some big hubbub. So we tried to be very discreet, very

13 cautious, very careful.

14 And that goes to your question about Mr. Higley. My recollection is that Mr. Higley, upon

15 seizing the phone, that Mr. Higley and the other agent that was with him imaged that phone as

16 quickly as the data could be transmitted over, as quickly they could find a spot to do it and do it,
17 couple of hours, and then went and gave it -- gave the phone back to Congressman Perry.
18 So Mr. Higley's role was -- you can ask Mr. Higley -- but as I remember it, it was to image the
19 phone and get it back to the Congressman.
20 We're at the end of our hour, so we'll go off the record.
21 [Recess.]
22 We'll go back on the record at 11:12 a.m.
23 BY :
24 Q Just to reintroduce myself, I'm . I'm joined by . We're with
25 Mr. Raskin's staff. We'll take this hour to ask you questions just like the majority did last hour.

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1 A Yes, sir.
2 Q But I do want to touch a little bit on your background just a little bit more.
3 Where did you go to undergrad? Where did you go to law school?
4 A I went to undergrad and law school at the University of Texas.
5 Q Okay. That describes the football analogy from the last hour.
6 And you started at DOJ, again, at 2012. Is that about right?
7 A Yes, sir.
8 Q And you stated about 4 years before graduating from law school and then starting at
9 DOJ. Is that about right?
10 A It was about -- are you asking me where I was for that 4 years?
11 Q The time -- yeah, I was about to. Sure. Can you let us know where you worked
12 before joining DOJ?
13 A Sure. I graduated from -- I grew up in Texas. I was in Austin for college and law
14 school. I graduated law school in 2008 and worked at a firm here in D.C. until 2010.
15 In the fall of 2010, I moved to Del Rio to clerk for a district judge on the Western District of
16 Texas. And I clerked for Judge Moses, the same judge, for, I guess, a little under 2 years, year and a
17 half --
18 Q Okay.
19 A -- until I joined DOJ.
20 Q So about the DOJ, I guess, what was your motivation in wanting to be a prosecutor and
21 wanting to work at DOJ? And this might be, like, an obvious question, but I just want to hear from
22 you what your motivation was.
23 A It's -- I believed it would be and it proved to be a job where I every day was able to go in
24 and do work of purpose, work of meaning where I felt like I got to do something that was good for
25 the world. You're helping to uphold the ideals of justice and equality and all those good principles.

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1 And there are few jobs out there where you're entrusted with the responsibility to ensure
2 that our legal system operates fairly, transparently, and equally for everybody. So it's -- it was a fun
3 job and a meaningful job, and that's why I did it.
4 Q Do you feel like you're able to live out those ideals you just described during your about
5 12 years at DOJ?
6 A Yeah. I mean, I outkicked my coverage. I certainly did. I was thrilled to get
7 the job in Del Rio, and I never expected that I would get to do anything -- I was honored and
8 surprised to get that job.

9 I never expected that I'd get to do the kind of work that I got to do at the Criminal Division. I
10 never expected that I would be able to supervise really talented prosecutors like I did in New Jersey
11 and New York, and I certainly never expected to be entrusted with a case as -- with a role on a case
12 as important as this one and to work with such brilliant and decent and good people as I was able to.
13 So yeah, like, I got -- getting -- having it end with getting fired is no fun, but I got to -- I feel
14 blessed and honored that I got to work at DOJ for a long time and do the things I did.
15 Q And thank you for your service. And despite how it ended, overall, looking back, are
16 you proud of the work even up to the last day? Are you proud of what you were able to do at DOJ?
17 A 100 percent. And that includes -- and I'll emphasize while we're talking about
18 everything -- at the special counsel's office, most definitely. Very proud of it.
19 Q So I'm familiar -- I am familiar with Del Rio and the Western District of Texas.
20 A Awesome.
21 Q So I do want to ask a few questions. I have a feeling it might be quite a few numbers.
22 But looking back all the way to the Western District to your time at Main Justice and Crim,
23 approximately how many investigations were you involved with or that you led? Just give us like an
24 approximate number over that time period.
25 A At least hundreds, if I include management and personal, you know, work on the line as

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1 well, yeah.

2 Q And going back again, similarly, about how many cases, going all the way back to your
3 days in the Western District of Texas do you imagine you might have tried in court? Every
4 prosecutor knows this answer, by the way.

5 A I wish I did. More than a dozen. I can't tell you specifically.

6 Q Okay. But more than a dozen. Is that a fair estimate?

7 A Yeah. I'd say at least around a dozen is right, yeah.

8 Q During your tenure in the Western District of Texas and at DOJ, did you receive any
9 awards for your work?

10 A I did. I did.

11 Q Can you describe some of those, and please do not be humble here. Can you share
12 some of the awards that you're most proud of?

13 A I don't know that I know the names of them.

14 Q You can just describe them, too.

15 A I mean, I did get -- I did get a few. A line of thinking is that you stick around DOJ long
16 enough, they'll give you an award for something, right? But I got -- I remember getting an award
17 from -- distinguished service award or something like that. That might be the wrong name. I don't
18 mean to act like I wasn't honored by getting the award. I just don't remember the exact name at
19 this point.

20 I got an award from the Attorney General for one case that we built. I got an award from
21 the Assistant Attorney General of Crim Division for some COVID-related cases; an award from, I
think,
22 the Inspector General's Office of -- at some point, or a group of Inspector General's Offices, yeah,
23 anyway.

24 Q And, look, I know you touched on this in the last hour, and so I just want to make sure
25 we understand the timeline. It sounds like you got the call from Mr. McQuaide to start working on

1 the Jan. 6 cases on the back end of January of 2022. Is that correct?

2 A That's correct.

3 Q And which investigations were you working on when you were assigned in January
4 2022?

5 And the way we've broken it out in our head is there's the rioter cases and then there's the
6 election conspiracy cases. I guess, which bucket were you working on?

7 A I worked on what became the election conspiracy cases. I did not work on the rioter
8 cases.

9 Q And what was your direction or your marching orders, per se, when you were assigned
10 to these January 6th cases -- or I think it was a DOJ-related case?

11 A So I wouldn't -- I'd be careful not to call them the January 6th cases --

12 Q Right.

13 A -- because I roughly consider those to be more rioter-related.

14 But the marching orders, as I described and can describe in more detail if you want, was to
15 look into whether there had been misconduct within the Department of Justice related to the
16 transfer of power after the 2020 election.

17 Q And can you describe in general what this conspiracy was or what the criminal acts you
18 were investigating related to the Department of Justice and misconduct within it?

19 A Yes. I mean, I guess, to put a statute on it, there are several that it could have been.

20 But I was thinking of this at times through a lens of 18 U.S.C. 1512.

21 The -- one theory that I had was that -- and that I think the evidence supported as to -- as to,
22 you know, the Jeff Clark and Department of Justice is that the attempt to install Jeff Clark as Acting
23 Attorney General was intended to destabilize the election results and cajole certain States into
24 reconsidering and maybe changing their electoral votes.

25 And so one criminal charge that that could lead to is a charge for corruptly interfering with a

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1 Federal proceeding.

2 Q Thank you. And we'll get into this a little bit more a little bit later.

3 I'm going to introduce an exhibit. I think it will be exhibit 3. It's going to be document 1,
4 which is the letter that this committee sent to you for those transcribed interviews.

5 [Duree Exhibit No. 3.

6 was marked for identification.]

7 BY

8 Q I'll give you a second to look over this. And, again, this is exhibit 3. It's a December
9 16, 2025, letter from this committee to Mr. Timothy Duree.

10 A Yes, sir. I've looked it over.

11 Q Okay. I'm going to read a few quotes from this, and then I want to get your impression
12 from it.

13 But in this letter to you for this interview, the chairman said that the committee has
14 been -- and this is a quote -- "investigating former Special Counsel Jack Smith's partisan
investigations

15 into President Trump and his associates following the 2020 election."

16 The letter continues by stating that your testimony is, quote, "vital to our investigation into
17 how the Biden-Harris administration weaponized the Justice Department for political purposes and
18 misused Federal law enforcement resources," end quote.

19 Now, just to make sure the record is clear, you were on the special counsel's team, correct?

20 A Yes, sir.

21 Q Was your investigation partisan, as the chairman's letter suggests?

22 A No, never.

23 Q Did you engage in partisan politics while investigating the crimes associated with the
24 conspiracy leading up to the January 6th certification?

25 A No, never.

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1 Q Did you take investigative steps simply because the target of the investigation was
2 associated with a certain political party?

3 A Absolutely not.

4 Q Did you investigate President Trump or any of his associates because they were
5 members of the Republican Party?

6 A Absolutely not.

7 Q Did you take investigative steps and request records because the subjects of those
8 requests were members of the Republican Party?

9 A No, I did not.

10 Q If a Democratic member would have been involved in the conspiracy to overturn the
11 2020 election, would you have taken the same investigative steps with them, too?

12 A Definitely.

13 Q In general, what is your response to this committee's assertion that you were part of a
14 DOJ that was weaponized for political purposes?

15 A That is entirely false. Our -- our team adhered to the highest principles of the
16 Department of Justice throughout. We took it as our mandate to be transparent, thoughtful,
17 honest, and evenhanded in everything that we did. There was not a single instance in which
18 partisan favoritism ever factored into any of our decision-making.

19 Q I'm going to take -- build upon your single instance language there.

20 It sounded like from the last hour, you know or worked with Mr. J.P. Cooney. Is that
21 correct?

22 A I did. I think highly of J.P.

23 Q And very high level, what was his role overall in this investigation?

24 A He was Mr. Smith's deputy.

25 Q And did you ever encounter or witness Mr. Cooney taking an investigative step in a

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1 partisan manner?

2 A Absolutely not. J.P. is a straight arrow, and one of the best prosecutors I've ever
3 known. He would not and did not do that.

4 Q And are you familiar with Molly Gaston?

5 A Yes.

6 Q How do you know Ms. Gaston?

7 A Ms. Gaston was also on the special counsel's team. She was a supervisor of our
8 election fraud case.

9 Q And did you ever encounter Ms. Gaston taking investigative steps or speaking in a
10 partisan manner while in the investigation?

11 A Never. Again, Ms. Gaston is a spectacular prosecutor and a spectacular person. And
12 I have never seen her do anything except act with the greatest respect for the traditions and norms
13 of the Department of Justice.

14 Q And what about Mr. Thomas Windom? You mentioned him in the last hour as well.
15 A The answer will sound familiar. I think Thomas is an amazing prosecutor and an
16 amazing person with an ethical compass that points to true north. I have never seen -- never seen
17 Thomas do anything other than act with the greatest integrity. He was -- he never acted with
18 partisan favoritism.
19 Q Okay. And last but certainly not least, Special Counsel Jack Smith, I'm assuming you
20 know Jack -- Mr. Smith?
21 A I do. I do.
22 Q And did you ever witness Mr. Smith taking investigative steps, or directing investigative
23 steps in a partisan manner?
24 A Absolutely not. It is my impression of Jack that he is one of the most unfailingly ethical
25 and disciplined people I ever have known, and I think he would be disgusted if anyone in our office

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1 ever considered for a second doing something like that. Jack would not permit it.
2 Q Did you ever encounter the special counsel targeting or directing an investigation
3 directly at President Trump because of Mr. Trump's affiliation with the Republican Party?
4 A Absolutely not.
5 Q So going back to the overall premise of the special counsel's indictments, of your team's
6 indictments, do you believe there was sufficient evidence to justify bringing charges -- the charges
7 that were brought against President Trump?
8 A Absolutely.
9 Q I'm going to actually -- I'm going to go a little off track. I want to go to the
10 Congressman Perry's cell phone discussion.
11 A Okay.
12 Q It sounds like you were involved in the investigation into Mr. Jeffrey Clark. Is that
13 correct?
14 A Yes, sir.
15 Q And through that investigation, is that what led you -- the facts led you to Congressman
16 Perry. Is that correct as well?
17 A They did.
18 Q Can you walk us through -- because I've heard a lot of prosecutors say you follow the
19 facts and the law. Is that what you did in this investigation?
20 A Yes, sir, it is.
21 Q So how did we get from investigating misconduct within the Department of Justice with
22 Mr. Jeffrey Clark to, you know, a court-authorized seizure of Mr. Perry's phone? And summarizing
23 is fine.
24 A Because the evidence indicated that Mr. Perry was involved with Mr. Clark and others to
25 advance the effort to have Jeff Clark installed as the Acting Attorney General. And we sought a

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1 search warrant for Congressman Perry's phone because the evidence we had developed to date led
2 us to believe that there was probable cause that on Congressman Perry's phone would be evidence
3 of the criminal conduct we were investigating.
4 Q And I guess, let's take a step back. What is a search warrant? We've used the term
5 frequently. I think all of us probably know what it is, but what is a search warrant?
6 A A search warrant is an investigative tool and legal process that allows -- allows

7 prosecutors and agents, upon a showing of probable cause, to access things to which they might
8 otherwise -- to which they would otherwise be unentitled to access, things like a cell phone in this
9 case. But a search warrant can also be used to permit access to a house, a locked car, all types of
10 things.

11 Q In layman's terms, what is probable cause? Sorry for the law school exam here, by the
12 way.

13 A Probable cause, I'll ask my attorneys to chime in if my criminal procedure is a little bit
14 messy.

15 But probable cause is, roughly, evidence more likely than not of the crime.

16 Q And it sounds like you were involved in seeking this court authorization to search
17 Congressman Perry's cell phone?

18 A I'm sorry. I spoke over you. Yes, sir, I was.

19 Q And you mentioned earlier that you would have never sought this step without, you
20 know, input from your teammates or even going to your superiors.

21 Can you just -- from what you remember, can you walk us through what that process would
22 have looked like before seeking this court authorization for Congressman Perry's cell phone?

23 A Well, I would have -- a lot of things would have happened. I would have pored over
24 the evidence that we had developed to date over those several months of the investigation to
25 determine whether it appeared there was probable cause, and in this case, satisfied myself that

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1 there was.

2 I would have needed to decide not only that there was probable cause, but that making that
3 showing of probable cause and getting the phone was something that I thought was going to be
4 investigatively productive and useful to the advancement of our cases.

5 I would have spent -- and believe I did spend -- a lot of time looking through evidence, looking
6 through records, tying the pieces together to, in the first instance, satisfy myself that the probable
7 cause was there and that this tool, which is powerful but also invasive and needs to be, you know,
8 wielded with caution, was one worth using.

9 After looking through the phone records, the -- you know, whatever else we may have had,
10 which was a lot, and convincing myself of that, I would have then written a draft of the affidavit.

11 I would have built this affidavit, along with the other members of my team, who were each
12 very smart, very seasoned, very ethical, and very thoughtful prosecutors. And I would have
13 solicited their input on whether we met the necessary standards, whether this was a good
14 investigative step, whether the evidence was articulated clearly, whether there were other things we
15 wanted to add and all that.

16 We would have all chimed in to create the best product possible.

17 Q You said -- it sounded like you had quite a bit of evidence even before requesting
18 Congressman Perry's cell phone or search of it. Is that correct?

19 A I believe so yeah.

20 Q So why then -- and I think I know why, but just for the sake of the record, why then
21 would you seek then to search Congressman Perry's cell phone if you already had a lot of evidence?

22 A Having a lot of evidence doesn't mean that you have all the evidence you want or all the
23 evidence you need. Investigations tend to proceed in phases.

24 And we, as investigators and as prosecutors, are constantly -- are building towards a
25 determination of whether we're able to get proof beyond a reasonable doubt. But more than just

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1 that, we want to be comprehensive and inclusive so we know that we have thoroughly considered
2 the evidence that may exist and the charges that we want to bring.

3 And so we had some evidence, but that doesn't mean we had all the evidence. And

4 moreover, just because we have some evidence against some people doesn't mean we have all the
5 evidence against all the people or even that we knew everybody that may have been involved.

6 And so obtaining all the evidence that you can in an investigation like this, I believe, is

7 necessary to being thorough, being comprehensive, ensuring that you understand the criminal

8 conduct correct, ensuring that you've included the right people in the case and excluded the right

9 people. It is -- it's the way that you are supposed to do your job diligently.

10 It is also, you know, fair to the defendants that you are -- the people being investigated

11 before they were defendants, that you are considering everything as diligently and thoroughly as you
12 can.

13 Q Is this a common investigative step in white collar investigations?

14 A A search warrant?

15 Q Search warrant for cell phone records, for -- to search a phone for communications?

16 A Yes, sir. I would say that it is.

17 Q Okay. And you mentioned beyond a reasonable doubt when you were talking about

18 the evidentiary standard and kind of describing why you would seek this type of evidence.

19 What is beyond a reasonable doubt?

20 A Beyond a reasonable doubt is evidence sufficient to satisfy you in the most serious of

21 your own personal affairs. Beyond a reasonable doubt is the standard you need to prove someone

22 guilty at trial, and it doesn't mean that there isn't some teeny tiny shred of possible doubt, but it

23 means, yeah, that you are satisfied to a degree that you would be in the most important of your

24 personal affairs.

25 Q Also in the last hour with the majority, they started on the discussion of Speech or

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1 Debate Clause issues. Do you recall that discussion?

2 A I do.

3 Q And it sounded like Speech or Debate issues were something that your team thought

4 about before going through Congressman Perry's cell phone materials. Is that correct?

5 A Yes, sir.

6 Q Can you walk us through just what that consideration looked like, and I think you even

7 mentioned that there were some thoughtful protocols, I think, is the term you used last hour.

8 Can you just walk us through what those protocols were? Like, what was your team trying

9 to figure out before going through with this investigative step with Congressman Perry?

10 A So we were fundamentally trying to ensure that we did not obtain evidence of

11 legislative acts to which we were not entitled and that we did not want to get. It can be challenging

12 to determine both what is -- it can be difficult to determine what a legislative act actually is, and it is

13 impossible to know what you are going to find on the phone before you find it.

14 So we implemented -- and if you ask me to tell you exactly what it is, I'm going to struggle on

15 the bit by bit. But we implemented filter processes that I believe involved Congressman Perry and

16 his lawyers, ultimately, that enabled us to have the assurance that we were going to properly exclude
17 evidence of legislative acts from things that we obtained.

18 Q So just to make sure I understand this, it sounds like Congressman Perry and his

19 attorneys were involved in this review prior to you all looking at the -- or using the materials?

20 A Yes. As I remember it -- this is to the best of my recollection -- our filter process did

21 involve, after we seized the phone, allowing them, his attorneys to look through the records, identify
22 things that they believed to be privileged, and then provided a mechanism by which disputes over
23 those privileged materials could be presented to the court for resolution.
24 Q And it actually -- these issues actually were presented to the court for resolution. Is
25 that correct?

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1 A They were.

2 Q Before I get to that, one thing that has come up in other instances of this investigation is
3 why didn't you all simply ask Congressman Perry to give over relevant materials from his cell phone?
4 Can you explain to us why you wouldn't have taken that step?

5 A That is not a step that I would -- that is not an approach I would take in any criminal
6 investigation. And it would -- I think that I am par for the course amongst prosecutors in that.
7 There are a lot of reasons why you wouldn't want to just ask someone for their phone.

8 Principally --

9 Q Sorry. Can I ask you to give us a few of those reasons?

10 A Yeah. Principally, it is because you want to obtain that evidence in unadulterated
11 form. And if I were to just ask someone to turn over their phone and give me evidence, they could
12 say no, they could delete things, they could modify things, they could add things, they could change
13 things. I would not have a clear and unvarnished picture of what was on that phone.

14 So there are a lot of reasons related to the preservation of evidence why you wouldn't want
15 to do that.

16 Q Would you say it's fair to say that by seeking a court authorization to search someone's
17 phone, it helps preserve the integrity of the investigation?

18 A I think that's fair, yes.

19 Q Okay. I'm going to introduce another exhibit. It will actually be a court opinion about
20 the Speech or Debate Clause issues.

21 [Duree Exhibit No. 4.

22 was marked for identification.]

23 BY :

24 Q So this will be exhibit 4. It is a December 19th, 2023, opinion out of the District Court
25 of D.C. I'll give you a second to look over that.

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1 A I'm familiar with this. Do you need me to read the whole thing?

2 Q Oh, no. I'll direct you to some pages as well as we go through this. Now, just to give
3 a little bit of procedural posture before this, please correct me if I misstate anything.

4 I believe there was a district court opinion that was initially entered over specific
5 communication by Judge Boasberg that went up to the circuit court, which then sent it back down to
6 Judge Boasberg to do a -- almost a document-by-document analysis under Gravel v. United States.

7 Is that what you recall as a summary of the procedural posture of this?

8 A One change. I think that the chief judge at the time this initially came before her was
9 Judge Howell. So it went from Judge Howell to the D.C. Circuit, and then to Judge Boasberg, who in
10 the time in between, had become the chief.

11 Q Thank you for that clarification. I appreciate that.

12 So let's start on page 1 on the bottom of the first paragraph. And just to add on to the
13 summary that I just kind of gave, specifically in your words, or in your opinion, why did the circuit

14 court or what was the reason for the circuit court remanding this case back down to district court?
15 I believe they talk about it at the end of the first paragraph.
16 A Yeah. I mean, it's -- the opinion sort of speaks for itself. And I would be hesitant to
17 say more about the circuit than I have to.
18 But essentially, yes, the D.C. Circuit wanted the district court to apply a fact-specific inquiry
19 that it believed the district court had not fully done the first time around.
20 Q Thank you. We'll go to page 11. So in general, I kind of just want to get a sense of
21 what the court ruled when it came to the actual records related to Congressman Perry and what he
22 had to disclose. Feel free to reference any part of this opinion.
23 I know that 11 and 12 talk about this. But can you give us a summary of what the court
24 ordered Congressman Perry to disclose?
25 A In summary, the court ordered Congressman Perry to disclose the vast majority of

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1 documents that were in dispute on the phone.
2 As I remember it, the court determined that many of the things that Congressman Perry was
3 claiming to be legislative act, materials were not, and so Congressman Perry was required to turn
4 over to us everything except certain, like, maybe legislative newsletters, things like that, that were
5 legislative acts.
6 Q Okay. And just to make sure it's clear for the record, from this opinion on the bottom
7 of page 11, it says that Congressman Perry must disclose to the Government 1,659 of the 2,055
8 records still at issue.
9 A Uh-huh.
10 Q Is that accurate with the opinion?
11 A I don't remember the exact -- that is what the opinion states, yes.
12 Q Okay. So additionally, the court said that Congressman Perry was only permitted to
13 withhold 396 documents under Speech or Debate Clause. Is that correct?
14 A That is what the opinion says.
15 Q So I guess taking a step back, would you say it was -- would you say or would you agree
16 with the assertion that Congressman Perry had the opportunity to litigate Speech or Debate Clause
17 issues before the Department of Justice was able to consider those messages or communications as
18 part of your investigation?
19 A He did, as evidenced by the fact that the litigation happened.
20 Q I think you also mentioned earlier when discussing investigative actions dealing with
21 Members of Congress or political leaders that you sought to, I guess, image the phone as quickly as
22 possible, I think, is the term you used. Do you recall saying that?
23 A I do.
24 Q I guess, why were you trying to image the phone as quickly as possible? You touched
25 on it a little bit, but I would love to hear why you were trying to image it as quickly as possible for

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1 Congressman Perry.
2 A To minimize the disruption to Congressman Perry, fundamentally.
3 Q And why was it important to minimize the disruption for Congressman Perry?
4 A We basically did not want to impede Congressman Perry's ability to use his phone and
5 live his life any more than we absolutely had to. We believed that we -- the court agreed that we
6 were entitled to the evidence on that phone.

7 We believed that we needed that phone -- that that evidence would be useful to advance our
8 case, but we also recognized that a search warrant is a powerful tool and invasive tool, so we wanted
9 to minimize the disruption.

10 Q Is this something, I guess -- and by "something," I mean, minimizing the disruption,
11 moving as quickly as possible when you image somebody's phone.

12 Did you do that with every subject of investigations during your career?

13 A I -- I tried to be as cautious as I could, and I always tried to remember not to allow
14 the -- I did my best not to allow the tools of criminal investigation to disrupt the lives of those who
15 were within the scope of the investigation any more than we had to.

16 This was probably quicker than a quicker-than-normal turnaround, but circumstances of cases
17 and facts of cases differ. I can't say that I turned many phones -- that I was on teams that turned
18 many phones around quite this quickly, but we tried to be fast and efficient when we could.

19 Q I'm going to introduce another exhibit. This will be exhibit 5, I believe, and it will be
20 the Volume 1 of the special counsel report.

21 A Okay.

22 [Duree Exhibit No. 5.

23 was marked for identification.]

24 BY :

25 Q Do you have a copy of volume -- are you familiar with this?

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1 A I should probably look at a copy.

2 Q Please take a second to refresh your recollection. We're going to start on page 53, just
3 because I want to continue a line of questioning from the last hour, but then we'll go back to the
4 beginning after that.

5 A I'll tell you this. I'm not -- it's a long document. I'm not going to sit and read
6 150-something pages.

7 Q Great.

8 A But if, like, this -- from the few seconds I've looked at it, this appears to be the report of
9 the election investigation that we prepared at the end of the special counsel's office. And if that is
10 this report, I'm familiar with it.

11 Q So to carry on what you just said -- and thank you for that summary -- did you assist in
12 the preparation of volume 1 of the special counsel's report related to the election interference?

13 A I believe that I did.

14 Q And so I believe you just said also you're familiar generally with the contents of this
15 report?

16 A Yes, sir.

17 Q Actually, let's go right to page 53. During the last hour there was a discussion about
18 fake or fraudulent electors.

19 And I guess what the President Trump might have believed to be outcome-determinative
20 fraud or issues in certain States. Do you recall that conversation last hour?

21 A Yes. Yes, sir.

22 Q Would you -- I guess, the notion of President Trump believing an
23 outcome-determinative fraud, did you all seek evidence to see whether that was a reasonable
24 conclusion for the President to come to during this relevant time period?

25 A Yes.

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1 Q And what evidence -- just give us an example -- and I think page 53 actually outlines
2 some of the evidence you found that should have made it or President Trump should have known or
3 a reasonable person would have known that there was no outcome-determinative fraud for the
4 election integrity that caused him to lose?

5 A I cannot in the time we have identify all the evidence on that point because there was a
6 lot.

7 But in broad summary, the President's advisers, people that were in positions close to him,
8 positions that appeared to be positions of trust, told him at various points throughout the
9 election -- the post-election period that the allegations he was making were not substantiated by the
10 evidence. That was people, you know, at high levels within the Federal Government, like the
11 Attorney General, people, as I recollect, within the White House counsel's office.

12 Then that was -- those same statements were made by State and -- by State and local leaders
13 on the ground in the various States. So a few that come to mind, among many others, Brad
14 Raffensperger in Georgia, prominently, let the President know that allegations of fraud being made
in

15 Georgia were false.

16 The Attorney General of Georgia, Chris Carr, told the President that they weren't seeing
17 evidence of what he was -- what he was saying -- what the President was saying had happened.

18 In Michigan, State -- a State legislative leader that I'm thinking of right now also conveyed that
19 they were not seeing what the President was saying.

20 And I'll pause there for just a second to say, in each instance, these were -- these State and
21 local leaders were Republicans, people of the same party as the President. And a theme that
22 developed throughout the case is that it appeared that President Trump may have been preying on
23 party loyalty and presuming that people within his party would bend their ethics and their morals
24 and their sense of truth based on their party affiliation.

25 And we found out, reassuringly, happily, that there were a good many people who would not

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1 do that. So those were parts of it, and I'll continue just a little bit longer to say, there was also
2 significant evidence that we developed about the overall structure of how the elections worked in
3 each contested State, Michigan, Georgia, Pennsylvania, all six or seven of them.

4 And the evidence we developed made it clear that not only had the fraud being alleged not
5 happened, but that in many, many, many instances, the allegations that were made would have been
6 virtually impossible to have happened, that the structures and redundancies set up in these systems
7 would not permit such things.

8 So that's a relatively broad overview of some of the evidence.

9 Q Thank you. And just taking what you said, that thread of, quote, "virtually impossible,"
10 is it fair to say that the office -- the Special Counsel's Office developed strong proof that Mr. Trump
11 should have known that his election fraud claims were false?

12 A Yes.

13 Q Thank you. Going back to just the special counsel's report in general -- and special
14 counsels' reports in general, not just the one led by Mr. Jack Smith but led by others, do you think
it's

15 important for the public to be aware of special counsel's investigative findings?

16 A I hesitate to answer that question because I -- I do think that, yes, the public should be
17 aware. I also think that the rights of the criminally accused are paramount, and I wouldn't want to,
18 you know, accuse people of things that -- for which they've not been convicted.

19 But generally, yes, I know that prior special counsels have spoken about their work, and I
20 think that is a worthwhile thing.
21 Q And so going through what you just said of past special counsels speaking about their
22 work, to the best of your knowledge, was Special Counsel Mueller's report or parts of it made public
23 when -- at the conclusion of his investigation?
24 A I think so. I'm probably the wrong person to ask. I don't know -- I don't much
25 anything about any special counsel's office other than Mr. Smith's.

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1 Q Okay. I'm just going to go through a few, and if you don't recall, that's fine.
2 Do you recall whether Special Counsel Hur's report was made public at the conclusion of his
3 investigation?
4 A Might have been.
5 Q And are you aware of whether Special Counsel Weiss's report was made public at the
6 conclusion of his investigation?
7 A I don't know.
8 Q Okay. In this report that you all drafted, volume 1 of Special Counsel Jack Smith's
9 report, it documents Donald Trump's crimes attempting to overturn the election results. So I want
10 to direct you to page 2 specifically here.
11 A Page 2 of the report?
12 Q Page 2 of the report. Not the cover letter, but actual page 2.
13 And on page 2, the special counsel writes -- and this is a quote -- "When it became clear that
14 Trump had lost the election and that lawful means of challenging the election results had failed, he
15 resorted to a series of criminal efforts to retain power." Do you see that quote?
16 A Yes, sir.
17 Q Do you agree and stand by this summary of Donald Trump's criminal conduct in general?
18 A Yes, sir.
19 Q On the next page -- so page 3 of the report -- it outlines some of those criminal acts that
20 President Trump engaged in after he lost the election and after President Trump had exhausted
21 lawful means.
22 Can you summarize what some of these acts were that your report details?
23 A Well, it lists them right here. I'll just read from it because this is a good summary.
24 It included attempts to induce State officials to ignore true vote counts, to manufacture
25 fraudulent slates of presidential electors in seven States that President Trump had lost, to force

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1 Department of Justice officials and his own Vice President, Mike Pence, to act in contravention of
2 their oaths, and to instead advance President Trump's personal interest. And on January 6, 2021, to
3 direct an angry mob to the U.S. Capitol to obstruct the congressional certification of the presidential
4 election and then leverage rioters' violence to further delay those --
5 Mr. Dawson. I'll just caution the witness, for the court reporter's benefiting, if you're
6 reading, to read slowly.
7 Mr. Duree. I'm sorry. My apologies. But, yes, I am only reading verbatim -- virtually
8 verbatim from the report.
9 BY
10 Q Thank you. And eventually, the Special Counsel's Office indicted Mr. Trump for his
11 actions leading up to the -- leading up to the certification of the 2020 election. Is that correct?

12 A That's correct.

13 Q For these charges stemming from Mr. Trump's efforts to overturn the 2020 election, do
14 you believe that you had sufficient evidence to prove the charges beyond a reasonable doubt?

15 A Yes.

16 Q And do you believe there were multiple -- or do you believe there was a Federal interest
17 in proceeding with prosecuting Mr. Trump after he attempted to overturn the 2020 election?

18 A Absolutely.

19 Q Page 3 of the special counsel's report writes -- and this is a quote -- "Indeed,
20 Mr. Trump's cases represented ones in which the offenses was the most flagrant and the public harm
21 the greatest and the proof most certain."

22 Do you agree with this statement?

23 A Yes.

24 Q And can you just summarize for us, what was the public harm that was so significant
25 with this criminal conduct?

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1 A It remains hard for me to articulate. Smarter people can do better.

2 But the public harm is that President Trump -- we developed -- I believe that we developed
3 proof beyond a reasonable doubt that President Trump had tried to undermine the results of the
4 2020 election, and to do so is to undermine the very foundation of our democratic system.

5 If the sanctity of our elections is called into question, every single piece of this government
6 crumbles right behind it. Our safety, our peace, our well-being, our faith in our institutions,
7 everything.

8 It is hard for me to imagine a crime that has a more significant Federal interest than using the
9 highest office in the land to try to undermine the results of a proper election.

10 Q Thank you. All right. We'll end our hour there. Thank you.

11 [Recess.]

12 We'll go back on the record. The time is now 12:01 p.m.

13 BY

14 Q Mr. Duree, when we ended our last hour, we were discussing procedure of
15 Congressman Perry's cell phone. I want to jump back to that topic.

16 Did you ever become aware that the FBI surveilled Mr. Perry for a week prior to executing the
17 search warrant?

18 A I may have been aware. I'm not exactly sure what you mean by surveillance, but I may
19 have been aware of that.

20 Q And what were you aware of in terms of surveillance?

21 A Now, did you say before executing the search warrant?

22 Q Correct.

23 A Or before we obtained the search warrant?

24 Q It was before executing the search warrant. This occurred in the late July 2022 time
25 frame.

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1 A Oh, I'm not sure I can speak to that. I don't know.

2 What I remember is that we did need to identify where Congressman Perry was to actually
3 take the phone from him --

4 Q Okay.

5 A -- and wanted to do that, ideally, in a discreet way. But to answer your question, I'm
6 not remembering offhand. Show me documents, maybe you can refresh me.
7 I'm not remembering offhand whether the FBI looked at Mr. Perry's locations before we
8 obtained the search warrant.
9 Q Okay. Okay. So are you aware of whether -- you said there was some surveillance
10 that occurred before executing the search warrant to identify daily patterns, where he worked, his
11 associates. That occurred in the late July 2022 time frame.
12 Was there other surveillance of Mr. Perry that you are aware of?
13 A No. I mean, it's been years, so my memory might be a little hazy. Everything -- I
14 don't have great specific memories of that.
15 But everything you're describing to me seems like something that we would normally do in
16 the course of any investigation when trying to execute a search warrant. So it doesn't surprise me.
17 I just don't have a lot of specific memories to offer you.
18 BY
19 Q Was Mr. Perry a target at this point?
20 A Again, using the subject target witness sort of categories, I would not have called
21 Mr. Perry a target at this point. A target --
22 Q So there's no evidence that he did anything wrong?
23 A I didn't say that. I said a target is essentially -- you can look to the justice manual for
24 the exact wording. A target is someone that is a presumptive defendant, basically. I believe
25 Mr. Perry, at this point, was a subject.

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1 Q Okay. And when you obtained his phone, you had to litigate with his team over the
2 Speech or Debate issues, correct?
3 A Yes, sir.
4 Q And how long did that last?
5 A A long time. We -- I mean, the litigation -- the records of litigation, which are public,
6 speak for themselves. I don't have those dates --
7 Q Right.
8 A -- at hand. But roughly from, you know, August or September of '22 until the case
9 went up to the D.C. Circuit and back and Judge Boasberg's opinion came down in December of '23.
10 So it would have been entangled in litigation over a year and a few months.
11 Q So wouldn't it have been easier if you simply asked Representative Perry's lawyers for
12 the communications you were looking for?
13 A I don't believe so no.
14 Q And why is that?
15 A Well, the number one -- a few things here. One, I can't really speculate. The fact is
16 we didn't do that. And to do that would have been an extraordinarily unusual prosecutorial step in
17 this case or any other. But I don't believe it would have been easier. For all the reasons that I
18 described in the last hour that I'm sure you were listening to, if you seek to obtain something
19 voluntarily, people can just choose not to give it to you. That's one obvious thing. But there are
20 myriad opportunities for evidence to be altered, tampered with, deleted, added to. And in this
21 search warrant, same as any others, as I just explained in the last hour, it was important to me and
22 our team to obtain the evidence in a way that was unadulterated.
23 Q Okay. So you had concerns that Congressman Perry would alter, tamper, delete,
24 otherwise obstruct your investigation?
25 A I didn't say that.

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1 Q Then what did you say?

2 A I answered your questions as to what the concerns are that motivate a person.

3 Q Well, when you're dealing with a Member of Congress, you're obviously dealing with a
4 different -- a different type of individual.

5 I mean, this is somebody that has constitutionally been elected by his 800,000 people, or
6 whatever it is, in the State of Pennsylvania, and so he's obviously a person presumed to have honesty
7 and integrity.

8 A It is that line of thinking that is so perniciously dangerous. I do not mean for a second
9 to impugn Congressman Perry's integrity. But I will say, I am never going to look at a Congressman,
10 a janitor, a President, or a person on the street and presume that one person is more likely to be
11 honest, more likely to have integrity, more likely to be truthful than the others. To believe that
12 would be to corrupt my role as a prosecutor.

13 My role as a prosecutor is not to make value judgments about whether one person seems
14 more honest based on their status in life. My role is to follow the facts dispassionately where they
15 may lead, irrespective of the power or money or status or title a person might hold.

16 So I endeavored throughout this process to treat Congressman Perry exactly as I would treat
17 every other individual who was in possession of a phone that we needed to search. The only
18 wrinkle that was added is that, because of his status as a Congressman, we needed to consider
19 Rayburn and Speech or Debate considerations, which we did.

20 Q What were you seeking on his phone?

21 A Evidence.

22 Q But specifically, what were you seeking? I mean, did you want pictures of him and his
23 family?

24 A I don't believe that pictures of him and his family would have been particularly valuable
25 to our investigation.

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1 Q But you took them anyway?

2 A That is the nature of how a search warrant works, yes.

3 Q So what were you looking for on his phone? Did you want call records of who he was
4 calling while he was considering his legislative duties?

5 A As I believe I have explained, if you're intimating that those calls would have been
6 Speech or Debate protected in some way -- I'm not agreeing that records of calls would be -- we were
7 not at any point attempting to get Speech or Debate materials.

8 Q But you did anyway?

9 A No. In fact, as I have explained at great length, probably in a way that's kind of
10 tiresome to everyone in this room, we implemented strict and rigorous protocols to ensure that we
11 did not obtain Speech or Debate-protected materials and that our actions --

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1 [12:10 p.m.]

2 BY

3 Q Well, you did take it. It's whether you looked at it or not, whether you looked at it, but
4 somebody in DOJ did. There had to be a filter team.

5 A I don't think that that is true. Again, if -- I'd encourage you to familiarize yourself with
6 our protocols, which did not permit -- for which we're very careful in the way that, you know, Speech
7 or Debate material, should they exist, were handled.
8 I can answer your question by saying, yeah, we did take his phone. And whatever was on
9 that phone is something that was imaged.
10 Q And, again, what exactly were you looking for on the phone? If you weren't looking for
11 pictures of his family, if you weren't looking for phone call records, what were you looking for?
12 A Evidence. And to be a little more specific --
13 Q So what was the evidence you were looking for?
14 A To be a little more specific, we were looking for evidence of criminal conduct by any
15 party, and more specifically than that, evidence related to the effort to install Jeff Clark as the Acting
16 Attorney General, which was an investigative stream in which I had a significant part.
17 Q Okay. But specifically, were you looking for telephone records or content of his emails
18 or text messages with -- with who?
19 A You, naturally, when you execute a search warrant on a phone, are going to be looking
20 for content, right? Like phone tolls, call logs. Those are things that can be obtained in a less
21 burdensome way through subpoenas and that sort of thing.
22 But yes, we did seek content, content of text messages with individuals with whom Mr. Perry
23 was communicating and, again, more specifically, text messages relevant to the effort to utilize the
24 Department of Justice potentially to help overturn the 2020 election.
25 Q Okay. And how long was Mr. Perry without the use of his telephone, do you know?

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1 A Few hours. Couldn't tell you exactly how many.
2 Q Would it surprise you if it was all day, 9 to 5?
3 A No. I mean, could have been, yeah.
4 Q Okay. So for one day, Mr. Perry was out -- was without the ability to have
5 communications with his chief of staff?
6 A Again, if you --
7 Q Members of Congress?
8 A Are you -- are you asking me a question or should I wait for you?
9 Q I'm asking you, did you understand that Mr. Perry, while his phone was in DOJ's
10 possession, he was unable to have communications with his chief of staff, with Members of
11 Congress,
12 and with other key people that he needed to do his constitutionally elected responsibilities?
12 A I understood that while we took Mr. Perry's -- while we were in possession of Mr.
13 Perry's personal phone, Mr. Perry was not able to access that personal phone.
14 Q Okay. Did you understand, for example, he didn't know his chief of staff's telephone
15 number? I mean, a lot of people nowadays don't know the numbers. You know, it's programmed
16 in your phone under a contact card.
17 A Did I know that Congressman Perry didn't know his chief of staff's phone number?
18 Q And was unable to contact his chief of staff during that time period.
19 A I don't -- I don't recall if that was anything I knew. I don't know why I would know that.
20 Q Okay.
21 BY
22 Q Were there any conversations that were had about depriving Mr. Perry of his ability to
23 conduct his legislative duties while you all had his cell phone?
24 A As I've said, we worked to return the cell phone to Congressman Perry as quickly as we

25 could. It is understood when you take someone's phone that they are going to be deprived of use

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1 of that phone for a while. That's Congressman Perry, that's you, that's me, that's anyone else's cell
2 phone.

3 We consider that deprivation of the use of a cell phone is a thing that can be burdensome,
4 and so we tried to get it back to him as quick as we could.

5 Q When did the idea that the team needed toll records for Members of Congress, when
6 did that idea first come about?

7 We know there are subpoenas for Members of Congress in 2022 and 2023. So when did
8 that first come about that you thought you needed Members' phone logs?

9 A I understand what you're asking me. I think there might be a couple of things
10 conflated. At no point were we out to just, you know, we want to get Members of Congress' phone.
11 This wasn't a thing, right.

12 We -- there were Members' phones that I -- there were toll records for certain Members'
13 phones that I believe were obtained at different times in the course of the investigation. And those
14 tolls, along with tolls for dozens of -- dozens and dozens of other people, were obtained when they
15 were investigatively necessary.

16 And so those points came about -- and I can address whatever specific you'd like. Those
17 points came about at different times.

18 Q Okay. We can take each Member individually.

19 Let's have -- this will be exhibit No. 6.

20 [Duree Majority Exhibit No. 6.

21 was marked for identification.]

22 BY

23 Q And this is an email between you and Ms. Jennifer Clarke from PIN discussing toll
24 records for Chairman Jordan, who was the ranking member at the time, the relevant time period
25 here.

65

1 A Okay.

2 I'm going to enter as exhibit No. 7 too the actual subpoena that was issued for

3 Mr. Jordan.

4 Mr. Duree. Okay.

5 [Duree Majority Exhibit No. 7.

6 was marked for identification.]

7 Mr. Dawson. And based on that description of the next exhibit, I just want to caution that
8 for grand jury subpoenas, I'm hoping we can keep the questions at a certain level of abstraction,
9 which I think will still allow you to get all the answers you need. But I don't want Mr. Duree to be
10 confirming that a particular document is a legitimate grand jury subpoena or not. But email
11 records, contemplations of what was in one's mind at a certain phase of the investigation, I think
12 that's all fine. And I'm hoping that that's a guardrail that will work for you.

13 Has it been released publicly?

14 This has been released publicly, correct.

15 It's been publicly released.

16 Mr. Dawson. It has. The rules governing a government attorney remain even if, you know,
17 the subpoena recipient can disclose it. They can talk about what they say in the grand jury. And

18 there are still restrictions. And, again, I think we can get you what you need, but 6(e) is a
19 notoriously tricky, inconsistently interpreted provision. And so my job is, of course, to keep Mr.
20 Duree safe.

21 Mr. Duree. , what would you like to ask me?

22

23 Q Yes. So if we can look at exhibit No. 6 first, which is the email exchange. I thought it
24 would just be helpful to have both the email and the subpoena itself.

25 A Okay.

66

1 Q So we'll start with the email from Ms. Clarke to you on April 26, 2022, at 11:29 a.m., just
2 so the record's clear. I'll read the first sentence. It says, "PIN concurs with the proposed covert
3 investigative step of issuing a grand jury subpoena for toll records for the personal telephone number
4 of Rep. Jim Jordan for the time period of August 1st, 2020 through January 30th, 2021, based on the
5 fact that you have evidence that this phone number was in communication with Perry and others
6 suspected to be involved in alleged obstruction of the congressional certification proceeding on
7 January 6, 2021, related to the 2020 election for President of the United States."

8 So first, I want to talk about the timeframe of August 1st, 2020 through January 30th, 2021.

9 Why was there such a broad timeframe at this point?

10 A Okay. So I'm not remembering -- like, I see the words on the email, right. I

11 remember being part of the process to get the subpoena for Mr. Jordan's phone. I don't remember
12 the exact timeframe as I sit here talking to you today, the start and end dates of those records. So
13 it's a little hard for me to speak to that, but I will say we did subpoena a period of, I guess, some
14 breadth. And the -- you're asking me the reason why.

15 Q That's correct.

16 A Okay. I can tell you that.

17 Q And just -- sorry. Just before you start, I just want to point out that there's a
18 discrepancy with the email and then what's actually in the subpoena is -- you are correct that it was
19 some breadth. It was 2-and-a-half years. It was January 1st, 2020 to April 25th, 2022, was
20 when -- was the timeframe for the subpoena. So there's quite a change between what PIN signed
21 off on and what was in the subpoena.

22 A Okay.

23 Q So first, if you want to touch on why 2-and-a-half years was requested, and then if you
24 want to touch on the discrepancy.

25 A Yeah. Maybe because it relates to the timeframe, I'll touch on the discrepancy first --

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1 Q Okay.

2 A -- as you've identified it.

3 I don't -- I remember being part of the process of getting Mr. Jordan's toll records. And I
4 don't remember right now whether the records that we actually have were for August 1st or January
5 30th, whether they were for a 2-and-a-half-year period or whether they were from -- whether they
6 were from some other period.

7 I don't know that this is a genuine copy of the subpoena. I'm just not sure. But I do
8 remember being part of that process.

9 I don't know that there is a discrepancy, and I'll tell you what I mean. If you're telling me
10 that there are dates on these -- the date on this email that is different than the date on the

11 subpoena, I can give you a few possibilities as to why. But I'll start with sort of the unspoken
12 implication, just to clear that one out of the room.
13 There is absolutely no chance that I would ever have sought to circumvent PIN or go against
14 the order -- the direction they gave me. I saw, as a prosecutor, and continue to see, the adherence
15 and fidelity to process as sacrosanct. If a prosecutor does not follow the processes and instead, you
16 know, does what she or he wants to do, then the integrity of the system is undercut. I did not do
17 that in this case. I would not do that. That just plain old did not happen, period.
18 Now, as to why there's a discrepancy, there are a few possibilities. I had -- I haven't been
19 able to go back and look at my old emails from this time period, and my memory is hazy anyway,
but
20 I do know that I had lots of communications with PIN in this timeframe, with Ms. Clarke and others.
21 We had several phone calls. We had emails. We might have had like a video meeting or
22 something from time to time. So I talked to these people fairly regularly in this time period and
23 kept them informed about what we were doing.
24 I do not know if there is additional communication that expands or extends this timeframe.
25 Maybe Ms. Clarke got it wrong and she corrected it in a future one -- a future email. I don't know.

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1 There are probably other communications out there that would shed light on this.
2 Another -- I mean, another possibility is that there was a mistake. You know, if this was the
3 subpoena that was sent out -- I see Special Agent Burnett -- I see an email indicating to me, as this
4 email reads, that Special Agent Burnett sent a subpoena for a longer time period to -- to Verizon.
5 And if that happened, it would have been a mistake. He could have been using an old copy of the
6 subpoena, a different thing. I'm not sure.
7 I'd like to think that if there was a mistake, we would have caught it because, again, my
8 commitment to doing what PIN asked was strong and certain. So we would have -- I would like to
9 think that if there was a mistake, which is a possibility, we would have corrected it, sought additional
10 guidance from PIN, whatever.
11 But the bottom line is, I can't tell you exactly what the discrepancy was or if there was a
12 discrepancy at all, because I do not have the benefit of the full records.
13 Q But, I mean, that's a pretty big mistake. You went from wanting records for 6 months
14 to 2-and-a-half years. So can you just help explain how could it have gone from 6 months to
15 2-and-a-half years?
16 A And I'll tell you again, I'm not saying that we made a mistake. I offered the possibilities
17 to you. One that I think is less likely is that there was a mistake. And if we would have made a
18 mistake because, you know, the wrong dates were on the subpoena we sent or something, I would
19 like to think we would have corrected that. I don't know if there was a mistake.
20 Another possibility is that, amongst all the many phone calls, emails, video meetings,
21 everything else I had with PIN, that PIN authorized a longer time period. I just -- I just don't know.
22 I don't know that there was a mistake.
23 Q So if the criminal conduct that you were investigating at the time was the Clark matter
24 and trying to have him installed at the Justice Department, that was happening in the November
25 2020 timeframe -- is that correct? -- or in the post-election I know you described earlier?

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1 A December. The DOJ scheme was principally in December 2020 into early January
2 2021.

3 BY

4 Q So what did you need August, September, October phone records for?

5 A I'll tell you. What we knew -- so toll records are one way to build out -- one tool you
6 can use to build out an investigation and understand the people communicating with each other in
7 the timeframe of relevance.

8 All toll records tell me is that some certain number communicated with some other certain
9 number, right. But it's use -- they are useful to establish contact between people so that you can
10 understand who the individuals who appear to be part of your investigation were talking with. You
11 can understand their networks. You can understand who might otherwise be involved. You can
12 often exclude people who are not involved.

13 So I'm coming to a more comprehensive answer for you but, basically, that is why you need
14 toll records. Something that you have to be careful of, particularly in a case like Mr. Clark's, where
15 we're investigating really a 2-week period more than anything else for the DOJ scheme, is that all
you

16 get is a relatively tiny snapshot of the communication patterns of a person. And so you want to
17 extend the scope of the subpoena long enough so that you can see if the communications that were
18 occurring within that time period are abnormal or are exactly consistent with what that person
19 always otherwise does.

20 So for instance, right, if you looked at a 2-week snapshot of my phone, you'd probably see a
21 lot of calls with my wife. You could pull out from that and take a larger snapshot of my phone to
22 see is this person someone with whom Tad regularly communicates or is this a sudden abnormal,
you

23 know, party with whom you never communicated before or after. Those things can help you
24 identify the nature of the relationship, the frequency and duration of the communications.

25 And, as I said, understanding better whether the frequency with which people talk over a

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1 slightly longer term can help you both include and exclude people from the scope of your
2 investigation. So that's why we need a longer period, to contextualize and better understand if the
3 frequency of the calls in this period was abnormal or not.

4 Q But it becomes a problem when some of the phone -- the toll records you're seeking are
5 the President's political adversaries, in terms of Speaker McCarthy and Chairman Jordan.

6 A Are you telling me --

7 Q Like, developing a pattern of who Speaker McCarthy or, you know, soon-to-be Speaker
8 McCarthy and Chairman Jordan, develop -- you know, developing a record of who their network is
9 and how frequently they call, I mean, that is a real big problem.

10 A Is that a question to me?

11 Q Yeah. How can you do that?

12 A How can I -- I'm sorry, how can I do what?

13 Q So how does the Justice Department justify collecting all of this data and information
14 about the President's political adversaries?

15 A I don't -- I'm not trying to be dense. I don't think -- I don't think Chairman Jordan is
16 President Trump's political adversary.

17 Q President Biden.

18 A Oh, okay. I will tell you what we did and why we did it. We subpoenaed phone
19 numbers, including of instance -- of relevance to this immediate conversation, a 937 number that I
20 know pertains to Congressman Jordan. We subpoenaed that number because that number was in
21 contact with other individuals who were within the scope of our investigation. And we were trying

22 to develop evidence of that investigation to include, you know, whether -- to include building out an
23 understanding of the people involved, potentially, in the effort to overturn the election and to
24 elevate Jeff Clark within DOJ.

25 So we sought those records just to build out the network, and that is a completely normal,

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1 standard step in any criminal investigation. It has nothing to do with Mr. Jordan's status as a
2 Congressman or anything else and everything to do with this 937 number was contacting other
3 people of interest to me, and that's what we wanted to figure out.

4 Q So it didn't matter to you that he was the top Republican on the House Judiciary

5 Committee with oversight of the Justice Department?

6 A It mattered to me in that that meant that that 9 -- to get the subpoena for that 937

7 number, I was going to need to go through PIN and add some additional process. It mattered to me
8 because --

9 Q Those were speed bumps for you, right?

10 A I'm not going to classify them that way. I think that the policies that DOJ has are
11 thoughtfully made, and I understand why they have them. Whether I agree or disagree with them,
12 I'm a line prosecutor. I was a line prosecutor. I didn't make the policies.

13 What I'm telling you is that this 937 number was different from some of the other numbers I
14 subpoenaed only in that understanding, as I came to understand, that it was a Congressman's phone
15 number, we had to go through PIN to get approval.

16 Q Did you tell Mr. Burnett that the phone numbers included a Member of Congress when
17 you sought the subpoena?

18 A I would -- I don't recall what I specifically said to Mr. Burnett.

19 Q Would Mr. Burnett know that, know who the telephone numbers belonged to?

20 A Mr. Burnett was part of the investigative team at the time. I would have kept him, like
21 other members of the investigative team, apprised of investigative steps, of parties involved, and of
22 other things. So it is totally reasonable that I might have told Mr. Burnett who these phone
23 numbers were for, but I don't have a specific recollection of discussing this 937 number with
24 Mr. Burnett one way or the other.

25 Q So in the ordinary course, you think you probably would let him know whose numbers

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1 are involved?

2 A I'm -- I mean, I'm not saying that, right. Like, I certainly -- there would certainly be
3 nothing abnormal about letting my agents know the numbers we were subpoenaing. And given
4 that they are investigators, I think it would make sense.

5 Q Okay. And did he raise any issues that, you know, the Justice Department Inspector

6 General's Office has a special relationship with Congress, a special relationship with the Judiciary
7 Committee, that there presents a conflict there?

8 A I don't recall that.

9 Q Was that discussed?

10 A Again, I don't -- as I've told you, I don't recall discussing specifically this 937 number with
11 Special Agent Burnett, whether I did or whether I didn't. I don't recall a discussion on the point you
12 are describing.

13 Q Okay. And when you seek a nondisclosure order before the judge, you didn't let the

14 court know that you were seeking a nondisclosure order for a congressional telephone number. Is

15 that correct? A Member of Congress' phone?

16 A The NDOs would speak for themselves. I don't remember the specific wording of the
17 NDOs, but I do not think in 2022 that we were required to provide that information. We just did as
18 policy and law required us to do.

19 Q Do you understand that DOJ is required to do that now under their policy?

20 A I mean, you're telling me that. I don't -- I don't -- I don't dispute what you're telling
21 me. I don't work at DOJ anymore, and I haven't been keeping up to speed with developments on
22 the justice manual recently as much as I should.

23 At the time I was there, I was certainly cognizant of policies that affected the work I was
24 doing. I take your word. I don't know.

25 BY

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1 Q And looking back at the email here, the second full paragraph says, "PIN also concurs
2 with sending a preservation request to Google for the account -- redacted -- which is the personal
3 email account used by Jordan. There are numerous emails between this account and Perry's
4 personal account in December 2020 and early January 2021." Are you aware of whether you sent a
5 preservation request to Google for Mr. Jordan's email?

6 A I am not aware of if I did or I didn't, but if PIN concurred with it, I can see why you would
7 think that I did.

8 Q And with the preservation request, were you looking for the content of the emails, or
9 what were you --

10 A We don't get --

11 Q -- looking for there?

12 A I'm sorry, You don't get the content of an email with a preservation request.

13 A preservation request does just exactly what it says to do and basically nothing more. It causes the
14 email provider, in this case Google, to preserve it, to just not delete it.

15 So we didn't get anything. You don't -- you don't get anything from a provider through a
16 preservation request. You just have a request that they not destroy it or delete it.

17 Q And do you know if you ever got records from Google for Mr. Jordan's personal
18 account?

19 A You asking me if I got a subpoena for Jim Jordan's email?

20 Q Yes. Are you aware of --

21 A I'm sorry, a search warrant for Jim Jordan's email? I don't remember doing that. No,
22 I don't think so.

23 Q What about just a subpoena?

24 A I don't recall.

25 Q I want to turn to Ms. Clarke's Speech or Debate analysis here in the email.

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1 Can I just back up one second? I'm sorry.

2

3 Q If you had obtained a subpoena for the content of Mr. Jordan's emails -- the content,
4 not toll records, the content -- don't you think you would have remembered that?

5 A Yes, because that would be a terribly strange and procedurally -- like, it never happened.

6 You can't get a subpoena for content.

7 Q Okay.

8 A So I would --

9 Q So we're only talking about metadata here?

10 A No. I would -- I would never have sought a subpoena for content because the Fourth Amendment and all the rules that apply do not allow you to get content through a subpoena, period.

12 Q Okay. So what you don't remember about Mr. Jordan's email account is whether you sought metadata?

14 A Can you -- I don't know that I'm following the question exactly. I did not -- I guess I don't know.

16 Q So you do remember getting a subpoena for Mr. Jordan's toll records, for his --

17 A I do, yes.

18 Q -- his Verizon telephone number?

19 A That's the 937 number. Yes, sir, I do.

20 Q Okay. But you don't remember if you did anything with respect to Google?

21 A I -- correct. I do not. I have no specific recollection that I took any action as to

22 Congressman Jordan's, you know, Google accounts beyond potentially this preservation request, but I just don't remember. It was a long time ago.

24 Q Okay.

25 Looking to Ms. Clarke's Speech or Debate analysis, just reading the last

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1 paragraph on the page there, it says, "As we've previously discussed, obtaining these types of records from a third-party provider for the personal email address of a Member of Congress arguably does not violate the Speech or Debate Clause, even under an interpretation that the clause provides a privilege against disclosure, as the disclosure of the records is not compelled from the Member directly and the records are for the Member's personal email account rather than a congressional email account. That position is not without litigation risk as the D.C. Circuit does not interpret the privilege as one of nondisclosure."

8 Mr. Dawson. I'll just -- I guess, "the D.C. Circuit does interpret."

9 "Does," excuse me.

10 Mr. Dawson. Just for clarity on the record.

11 "Does interpret" -- thank you -- "the privilege as one of nondisclosure."

12 The paragraph --

13 I would just add that it's never been litigated whether the toll -- to the extent

14 the toll records are implicated in the Speech or Debate realm.

15 Mr. Dawson. I don't dispute that.

16 So I don't think it would surprise you that the House lawyers and Members of

17 Congress and their staff believe that the toll record content is protected by Speech or Debate.

18 Mr. Dawson. I have no doubt.

19

20 Q The paragraph mentions "previously discussed." Do you remember having any

21 conversations with Ms. Clarke prior to her memorializing all of this concurrence and analysis in the email?

23 A Like I said, I do remember having phone calls with Ms. Clarke. The exact timing of them I can't tell you.

25 Q And did you understand -- she mentions a lot in here the personal email account. Did

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1 you understand that this analysis also applied to the toll records as well?

2 A Where she writes about an email account, I presume that to apply to an email account.

3 Q Okay. So you didn't know if this applied to the toll records as well?

4 A Whether her statements about an email account applied to toll records?

5 Q Correct.

6 A I guess I don't.

7 Q And did it concern you that there was some litigation risk in issuing the subpoena for toll
8 records?

9 A It did not.

10 Q It did not. So you did not think that any of the toll records would be covered by the
11 Speech or Debate Clause?

12 A I do not and did not, but I will tell you a little more. We throughout this case did take
13 seriously and spend a lot of time thinking about the Speech or Debate Clause. There is the Rayburn
14 decision in the D.C. Circuit, which prohibits the disclosure of legislative materials, as those are
15 defined. There is no case law, that I'm aware of, supporting the idea that toll records, basically
16 records of one phone communicating with another, are themselves legislative acts.

17 So I understood that the Speech or Debate Clause was a thing that we need to consider.

18 And I understood that the exact question of whether toll records were legislative acts maybe had not
19 been squarely and decisively addressed, but I believed that this subpoena was appropriate and the
20 Speech or Debate concerns attendant thereto did not dissuade me from taking this investigative step.

21 I did not think then and do not think now that toll records are protected by the Speech or
22 Debate Clause, but I'm not a Supreme Court Justice or a D.C. Circuit judge.

23 And one of the huge upsides of this is that Mr. Jordan would never know and

24 the Members of Congress who you're seeking the toll records who have standing to bring this type
of

25 litigation would never know. Isn't that one of the upsides when calculating litigation risk?

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1 Mr. Duree. No. I'm not -- as is evidenced by our protocols and our work with Scott Perry's
2 phone and generally the way we approached and -- we approach litigation generally, I am not at all
3 afraid and I don't think anyone on my team was afraid of standing behind our legal arguments and
4 legal principles and allowing a judge to adjudicate the issues. We believed that what we were doing
5 was right under the law. And I would welcome the opportunity to, you know, have any sort of
6 clarity on any issue that existed.

7 But, you know -- yeah, a nondisclosure order does prohibit someone from, you know, having
8 the opportunity to intervene, I guess. I take your point on that.

9 Mr. Dawson. Did you have authority to draw your own Speech or Debate lines within the
10 Department?

11 Mr. Duree. No. No, I did not. I was doing what I was told.

12 BY

13 Q And when you all received the records of Mr. Jordan's phone calls for the
14 2-and-a-half-year timeframe, were those received by the DOJ OIG or did those get delivered to the
15 Justice Department?

16 A So again, I don't know that we got toll records for a 2-and-a-half-year timeframe. I

17 know that you've got the subpoena right here. I'm not sure what was actually returned or if this
18 was the operative subpoena. But I -- I'm not sure where those toll records would have first gone.

19 I presume, normally, the agent would -- an agent will download toll records from a law enforcement
20 internet site that Verizon has, something like that, but I don't -- I don't remember in this instance.

21 Q And how were those toll records that you did receive from Mr. Jordan's phone, how
22 were those used in the investigation?
23 A The same -- the same way that we use the dozens and dozens and dozens of other toll
24 records that we received, which is we looked at those toll records to determine parties with
25 whom -- people with whom parties, you know, we were looking at were talking, the frequency of

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1 those communications, the duration of those communications, the timing of those communications.

2 Q And wouldn't, if -- you know, before a big vote, who's calling a Representative, before
3 the big vote or after the big vote, what can you tell us of what was the analysis of the Justice
4 Department?

5 I understand we have different analyses of what's covered under Speech or Debate Clause.

6 What was the Justice Department's analysis of how that was not a legislative act of who a
7 Congressman is calling before and after a vote?

8 A My understanding of the Justice Department's position is what's encapsulated in this
9 email, that I as a line prosecutor had to seek approval for the search warrant -- not search warrant,
10 I'm sorry. I had to seek approval for this subpoena from PIN. I did seek approval from PIN. PIN
11 authorized the subpoena. And so I participated in obtaining that subpoena. That's it.

12 Q Was there ever a discussion that if you were able to map out who a Member was
13 calling -- who the Member was calling or who was calling a Member before and after a big vote,
how

14 that could be considered part of their legislative duty?

15 A I don't remember conversations on that, but I'll say that would have been of absolutely
16 zero interest to me or anyone on my team to map out people's congressional activities. We were
17 looking at the effort to overturn the 2020 election and specifically the DOJ scheme I described.

18 BY

19 Q Before we move on, the last two sentences of the Clarke email, she indicates, "You
20 should also notify ODAG via urgent report about legal process related to Jordan."

21 A Okay.

22 Q Did you need ODAG to okay or was this just simply a notification to ODAG?

23 A I don't remember. If she told us to notify ODAG, then I feel confident that
24 we -- someone on my team, I or someone else, would have notified ODAG. I'm basing only on the
25 words that I see here. I don't know.

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1 Q And who in Lisa Monaco's office would you have notified?

2 A I'm not sure I -- I'm not sure I remember who we had to notify for --

3 Q Was there a particular associate, deputy attorney general, that was keeping tabs on this
4 case?

5 A There may have been. I remember once or twice having communications with a
6 gentleman named Rush Atkinson, but I don't remember that, sir.

7 Q Okay. And do you remember contacting ODAG or notifying ODAG for any other
8 Member toll records subpoena?

9 A I don't remember whether I was the one who notified ODAG about this. I don't have a
10 specific recollection. But I'll tell you, if I obtained any other Members' toll records and if I was told
11 to notify ODAG, I notified ODAG. But I don't have a specific recollection.

12 Q Okay.

13 Mr. Dawson. It may be helpful. Do you know urgent reports more broadly, what an urgent
14 report is?

15 Mr. Duree. A little bit. I mean, I want to say at one point during this case -- and maybe this
16 was it -- I had to ask someone what an urgent report to ODAG was, because I didn't usually deal
17 with that sort of thing.

18 But my understanding is it's a -- my understanding is it's a notification to the Office of the
19 Deputy Attorney General of a investigative step or other thing that's going to be taken that might be,
20 you know, prominent or notable to ODAG, I guess.

21 Okay. We'll move on to another Member's toll records subpoena.

22 Mr. Dawson. It's a hard line to draw, but I'll just caution Mr. Duree to remember to discuss
23 the contemplated subpoenas, your intent, your planning, confine yourself not to address a particular
24 document as a legitimate or not subpoena. But, again, I don't think that'll impede the questioning.
25 . And this will be exhibit No. 8. It's an email exchange, again, between Ms.

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1 Clarke and Mr. Duree. This is on May 19, 2022, at 5:21 p.m. in regards to Chip Roy's toll records.

2 Mr. Duree. Okay.

3 [Duree Majority Exhibit No. 8.

4 was marked for identification.]

5 BY

6 Q And I'm sure you're familiar, but Chip Roy serves on the Judiciary Committee. He's a
7 Member from Texas.

8 Do you remember this email exchange at all or conversations surrounding getting Mr. Roy's
9 toll records?

10 A I don't really. I'm not doubting that it happened if you're telling me it did, but I don't
11 particularly remember this.

12 Q Okay. And do you remember figuring out what time period you needed Mr. Roy's
13 records? Here it's October 1st, 2020 through January 30th, 2021. Do you remember any
14 discussions about the timeframe?

15 A I don't. I'm sorry.

16 Q Do you remember if the approval process for the subpoena, you know, going through
17 PIN, having to notify the DAG's office, did any of that differ between April when you were issuing
18 Mr. Jordan's subpoena and this subpoena in May for Mr. Roy's records?

19 A I have no reason to believe that it did, but, again, I'll be as helpful as I can while telling
20 you I don't have a particular memory of the circumstances surrounding this.

21 Q Okay. And in looking at Ms. Clarke's email in the second paragraph in the middle after
22 the parenthetical, it says, "Should a court find that these election-fraud related calls involving
23 Members of Congress constituted legislative fact-finding and thus privileged legislative acts, under
24 Rayburn, you could be in violation of the privilege by even obtaining and possessing this
information

25 if the Member objected to the disclosure."

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1 Did you have any further discussions with Ms. Clarke about this specific sentence?

2 A I don't -- I don't remember. I see that sentence. I don't remember.

3 Q Were you concerned that you could be violating the Speech or Debate privilege by even

4 obtaining and possessing this information?

5 A I was -- I mean, she emailed this so I was aware of this as a possibility, but I don't
6 remember the level of concern, if any, I had about it.

7 Q Okay. And then, again, there was an NDO that was sought with this specific subpoena.

8 So Mr. Roy wouldn't have known about the subpoena to his service provider. Is that correct?

9 A If you're telling me there was an NDO, an NDO does stop notification, but I don't
10 remember that.

11 Q So how would he have been able to litigate this privilege issue had he not known about
12 the subpoena?

13 A Again, I don't -- I don't remember this email. I don't -- I don't remember this email, but
14 if there was an NDO as you're telling me, an NDO will prohibit a person who holds that phone
15 number from litigating issues surrounding the subpoena.

16 Q And this is a pretty unique privilege that's unique to Members of Congress, that's
17 embedded in the Constitution. There was no concern that you could be violating this privilege and
18 Members wouldn't be able to litigate their privilege underneath the Constitution?

19 A Like I said, I didn't say there was no concern. I certainly didn't say that there was no
20 consideration of this. I said -- I'm saying that I don't particularly remember the degree of concern, if
21 any, that we had over this.

22 I agree with you that Speech or Debate is -- the Speech or Debate Clause does provide
23 protections to Members of Congress.

24 Q And what remedy did these Members have to avail themselves of the Speech or Debate
25 Clause with these specific subpoenas?

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1 A I suppose that if there is a nondisclosure order in place, they are not able to challenge
2 the subpoenas.

3 Q So they had no remedy prior to their records being disclosed to the Justice Department.
4 Is that correct?

5 A I don't -- I mean, I don't know, strictly speaking, if that's entirely correct or not. I can
6 tell you if there was NDO, they're not going to be able to -- they're not -- the subpoena is not going to
7 be disclosed to them and so they wouldn't be able to challenge it. I agree with you on that.

8 Q Okay. On January 24th, 2023, a subpoena was issued for Speaker McCarthy's toll
9 records. What can you tell us about your involvement with that?

10 A I don't know if I was involved with it or not.

11 Q Okay. We -- you signed the subpoena.

12 A Okay.

13 Q So just wondering if you have any recollection of seeking process for Mr. -- Speaker
14 McCarthy's phone records?

15 A I don't. If you want to show me some documents, that could be helpful. I'll tell you
16 everything I remember. But I don't particularly remember that.

17 And it's a subpoena, but we will mark that as exhibit No. 9 I think we're up to.

18 [Duree Majority Exhibit No. 9.
19 was marked for identification.]

20 Mr. Dawson. And, of course, you're welcome to read the document and see if it refreshes
21 your memory.

22 Mr. Duree. Sure.

23 I'm sorry, ma'am. Where are you -- where are you seeing that this has my name on it?

24

25 Q So at the bottom of -- I think yours should be Bates stamped too. At 18. It's

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1 redacted, but in speaking with AT&T, it's your name that's underneath the redaction. It says
2 Timothy Duree.

3 A Okay.

4 Q So just wanted to know what you remember about any conversations you had about
5 subpoenaing toll records for the Speaker of the House.

6 A I don't -- I don't particularly remember -- I don't remember. I'll say that, you know, it
7 doesn't surprise me that I don't remember because over the course of this investigation, we did have
8 to get so so many subpoenas. And part of investigating wherever the facts lead, part of proceeding
9 impartially in your investigation is that you -- you need to obtain evidence relevant to your
10 investigation irrespective of where you might find that evidence.

11 And in this case, there were contacts with Members of Congress by parties relevant to our
12 investigation. So it doesn't surprise me that my office would have sought this subpoena, but I also
13 don't know that this would have struck me as a particularly, you know, huge thing.

14 And in context, we certainly would have sought the proper approvals. We certainly would
15 have done it the right way, but I just don't remember it.

16 Q And in this time period -- you know, January 23rd, 2023, is when the subpoena is dated.
17 Kevin McCarthy became Speaker January 7th, 2023, so couple weeks earlier.

18 Did any of the analysis change after he was elected Speaker of the House?

19 A As I said, I don't remember this, so I don't -- I don't remember.

20 Q Okay. So you don't remember signing a subpoena for the toll records of the Speaker of
21 the House of Representatives?

22 A I don't -- I don't dispute that I did. I just -- I don't remember one way or the other if I
23 did. And as I said, it would not have been -- and I understand why that might seem like a
24 particularly notable thing. But in the course of this investigation, given the topics we were
25 investigating and the magnitude of things being investigated, this doesn't strike me and I suppose

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1 didn't strike me as particularly abnormal. So I just -- I would love to be able to remember more and
2 tell you, but I just do not remember this.

3 Q And why wait until after he was elected Speaker? You sought Mr. Jordan's records in
4 April of 2022, Mr. Roy's records in May of 2022, and then waited until after McCarthy was elected
5 Speaker to send the subpoena for his records.

6 A I think that question might be based on a faulty premise. There was no -- there was no
7 intent to time the subpoena. I couldn't imagine that there was any intent to time the subpoena
8 related to, you know, when he occupied one role or another. I can't tell you why we issued the
9 subpoena on January 23rd, because I don't particularly remember this subpoena.

10 Q Okay. And so there were no extra approvals or anything that you had to get since this
11 was the Speaker's records?

12 A I don't remember. I can tell you just structurally one thing that may have been
13 different. By January 23rd, we're in the -- did you say it's January 23rd of 2023?

14 Q That's correct.

15 A By January 23rd, we're housed in the Special Counsel's Office. And so there was a
16 more rigid management structure. Things were a bit more solidified than they were in the early
17 days. So once Jack was in charge, the structure was, you know, Jack's at the top, J.P. below him,

18 filtering down through various people to me.

19 And I say that to tell you my -- my personal involvement with PIN may have been different at
20 this point.

21 Q Okay.

22 A I may no longer have been the person who needed to contact PIN. I'm not -- I'm not
23 sure if I did or I didn't, but it wouldn't surprise me if someone else in Special Counsel's Office
24 management was handling PIN-related communications at that point.

25 Q Okay. And the NDO that accompanied Speaker McCarthy's subpoena is Bates stamped

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1 19 at the bottom, if that's helpful.

2 A Okay.

3 Q It says, "the Court finds reasonable grounds to believe that such disclosure" -- of the
4 subpoena -- "will result in flight from prosecution, destruction of or tampering with evidence,
5 intimidation of potential witnesses, and serious jeopardy to the investigation."

6 What was the concern, that Speaker McCarthy was going to flee from prosecution?

7 A Now, it says that the court finds reasonable grounds to believe these things, not that
8 anyone on my team thought Kevin McCarthy was going to, you know, flee from prosecution.

9 This -- as I've explained already, we as prosecutors wanted to obtain evidence in its purest,
10 most complete, and most unadulterated form. And notification -- I'm not speaking about Kevin
11 McCarthy. I'm speaking generally about the NDOs and how it might apply in this instance.

12 Q But the NDO is specific to this subpoena. Is that correct?

13 A Yes. There is -- yeah, there is an NDO specific to the subpoena. What I'm saying to
14 you is NDOs are necessary -- are useful and helpful and necessary to investigations for a lot of
15 reasons, one being that even if a per -- you know, you're not accusing the person who has the phone
16 of being a criminal, but you are recognizing that if the fact of the subpoena or the fact of an
17 investigation becomes public, that that information can be spread about everywhere, that your
18 investigation could be compromised, that evidence could be manipulated or adjusted or something.
19 These are all concerns.

20 But as to what the -- what the specific concern was as to Mr. McCarthy, I do not know. I can
21 only tell you that, while I don't remember the specific subpoena or NDO, getting a subpoena like
this,

22 getting an NDO was absolutely par for the course in so many subpoenas that I have issued in my
23 career and that we issued in the Special Counsel's Office.

24 Q And how many other subpoenas were you involved with that sought records of
25 Members of Congress?

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1 A I -- beyond the ones we've talked about today?

2 Q Uh-huh.

3 A I don't -- I don't recall. I don't -- I don't specifically recall any. If you show me
4 documents that I was involved in subpoenas directed to the phone numbers of other Members of
5 Congress, that might jog my memory, but I can't name anybody else for you right now.

6 Q Yeah, we don't see your name anywhere when it comes to the subpoena that was
7 issued in May 2023 for the -- it was like nine Senators and Representative Kelly.

8 Do you remember any conversations about subpoenaing nine Senators and a Representative
9 all at once?

10 A I don't recall that.

11 Q You don't recall it? Okay.

12 A I don't know.

13 Mr. Dawson. One clarifying question. Would you have been involved in getting toll
14 records for Scott Perry? I'm not sure we talked about that specific --

15 Mr. Duree. Yes. You know, I believe that we did have toll records for Scott Perry, and
16 those would have proceeded via the same sort of, you know, procedural approval mechanism
17 through PIN as the others. I would've -- I would've been involved in that.

18 Mr. Dawson. Okay.

19

20 Q So did you stick with investigating the alleged misconduct at DOJ once you went over to
21 the special counsel's team or did your role broaden?

22 A My role broadened and then shifted. I did -- I did stick with the DOJ effort. That
23 remained a large part of what I did. But when we got to the Special Counsel's Office, there were
24 also a significant number of additional investigative workstreams that needed to be addressed and
25 developed.

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1 So I can tell you what they were if you want, but I do remember in the early part of '23
2 spending more of my time on investigative workstreams other than the DOJ one.

3 Q And what were those workstreams at that point in time, in the early 2023 timeframe?

4 A So a few things that I did. I was involved in the workstream to -- I'm not going to
5 remember if these workstreams even had specific names, but I was involved in the work to -- do you
6 need me to stop?

7 Q No, you can go ahead. We have 2 more minutes.

8 A I was involved in the workstream to figure out whether President Trump had pressured
9 officials at the State level to help overturn the vote or get the election decertified or assist him in
10 making, you know, unsubstantiated fraud allegations.

11 I participated in the workstream that involved going from State to State to understand the
12 election processes. And I remember being involved at times in the fraudulent elector workstream,
13 or you might want to call it the alternate elector workstream.

14 I remember doing some work on that and, you know, whatever else -- whatever else the
15 needs of the office dictated, but those are the -- those are the main things I'm remembering offhand.

16 Okay. We can go off the record.

17 [Recess.]

18 We'll go back on the record at 1:05 p.m. Eastern Time.

19 BY

20 Q I just want to pick up on some of the questions that were asked in the last hour, and
21 let's start with the chairman, Chairman Jordan.

22 A Okay.

23 Q I guess, what led you during the investigation, that you recall, to even, you know,
24 requesting the toll records of Chairman Jordan?

25 A Mr. Jordan -- the 937 number that I now know to be Chairman Jordan's was in contact

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1 with other phones held by people of relevance to our investigation.

2 Q Can you describe in more detail some of the other folks of relevance that Mr. Jordan

3 might have been in contact with which would have led to the request for the toll records?
4 A You're testing my memory now, but I remember Scott Perry for sure. I think Mark
5 Meadows. Mr. Jordan may have had communications with President Trump. I'm not sure if that
6 would have been on a cell phone or not. But I -- I don't remember the full cast at this point.
7 Q And I'll direct you to exhibit 6 that the majority entered in during their hour.
8 Look, I'll state the obvious, and I know I've heard some of our majority colleagues make this
9 point before, right, you mentioned President Trump, you mentioned Congressman Perry calling the
10 chairman. These are other congressional members.
11 I guess, what specifically about those calls from congressional Members to Chairman Jordan
12 stood out to you all during the course of your investigation? And I think it's referenced in PIN's
13 email back to you in exhibit 6.
14 A Okay. Yeah, as I look at this pretty -- give me just a second.
15 Q Please take your time.
16 A Yeah, this jogs my memory a little bit. And I should say, to be really clear, I
17 just -- I'm -- as to exactly who Mr. Jordan was contacting, I -- you know, I tried to offer a couple
18 names to be helpful. I really don't remember offhand -- it's just been so long -- which -- you know,
19 who was in that set of people. I really don't.
20 But what I do remember is this: As I've said, I was looking to understand as
21 comprehensively as I could what happened in the, roughly, 2-week period in which there was this
22 effort to elevate Jeff Clark to the acting attorney general's role. And in that time period, Mr. Clark
23 and Scott Perry were in very frequent communication.
24 One of the steps that I took in the early days of the commun- -- in the early days of the case,
25 in April '22 was, you know, relatively early on, is we were trying to build out our understanding of

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1 who was talking with whom and who may have been involved, understanding that not every person
2 with whom another person might talk is necessarily involved in one thing or another. It's just that,
3 you know, understanding the nature of the communications provides you a bit of evidence that's
4 useful.
5 So I sought subpoenas for many numbers that were in contact with Mr. Clark and many
6 numbers that were in contact with Mr. Perry. A thing that I remember doing in general is that once
7 we would get those subpoenas back, we would look through the toll records to identify if there were
8 any common numbers called between that number we'd subpoenaed and the other people we had
9 already -- that are already falling within the scope of our investigation.
10 We would look at the frequency of those calls. We would try to better understand who was
11 talking to whom so that we could build out things like, you know, on date X Jeff Clark called person
12 A.
13 Person B called person C. As soon as that call was over, person B called person -- called Jeff Clark
14 again. So understanding the play-by-play of how it happened.
15 So what brought -- I don't want to say that it brought Congressman Jordan to my attention.
16 What brought the 937 area code phone number to my attention was that that phone number was in
17 contact at relevant times with parties that were pertinent to our investigation.
18 Q And are these types of toll records, the way you just described it, are they helpful in
19 corroborating witness testimony as you're doing your investigation?
20 A They certainly can be.
21 Q And would this type of evidence typically or could it be used to corroborate the witness
22 testimony at trial if it would have gotten to that point?
23 A Yes, sir.

23 Q And is this type of evidence used to build chronologies like you just described, a series of
24 events or a timeline of events?

25 A Yes. That was -- that was one of the key things I was envisioning, yes.

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1 Q Going back as well, I think within the last hour we mentioned Congressman Roy as well.

2 Do you recall Congressman Roy's relevance to the investigation?

3 A Not really. If you want to show me some records, you can jog my memory, but I know
4 that he was a name that came up. But exactly how and the context, I'm struggling to pull those
5 specifics.

6 Q Okay. There was also questions in the last hour about collecting information about

7 President Biden's adversaries I think was -- do you remember those questions?

8 A I do. I do.

9 Q At any point during your investigation, were you collecting information for the benefit of
10 President Biden?

11 A Never.

12 Q Were you collecting information of individuals that you perceived to be adversaries to
13 the Democratic Party?

14 A No, we were not collecting any information for any political purpose.

15 Q Were you collecting information at the direction of President Biden or Vice President
16 Kamala Harris?

17 A Absolutely not.

18 Q Were you collecting information at the direction of Attorney General Merrick Garland?

19 A No, not that I know of.

20 Q You discussed as well and we've seen the emails of you going through PIN before
21 collecting these types of information. Can we -- and I think you've touched on this before, but just
22 to make sure it's clear, what role did PIN play? Why were you going to PIN when requesting these
23 types of records?

24 A So PIN has consulting authority on investigative actions taken in relation to Members of
25 Congress. So even though PIN wasn't, you know, my supervisor or anything -- I didn't have a

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1 supervisor in PIN. PIN's job was to -- PIN had a duty under the Justice manual to be the entity with
2 which we consulted when taking investigative steps relevant to Congress people. So we followed
3 the Justice manual.

4 Q So let's take another investigation, not, for example, the election conspiracy
5 investigation. Let's take a -- say you're investigating another Member of Congress or public official.
6 Would you have to consult PIN in those situations as well?

7 A I presume so yes. I would do -- if I were investigating a Member of Congress or I were
8 investigating a case that in which I needed evidence from a Member of Congress, I would do exactly
9 as the Justice manual requires. And at the time, that required consultation with PIN.

10 Q And I do want to go back to kind of the earlier one I was talking about, and I think the
11 majority might have mentioned this as well, Chairman Jordan's role on Judiciary and the
12 Department

12 of Justice requesting his toll records with him having that role.

13 Had Mr. Jeffrey Clark or Congressman Scott Perry called Ranking Member Nadler about
14 elevating Mr. Clark within the Department of Justice, would you have requested Mr. Nadler's

records

15 as well?

16 A Yes. I want to emphasize here on that point, the records -- what was relevant to me

17 was the 937 phone number that was communicating with parties of interest. I had no particular

18 focus on the titles or professional positions held by the people owning those phones at the moment.

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1 [1:13 p.m.]

2 BY :

3 Q Going back to PIN, are you aware if there's been broad personnel changes at Public

4 Integrity since President Trump assumed office in 2025?

5 A It is my understanding that there has. I'm not a DOJ anymore, so I can't speak too

6 much to --

7 Q Is it your understanding that many folks have been fired from PIN since President Trump

8 assumed office in January 2025?

9 A I honestly am not sure. I have read the news and understand through, you know,

10 colleagues that there had been broad personnel changes. I don't know how the personnel changes

11 came about exactly.

12 Q Is it your belief that gutting PIN, you know, could lead to more or less potential missteps,

13 right, in sensitive investigations? Like how would gutting PIN actually impact the issues that both

14 the majority and minority seem to be asking about today?

15 A So I was only a line prosecutor on this case, but what I will tell you is this: My

16 experience with PIN, PIN attorneys were professionals, seasoned, and the work that they did -- and I
17 personally have found PIN'S guidance to be valuable.

18 Q Okay. Going back to your time as well on the special counsel's Office, in the special

19 counsel's Office investigating these claims in 2022 and moving forward, I guess, how has, you
20 know,

21 being a member of this team and maybe some of the attacks about your investigation, how has that
22 impacted your life, if at all?

23 A How the attacks on the team affect my life or being part of the team?

24 Q Yeah, the attacks on the team that you were a part of, how has that impacted your life?

25 A I personally have found it disappointing that the work of our team has been called into
question or politicized in a way that I as someone on the team believe to be completely unfounded

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1 and completely unfair.

2 But at the same time, I am grateful for the opportunity to do things like be here today and

3 clarify some of that, so that I can hopefully help people understand the nature of the work that we

4 did. And although it's not exactly the question, I do want to emphasize, I felt then and feel now so

5 immensely lucky to have been able to work with the spectacular people on that team that I will

6 consider the time that I spent working with that team on a case of this magnitude to be, you know, a
7 great professional highlight.

8 Q And while we thank you for your service of engaging in this investigation, right, to

9 preserve, right, the election and the transfer, the peaceful transfer of power, we've heard from

10 others, they might have had to take additional steps for their safety, for their family's safety, things

11 of that nature of being a part of this team. Have you had to take similar steps in your own personal
12 life?

13 A You know, we definitely -- I definitely was cautious, but, you know, nothing. Do you
14 want me to identify specific things that we've done?
15 Q Whatever you're comfortable. I think I'm just trying to get a sense of how the
16 politicization of this investigation has impacted the civil servants' life afterward -- lives afterwards?
17 A I did feel like it was prudent to be more cautious and to, you know, take certain steps to
18 minimize the availability of my -- of putting my personal information online, and that kind of thing.
I
19 have taken a few steps.
20 Q Has it impacted your family -- I know you mentioned you wife earlier -- has it impacted
21 our family as well?
22 A You would have to ask my wife.
23 Q I am not going to speculate on your wife. I hear you on that. Has this committee's
24 investigation brought more attention specifically to you than what you might have envisioned or
25 appreciated?

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1 A Well, "appreciate" is hard to say. If I wasn't here today, I would be at work doing my
2 other job, my day job, and this has taken time away from that. But as I said, I am proud of the work
3 that we did. I believe wholeheartedly that we did the right things for the right reason. And I am
4 grateful to have the opportunity to talk to y'all and explain some of that.
5 Q And just a little bit of housekeeping. I know we've shown you a series of documents
6 today from your emails to PIN, subpoenas for toll records. I just want to do some level setting.
7 Have you had a chance to review your records at the Department of Justice from this time period?
8 A I have not reviewed my records at the Department of Justice.
9 Q Has the Department of Justice reached out to you about helping them identify records
10 that they have produced to this committee?
11 Mr. Dawson. Are you aware.
12 Mr. Duree. I have not received any reach-out.
13 BY
14 Q In, fact I'm just using exhibit 6 because it's the one I have in front of me as an example.
15 Are there any Bates numbers on this exhibit that you see?
16 A Which one is exhibit 6?
17 Q Exhibit 6 is your email with PIN from April 26, 2022.
18 A No, there's no Bates numbers.
19 Q So sitting here today, are you aware of whether you know, this committee has received
20 a complete set of emails between the special counsel's Office and PIN, for example?
21 A I have no idea.
22 Q Okay. I think that's all we have. We'll go off the record now. Thanks.
23 [Discussion off the record.]
24 BY
25 Q We'll go back on the record. It's now 1:25 p.m. During the break, we passed out

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1 what will be exhibit 10, which is a lengthy document, and it includes an email exchange between
2 Molly Gaston, J.P. Cooney, Thomas Windom, and they're discussing toll record subpoena for
3 Senators' records.
4 I am going to specifically draw your attention to -- it's page 7 of the packet, and there is an

5 email exchange between Ms. Gaston and John Keller, who was the Principal Deputy Chief of the
6 Public Integrity section.

7 Now, I know in the previous hour you had mentioned that quite possibly when the special
8 counsel took over the investigation, you may have not been the one that was interacting with the
9 Public Integrity Section. Is that correct?

10 A That's correct.

11 Q Do you ever remember discussing interacting with the Public Integrity Section with
12 Molly Gaston?

13 A Do I remember discussing interacting with Molly Gaston or discussing with Molly
14 interactions with PIN?

15 Q Correct. The latter.

16 A It could have come up, but I don't have a specific recollection of any conversations
17 about PIN with Ms. Gaston.

18 Q And do you know if she was designated an individual to reach out to PIN?

19 A I don't know. I don't know.

20 Q And during our last hour together we had discussed whether or not you remembered
21 subpoenas for Senators' records, and I believe you said you did not. Is that correct?

22 A I did not participate in -- I do not remember participating in those at all.

23 Q Okay. Do you remember participating in any discussions regarding the Speech or
24 Debate Clause in that context?

25 A In the context of those Senators --

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1 Q Correct.

2 A -- no, because, as I said, I don't think I was part of those conversations. And if I was, I
3 don't remember it.

4 Q Okay. And I want to walk through Mr. Keller's email just giving your knowledge of the
5 case as well as having prior interaction with PIN and just kind of walk through what was going on
6 here.

7 So looking at the paragraph, it says: Based on the email below in our conversation, PIN
8 concurs in the subpoenas for toll records for identified Members of Congress from January 4th, 2021,
9 through January 7, 2021. As you are aware, there is some litigation risk regarding whether
10 compelled disclosure of toll records of a Member's legislative calls violates the Speech or Debate
11 Clause in the D.C. circuit. Then the next parenthetical states, The bar on compelled disclosure is
12 absolute. And that is quoting from a case.

13 I want to break this down just a little bit. But the toll records for the Senators were only
14 requested between January 4th, 2021, and January 7th, 2021. Can you help explain why the
15 timeframe was so narrow in comparison to what was requested for, you know, Mr. Jordan and Mr.
16 Roy?

17 A Sure. So I can't tell you precisely -- I can't tell you without speculating as to why these
18 3 days were requested because I wasn't on these emails' prior conversations. But I can tell you why
19 the scope narrowed. This is completely normal and standard in a criminal investigation.

20 At the beginning of an investigation -- and I'll tell you generally and apply it to this case.

21 At the beginning of investigation, you know some information, but you're trying to build out
22 your understanding. You want to know the parties involved and all that, and you're trying to build
23 out contacts and understand the folks involved at a broad level. As you build your understanding of
24 the case, you've laid your foundation and understand what the facts are and who the people
25 involved might be, then you start digging in more, refining your focus so that ideally if you've done

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1 your investigation thoroughly, you've done your investigation well, you're going to go from spot at
2 the beginning where you're looking broadly to sort of learn the landscape to a spot at the end where
3 you were laser-focused on developing evidence of specific criminal conduct. And I believe that
4 is -- without speculating or why these 3 days exactly were the ones chosen -- I believe that that is
5 what happened here. That in 2022 when I am beginning to run in the early stages of investigating
6 the DOJ stuff, we were trying to build out our understanding of who may or may not have been
7 involved and understand the universe myriad investigation.

8 By this point in 2023 which is a few months before we did the grand jury returned an
9 indictment against the President in our election case, our investigative focus had refined greatly so
10 that we could specifically target real narrow date ranges, knowing we needed specific information
11 about individual things. And that is a function of a -- that's a particularly normal thing that
12 happens -- in a function of the investigation narrowing if the work is done well as the investigation
13 develops.

14 Q And in speaking with the other prosecutors who have been involved in these subpoenas,
15 you know, they have stated they needed the Senators' toll records. And I'm using Senators, but
16 Representative Kelly was in that subpoena as well -- but Senators' toll records was -- because they
17 had the President's phone records, and they had Mayor Giuliani's phone records, and they were
18 tracking who was calling who, but they needed the Senators' phone records to nail down a timeline
19 of who the President was communicating with. Do you remember any discussions along that line?

20 A I remember generally that being -- that being -- I remember generally there being
21 interest in understanding who was called in the late afternoon, early evening hours of January 6th.

22 Q Okay. And do you know why they still needed the Senators' records even though they
23 had all of these other returns from toll records?

24 A I don't know the specific rationale. I could hazard a guess to reasons, but I don't think
25 that would be productive. I wasn't part of these conversations.

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1 Q And turning back to the email I read the couple sentences of: As you are aware, there
2 is some litigation risk regarding whether compelled disclosure of toll records of a Member's
3 legislative calls violates the Speech or Debate Clause in the D.C. Circuit. Then Mr. Keller quotes
4 some D.C. Circuit cases. One is the bar on compelled disclosure is absolute. Further down, it says:
5 The caselaw is clear that a legislator asserting the invasion of the Speech or Debate Clause privilege
6 by use of the grand jury subpoena to a third party may intervene and oppose such use.

7 Would you agree that a legislator should be able to intervene if the subpoena is to a third
8 party to a service provider to litigate their rights under the Speech or Debate Clause?

9 A First, could you point me to where you're reading.

10 Q Yes, the specific to third party is right after the member?

11 A 594.

12 Q 594. And then it says: The caselaw is clear that a legislator asserting the invasion of
13 the Speech or Debate Clause privilege by use of a grand jury subpoena to a third party may
intervene

14 and oppose such use."

15 A Okay.

16 Q I guess, first of all, was there any discussion of this specific caselaw where the subpoena
17 is to a third party, such as a service provider for a Members' records?

18 A In this context specifically, I don't know, because I wasn't party to these conversations.
19 Q Did this case ever come up in the previous subpoenas that you were involved with.
20 A I can't say I can remember every Speech or Debate Clause case that we analyzed or
21 considered. Just looking at this as it is, the case that you cited, that Mr. Keller is referencing here is
22 a Third Circuit case. The D.C. Circuit, where we were, is a different circuit and has its own
particular
23 and unique Speech or Debate laws.
24 So it's possible that this case would have come up in prior research. I don't doubt it, but I
25 don't have a particular memory. And I'll note that this will be an opinion from outside the most

99

1 pertinent --

2 Q So were prosecutors just unconcerned that even records from a third party for a
3 Member of Congress could be privileged under the Speech or Debate Clause?
4 A I wouldn't say that a second. I would say we were hyper vigilant and extremely aware
5 of the contours of the Speech or Debate Clause. We knew that Speech or Debate was something
6 that we had to navigate. We treated it seriously. There are portions of the Speech or Debate
7 caselaw that might, in different circuits, be a little bit underdeveloped, such that the guidance is not
8 entirely clear. But we were very much aware of Speech or Debate, the Speech or Debate Clause
9 and committed to following the law that pertained to us relating to the Speech or Debate Clause, and
10 did the very best we could to navigate and resolve any uncertainty that may have existed therein.
11 We were not unconcerned about the Speech or Debate Clause.
12 Q The last clause here says: Given my understanding of the low likelihood that any of the
13 Members listed below would be charged, the litigation risk should be minimal here.
14 Were you aware that there was, indeed, some sort of litigation risk involved with issuing
15 these subpoenas? I know this is specific to the Senators, but this is a more in-depth Speech or
16 Debate analysis than what went on in the other PIN emails?
17 A I was aware that -- at some point I became aware that certain of the specific issues that
18 we were addressing, or what we were running into were arguably not fully resolved by the existing
19 caselaw on Speech or Debate. And that's a common thing, particularly in complex investigation, to
20 run into the corners of the law that aren't fully built out.
21 Yeah, I was aware that, you know, there was some lack of clarity on certain points. And we
22 did the very best we could to proceed as thoughtfully and intelligently as possible.
23 Q And, just again, I'll represent to you that there was an NDO signed by Judge Boasberg
24 that accompanies this subpoena. So with the NDO, you have mentioned there's a lack of clarity of
25 what, you know, the full spectrum of the rights are underneath the Speech or Debate Clause, and

100

1 there's a lack of clarity. But what remedy did Members have to litigate this lack of clarity, if you
2 will?
3 A Are you asking me what ability Members of Congress have to?
4 Q In the context of these subpoenas, what remedies did Members have to litigate this lack
5 of clarity that's apparent from this email?
6 A So a quick clarifying point. I am not saying that there is particularly a lack of clarity in
7 my mind as to whether toll records are protected by the Speech or Debate Clause. I feel pretty
8 confident that toll records are not under D.C. Circuit caselaw. But, you know, again, I am not a
9 judge.

10 But to get to your question what remedy they have, a nondisclosure order does prohibit
11 disclosure of the subpoena. So if the nondisclosures orders follow, the subscriber would not
12 receive that subpoena.
13 Q And do you know if there was any discussion of -- it's a code that protects Senate phone
14 records. It's 2 USC Section 6628. And it says, you know, if a third party receives some sort of legal
15 process for a Senate phone line, they have to notify the Senate office or the Senate Sergeant at Arms.
16 Do you remember any of those conversations occurring at that specific statute?
17 A I don't remember, but I don't remember being part of any conversations about
18 subpoenaing Senators' numbers.
19 Q I am going to jump around a little bit.
20 A As you wish, sure.
21 Q Did you know Jack Smith before joining the special counsel's team?
22 A No.
23 Q And who asked you to join the special counsel's team?
24 A I think Jack. I think Jack. I think I was -- I think he called and asked me to join.
25 Q And you had never worked with Mr. Smith prior to joining?

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1 A I had not.
2 Q And you didn't work at all on the document piece of his investigation, correct?
3 A That wasn't where my work was. I may have, you know, at some point over the three
4 something years have -- touched in a way I am not particularly remembering. But, no, that wasn't
5 what I worked on.
6 Q Okay. And then the President is indicted August 1st, 2023, in D.C. for the election case.
7 A Yes, ma'am.
8 Q And then a gag order was sought against the President on September 15th, 2023.
9 Did you have any -- did you do any work in relation to the filings for this?
10 A If you show me my emails, that could help me a little bit, but I don't remember
11 participating in the gag order really at all.
12 Q And were you aware that it was narrowed at one point by the Appeals Court?
13 A If that happened, I may have been made aware of it. I am not -- I don't think I worked
14 on the gag order stuff. And if I did, I don't remember it, so I don't really recall.
15 Q Were you aware of any violation of 18 USC Section 1512, the Witness Tampering Statute
16 by President Trump?
17 A When?
18 Q At the time of the gag order that was sought in September 15th, 2023?
19 A I don't know one way or the other. I do know that over the course of our investigation,
20 there was a whole lot of evidence that President Trump sought to cajole people to say things that he
21 wanted them to say even if those things didn't bear much relationship to the truth as we understood
22 it. But to your exact question, I don't particularly know.
23 Q And then did you play any role in the appellate process for the Presidential immunity
24 question?
25 A No, we had really great appellate attorneys. They didn't need me.

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1 Q And so after the superseding indictment is handed on August 27th, 2024, did you play
2 any role in the superseding indictment?

3 A Probably some role. I just don't -- you know, I don't remember exactly what I did, but I
4 assume that I probably, you know, reviewed it, participated in some way. I just don't remember
5 what my role was.

6 Q And did you have any role in setting the trial date for when it would start in D.C.?

7 A No.

8 Q After the immunity decision and the superseding indictment on August 2nd, 2024,
9 Smith's office filed a 165-page brief that was styled as like an immunity determinations brief. Are
10 you aware of this brief?

11 A Yeah, I am. It was pretty big, yeah.

12 Q And what was your role in the brief?

13 A I don't remember honestly. Like I probably had some role in reviewing it, addressing
14 some factual issues. I just -- I remember it being a big brief that our office did, but I am a bit hazy as
15 to exactly what work I was doing at that point and if that was something I spent much time on. I
16 don't remember what my particular role was.

17 Q And what can you tell us about any discussions you were party to regarding the timing
18 of the brief. You know, it came out August 2nd, 2024. The defense hadn't even responded to the
19 superseding indictment yet. So it's just kind of out of order. Were you party to any discussions of
20 timing?

21 A Not that I remember other than generally and historically we wanted to move quickly.

22 In this case, the same as any other, you don't want to just leave an indictment hanging out over
23 someone's head. You want to get it resolved. You want to move fast. But I don't remember
24 specific conversations.

25 Q Were there any concerns about the proximity to the November 2024 election?

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1 A We had absolutely zero desire to do anything at any point ever that would have
2 impacted the, you know, the 2024 election. We were as a team aware of the election interference
3 policy, so it was something about which we knew. That's about it.

4 Q Do you know if it was within the Election Interterm Policy? I think it's called, like, a
5 60-day election sensitivities policy.

6 A I'm not remembering how any sort of policies on election interference might have
7 impacted our decisionmaking.

8 Q Do you know if there was any correspondence with the Public Integrity Section given
9 that this was clearly within 60 days of the November 2024, election?

10 A Is that communication I was on that you can show me?

11 Q I don't have any of that communication. I am just trying to see if you remember any
12 communications or discussions?

13 A I am happy to look at whatever you want to show me, but I don't remember anything.

14 Q So if there were discussions with public integrity, you don't remember being party to
15 those just as you sit here today?

16 A I don't.

17 Q I want to talk about our interactions with various other individuals outside of the special
18 counsel's office?

19 A Yes.

20 Q While you were on the special counsel's team, and even prior to joining the special
21 counsel's team, so from January 2022 to January 2025, did you ever have any interactions with the
22 House's January 6th Select Committee?

23 A I don't believe I ever did. I don't think so.

24 Q Were you ever a party to any discussions about receiving information from the January
25 6th Select Committee?

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1 A There may have been in May-ish of 2022. I said, I want you to understand, I'm doing
2 my best on the date, but don't hold me to May.

3 Q Okay.

4 A In May, around that time of 2022, there might have been an opportunity for those of us
5 on the team to review certain transcripts that they had of people that they had interviewed. I don't
6 remember how many transcripts it was, or anything like that, but I have a vague recollection of this.
7 And I think I might have been out of town, and so I wasn't able to participate in any review that might
8 have happened. I sort of vaguely remember that.

9 Q At any point in time, did you ever review materials that were provided by the January
10 6th Select Committee?

11 A Yes.

12 Q And what do you remember reviewing?

13 A I remember that at some point, we were provided a bunch of -- a tranche of documents,
14 and we had things like transcripts. I specifically remember transcripts. I don't know if there was
15 anything other than transcripts. But I remember reviewing transcripts of witnesses that the Select
16 Committee had interviewed.

17 Particularly, in my case, I was particularly but not exclusively focused on witnesses who are
18 also relevant to the work that I was doing and is obvious.

19 Q Okay. And to the extent there were conversations or communications that happened
20 between Mr. Smith's team and the January 6th Select Committee or the election interference
21 investigation prior to Smith's arrival, those communications did not involve you. Is that correct?

22 A To the best of my memory, I cannot say for certain, but I do not remember ever
23 speaking to anyone. I don't remember personally speaking to anyone on the January 6th
24 Committee. I do remember receiving the documents from the January 6th Committee.

25 Q And did you have any contact or communication with Fulton County District Attorney

105

1 Fani Willis?

2 A No.

3 Q Are you aware of any contact that occurred between Mr. Smith's team and Ms. Willis?

4 A I am not.

5 Q And no contact with Nathan Wade, he was one of her prosecutors?

6 A No.

7 Q Did you have any contact or communication with Manhattan District Attorney Alvin
8 Bragg?

9 A No.

10 Q Are you aware of any contact that took place between Mr. Smith's team or the election
11 interference investigators?

12 A I'm not aware of that.

13 Q Any communication with Michael Colangelo after he went to Mr. Bragg's office?

14 A I don't know who that person is to tell you the truth.

15 Q Did you have any contact or communication with State Attorneys General?

16 A Yes. In that I -- I interviewed the Michigan -- not Michigan, I'm sorry. I interviewed

17 Georgia Attorney General Chris Carr.

18 Q Okay.

19 A I flew down to Atlanta and talked with him about -- but this was not -- maybe I should
20 clarify your question. I interviewed Chris Carr related to communications President Trump had had
21 with him in 2020. But, yeah, I did talk to Chris Carr.

22 Q Okay. Did you talk to any other State Attorneys General or anyone in their respective
23 offices?

24 A Let me go through the States. I don't remember doing so. And if you -- yeah, I don't
25 remember doing so.

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1 Q And when we had Assistant Attorney General Kenneth Polite -- I am sure you're familiar
2 with him --

3 A I do know him.

4 Q -- in for a transcribed interview, he discussed two calls that he had convened with
5 approximately 10 State Attorneys General. Do you remember if you were on those calls?

6 A Oh, that may have been -- I mean, I don't -- I don't remember. I don't think I would
7 have been. No, I don't. I don't know. I don't know.

8 Q And did you ever discuss what occurred on those calls with either Mr. Polite or Mr.
9 McQuaid?

10 A I'm not sure. Can you tell me what those calls related to that might jog my memory?

11 Q Yeah, I can tell you. I have Mr. Polite's testimony right here. He said: I can recall a
12 call that involved several State Attorneys General on it, and my recollection was that representatives
13 for the Attorney General or from the offices of Michigan, Nevada, Pennsylvania, Colorado were on
14 that call, but it may have been certainly more than that. My recollection was around 10.

15 A Colorado? You know, that's weird to me. I was thinking maybe there's a call about
16 the alternate electors, the fraudulent electors, or something, but no. I can sum it up this way real
17 easily. The communication I had like with Chris Carr, -- and if there was any others -- would have
18 been relevant to investigating what happened in the 2020 election, potentially as witnesses, right.
19 I don't recollect any conversations with people that were Attorneys General in their States at
20 the time we were doing the investigation about, you know, investigative steps that those offices
21 might be taking or anything like that.

22 Q Great.

23 A Does that distinction make sense?

24 Q That's helpful. Thank you. And in the January 2022 to January 2025 timeframe, did
25 you ever have any contact with the Biden White House?

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1 A No.

2 Q I want to talk about the use of FBI confidential human sources in that election
3 interference investigation. While you were working on that investigation, did you ever interact with
4 either FBI confidential human sources or information that was provided by FBI confident human
5 sources?

6 A I do not believe I ever used a confidential human source in this case. I have no
7 recollection of doing so. And I do not have any recollection of ever, you know, receiving
8 information from a confidential source in this case.

9 Q And we're aware of June 2023 payment from Mr. Smith's team -- for the FBI

10 rather -- but Mr. Smith and Mr. Holzer, I believe, okayed the payment of \$20,000 to a confidential
11 human source for review of video footage and photographic evidence in that case. Were you aware
12 of that payment or aware of how the confidential human source was used?
13 A No, not unless you -- if you can provide me with evidence -- with emails, you know, that
14 I was on it or something. But, no, I don't remember that, no.
15 Q Okay. So you weren't aware of any use of confidential human sources in this case?
16 A I don't remember right now being aware of that.
17
18 Q Do you know where Brian Burnett is currently? The IG official?
19 A No. Mr. Burnett have not -- I unfortunately have not maintained communication with
20 him. The last I heard he was still at DOJ OIG, but I haven't talked to him since probably some years.
21 Q Okay. We can go off the record.
22 [Whereupon, at 1:53 p.m., the interview was concluded.]

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1 Certificate of Deponent/Interviewee

2

3

4 I have read the foregoing ____ pages, which contain the correct transcript of the answers made
5 by me to the questions therein recorded.

6

7

8

9

10 _____
10 Witness Name

11

12

13

14 _____
14 Date

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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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13 INTERVIEW OF: MOLLY GASTON

14

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16

17

18 Wednesday, February 25, 2026

19

20 Washington, D.C.

21

22

23 The interview in the above matter was held in room 2237 Rayburn House Office Building,
24 commencing at 9:55 a.m.

25

2

1 Appearances:

2

3

4

5 For the COMMITTEE ON THE JUDICIARY:

6 , GENERAL COUNSEL

7 , PROFESSIONAL STAFF MEMBER

8 , DIGITAL DIRECTOR

9 , CHIEF COUNSEL FOR OVERSIGHT

10 , COUNSEL

11 RESEARCH ASSISTANT

12 , MINORITY FELLOW

13 , MINORITY SPECIAL COUNSEL FOR INVESTIGATIONS AND SENIOR ADVISOR

14 MINORITY LEGAL INTERN

15 , MINORITY FELLOW

16 , MINORITY LEGAL INTERN

17 , MINORITY SENIOR INVESTIGATIVE COUNSEL

18

19 For MOLLY GASTON:

20 CATHERINE DUVAL, ESQ.

21 JACOBUS VAN DER VEN, ESQ.

22 Zuckerman Spaeder

23

24

25 . Good morning. This is a transcribed interview of Ms. Molly Gaston.

3

1 Chairman Jordan has requested this interview as part of the committee's oversight of special counsel

2 Jack Smith and his team.

3 Would the witness please state your name for the record.

4 Ms. Gaston. Sure. I'm Molly Gaston.

5 . We encourage witnesses who appear before the committee to freely consult

6 with counsel if they so choose. And it's my understanding that you are appearing today with

7 personal counsel. Is that correct?

8 Ms. Gaston. Yes.

9 . Would counsel please state your name for the record.

10 Ms. Duval. My name is Catherine Duval. I'm with Zuckerman Spaeder, here with my
11 colleague.

12 Mr. Van Der Ven. I'm Cobus Van der Ven, also with Zuckerman Spaeder.

13 . Thank you.

14 On behalf of the committee, I want to thank you for appearing here today voluntarily. The
15 chairman also appreciates your willingness to appear here today. My name is , and
16 I'm with Chairman Jordan's staff. I'll now have everyone else from the committee who is here in
17 the room introduce themselves as well.

18 . Good morning. .

19 from Ranking Member Raskin's staff.

20 . from Ranking Member Raskin's staff.

21 , Chairman Jordan's staff.

22 , Chairman Jordan's staff.

23 . , Chairman Jordan's staff.

24 . , Ranking Member Jamie Raskin's staff.

25 . Jamie Raskin's staff.

4

1 , Ranking Member Raskin's staff.

2 . , Ranking Member Raskin's staff.

3 . , Chairman Jordan's staff.

4 . Thank you. I'll now going over the ground rules and guidelines that we'll
5 follow during today's interview.

6 Our questioning will proceed in rounds. The majority will ask questions first for 1 hour, and
7 then the minority will have an opportunity to ask questions for an equal period of time if they so
8 choose. We'll alternate back and forth until there are no more questions and the interview is over.
9 Typically, we take a short break at the end of each hour, but if you'd like to take a break apart
10 from that, just let us know.

11 As you can see, there is an official court reporter taking down everything we say to make a
12 written record, so we ask that you give verbal responses to all questions. Do you understand that?

13 Ms. Gaston. Yes.

14 . As you can also see, we have a videographer video recording the interview as
15 well.

16 So the court reporter can take down a clear record, we'll do our best to limit the number of
17 people directing questions at you during any given hour to just those people on the staff whose turn
18 it is. Please try and speak clearly so the court reporter can understand and so the folks down at the
19 end of the table can hear you. It's important that we don't talk over one another, interrupt each
20 other if we can help it. And that goes for everybody present at today's interview.

21 We want you to answer our questions in the most complete and truthful manner as possible,
22 so we'll take our time. If you have any questions, or if you do not understand one of our questions,
23 please let us know. Our questions will cover a wide range of topics, so if you need clarification at
24 any point, just say so.

25 If you honestly don't know the answer to a question or do not remember, it is best not to

5

1 guess. Please give us your best recollection, and it is okay to tell us if you learned information from
2 someone else. Just indicate how you came to know the information.

3 If there are things you don't know or can't remember, just say so and please inform us who,
4 to the best of your knowledge, might be able to provide a more complete answer to that question.

5 You should also understand that by law you are required to answer questions from Congress
6 truthfully. Do you understand that?

7 Ms. Gaston. I do.

8 . This also applies to questions posed by congressional staff in an interview. Do
9 you understand this?

10 Ms. Gaston. I do.

11 . Witnesses that knowingly provide false testimony could be subject to criminal
12 prosecution for making false statements under 18 U.S.C. Section 1001. Do you understand this?

13 Ms. Gaston. I do.

14 . Is there any reason you are unable to provide truthful answers to today's
15 questions?

16 Ms. Gaston. No.

17 Finally, I'd like to make note that the content of what we discuss here today is
18 confidential. We ask that you not speak about what we discuss in this interview to any outside
19 individuals to preserve the integrity of our investigation.

20 For the same reason, the marked exhibits that we'll use today will remain with the court
21 reporter so they can go in the official transcript, and any copies of those exhibits will be collected at
22 the end of the interview.

23 That is the end of my preamble. Is there anything my colleagues from minority would like to
24 add?

25 . We would just thank you again for appearing here voluntarily. And I believe it's

6

1 already been noted for the record, but drawing your attention to the video cameras.

2 . Ms. Duval, anything?

3 Ms. Duval. Again, Kate Duval for Ms. Gaston. We're here voluntarily, and Ms. Gaston's
4 going to do her best to answer your questions.

5 We don't know what documents you may or may not show to her. My understanding was it
6 probably wouldn't be document-heavy. But we've looked at what we could that's publicly available
7 and the news article that you mentioned, Caroline. And, you know, our purpose here is to give the
8 testimony and the facts that she can. If we run into a kerfuffle about Rule 6(e) or something like
9 that, we've talked about going off the record and figuring out a way to get to the information if we
10 can legally get there.

11 . Great. The clock now reads 10:04 a.m. We'll start our first hour of
12 questions.

13 EXAMINATION

14 :

15 Q Ms. Gaston, what years did you work at the Department of Justice?

16 A From 2011 until 2025. '25. Sorry.

17 Q Okay. And starting with 2011, what position did you go in at the Department?

18 A I was an attorney advisor in the Office of Legislative Affairs.

19 Q And how long were you an attorney advisor at OLA?

20 A I think about 2 years.

21 Q Okay. And were you promoted, or did you move on to another job --

22 A It was probably 3 years. Sorry.

23 Q Okay.

24 A I then moved onto another job in DOJ.

25 Q Okay. And what year was that? Do you remember?

7

1 A I think in 2015.

2 Q 2015.

3 A Yes.

4 Q And what role was that?

5 A I was a counselor in the Office of Attorney General.

6 Q And was that a lateral move? Was it a promotion?

7 A So in the Office of Legislative Affairs, eventually I became an attorney advisor and the
8 chief of staff. And then I moved to the Office of Attorney General as a counselor. They were
9 different sorts of jobs. Lateral move perhaps.

10 Q Okay. And in 2015 when you became a counselor to the Attorney General, who was
11 the Attorney General at that time?

12 A It was Eric Holder.

13 Q Okay. And after you served Attorney General Holder as a counselor in 2015, what was
14 your next role at the Department of Justice?

15 A Then I accepted a position in the Public Integrity Section.

16 Q And who offered you the position in the Public Integrity Section?

17 A The chief of the section and, I think, formally, the Assistant Attorney General for the
18 criminal division.

19 Q And who was the chief of the section at that time?

20 A Ray Hulse.

21 Q Ray Hulse. And what year was that that you went to PIN?

22 A I think 2015 -- and so I believe I was offered the position in 2015.

23 Q Okay.

24 A And then I spent the beginning of -- then I spent 9 months as a Special Assistant United
25 States Attorney in the D.C. United States Attorney's Office --

8

1 Q Okay.

2 A -- before I began work in PIN.

3 Q In PIN. Okay. And how long were you with PIN?

4 A I was with PIN from 2016 until 2018.

5 Q 2016 to 2018. And where did you go in 2018?

6 A I went to the D.C. U.S. Attorney's Office.

7 Q Okay. And how long were you at the D.C. U.S. Attorney's Office?

8 A I think technically I was at the D.C. U.S. Attorney's Office until January of 2025.

9 Q January of 2025. Okay. Can you tell us about the various roles that you held at the
10 U.S. Attorney's Office for D.C.?

11 A I went -- I went there to work in the fraud and public corruption section.

12 Q Okay.

13 A Which is a section whose name changed at points while I was there, but it was always

14 that section that I worked in.

15 Q Okay. And then you stayed there fully technically until January 2025? Is that
16 correct?

17 A Yes. Yes.

18 Q Okay. Did you ever go to the Office of Special Counsel? Were you ever detailed? --

19 A Yes. I was detailed to the office -- to the special counsel's office, and my start there
20 was in April of 2023.

21 Q April of 2023. But the -- were you working out of the D.C. U.S. Attorney's Office for the
22 full tenure there, 2018 to 2025?

23 A So I was also on another detail --

24 Q Okay.

25 A -- before the special counsel's office.

9

1 Q What can you tell us about that detail?

2 A It was a detail to the Deputy Attorney General's office.

3 Q And who was the DAG at the time?

4 A Lisa Monaco.

5 Q And what role did you play for DAG Monaco?

6 A I was an Associate Deputy Attorney General.

7 Q And what were your responsibilities as an ADAG?

8 A My portfolio was the criminal division and criminal matters.

9 Q Okay. And did you leave this detail to go on detail to the special counsel's office, or

10 was there a frame of time where you were just at the D.C. U.S. Attorney's Office?

11 A I went from the detail in ODAG to the detail in the special counsel's office.

12 Q Okay. And can you tell us the dates of your detail to the DAG's office?

13 A I think approximately it would have been September -- August or September of 2022.

14 Q Okay.

15 A Until April of 2023.

16 Q Okay. And then you were with the special counsel's office until January 2025?

17 A Yes.

18 Q Okay.

19 A And then I went back to the fraud and public corruption section in the U.S. Attorney's
20 Office.

21 Q Okay. And now to work backwards a bit, so you went to DOJ in 2011. What did you
22 do prior to going to the Department of Justice?

23 A So before going to OLA --

24 Q Uh-huh.

25 A -- I worked for the Energy and Commerce Committee.

10

1 Q And which member did you work for at the Energy and Commerce --

2 A The chairman was Henry Waxman.

3 Q Waxman. Okay. And flipping to your time at the special counsel's office, when did
4 you first meet Jack Smith?

5 A At the special counsel's office?

6 Q Ever during your tenure at the Justice Department. I know he was there a long time,

7 so.

8 A I first met Mr. Smith when I was in the Office of Legislative Affairs.

9 Q Okay. And what year was that?

10 A My guess is that it would have been in 2014?

11 Q 2014. Okay. And what was the context in which you were meeting Mr. Smith at that
12 time?

13 A So in my role in the Office of Legislative Affairs, the public integrity section was the
14 recipient of some oversight requests from Congress, and so I was facilitating that.

15 Q Okay. And did you have any more interactions with Mr. Smith between 2014 and
16 when you went to the special counsel's office in 2023?

17 A I'm just pausing to think for a second.

18 Q Of course.

19 A So, yes.

20 Q And what can you tell us about those interactions?

21 A I remember one interaction.

22 Q Okay.

23 A And it was -- I ran into him in the hallway --

24 Q Okay.

25 A -- at Main Justice. And we made small talk.

11

1 Q Okay. Was that in the later time frame or the earlier time frame, if you can
2 remember?

3 A It was -- it was in the later time frame when I was in ODAG.

4 Q In ODAG. Okay. Was he special counsel at the time or had he --

5 A No.

6 Q Okay.

7 A I'm sorry. Can you remind me of --

8 Q Of course.

9 A -- the -- so the question was between the special counsel -- between -- sorry. Can you
10 remind me the question again? I just want to make sure that I answered it completely.

11 Q So between the time that you were handling the oversight requests in OLA for PIN in the
12 2014 time frame and April 2023 when you went to the special counsel's office, did you have any
13 other interactions with Jack Smith?

14 A Got it. So there was the meeting in the hallway where we made small talk before he
15 was appointed.

16 Q Okay.

17 A And then after Mr. Smith was appointed, I had some interactions with him, helping,
18 essentially, with logistics of getting the special counsel's office set up.

19 Q Okay.

20 A Okay.

21 Q Okay. And do you by chance remember -- before he was appointed when you were in
22 the DAG's office, do you remember what year that was that you would have seen him in the hallway
23 or --

24 A So I think it would have been 2022.

25 Q 2022. Okay. And I know he's appointed November 18th, 2022, to serve as special

12

1 counsel. Did you have any role in the selection process for the special counsel?

2 A I did not.

3 Q Okay. Are you familiar with Marshall Miller?

4 A Yes.

5 Q And did you work with Marshall Miller in the DAG's office?

6 A Yes.

7 Q Okay. And when Mr. Smith was here testifying, he talked about how he had had some
8 interactions with Mr. Miller in the summer of 2022 about his desire to come back to the Justice
9 Department. Were you aware of any of those communications?

10 A I was not.

11 Q Were you involved in any of those conversations?

12 A I was not.

13 Q Okay. And who asked you to join the special counsel's team in April of 2023?

14 A In terms of who directly asked me, it was J.P. Cooney.

15 Q J.P. Cooney. And what was his role at the time?

16 A He was the deputy special counsel.

17 Q Okay. And had you worked with J.P. Cooney prior to the special counsel's office?

18 A Yes.

19 Q How long would you say that you worked with Mr. Cooney?

20 A Over a number of years.

21 Q Okay. Was he also at the D.C. U.S. Attorney's Office at the time?

22 A Yes.

23 Q Okay. Was he in the fraud and public corruption section?

24 A Yes.

25 Q Okay. How long did you overlap while you were there, if you can remember?

13

1 A The entire time that I was in the D.C. U.S. Attorney's Office, he was as well.

2 Q Okay. And did you ever talk to Mr. Smith about your position with the special
3 counsel's office?

4 A Yes.

5 Q And how many conversations did you have with Mr. Smith before accepting the
6 position?

7 A I'm pausing just because --

8 Q Take your time --

9 A -- I remember only one conversation. I can't remember if that single conversation was
10 before or after I accepted.

11 Q Okay.

12 A It's possible it was after I accepted.

13 Q And what were the details of the conversation? What did you discuss with Mr. Smith
14 at the time?

15 A I don't remember --

16 Q Okay.

17 A -- the details.

18 Q Okay. You talked about a conversation you had with Mr. Smith after his appointment
19 regarding logistics of setting up the office. What can you tell us about that discussion you had with
20 Mr. Smith?

21 A I had more than one --

22 Q Okay.

23 A -- such discussion. And when I say "logistics," I mean logistics, like how to get him
24 equipment to start working.

25 Q Uh-huh.

14

1 A And things of that nature.

2 Q Okay.

3 A So very much nuts and bolts of getting an office started and not actually substance.

4 Q And when you came on in April 2023, how many people were working in the special
5 counsel's office?

6 A Let me just pause for a second and think through it. My very rough estimate would be
7 maybe 30.

8 Q Okay. Did that number fluctuate at all while you were at the special counsel's office?

9 A The number of folks working there did fluctuate.

10 Q Okay. And did it go up or down?

11 A I think it went down.

12 Q Down? Okay. Was 30 the most people that worked at the special counsel's office
13 that you can remember?

14 A If 30 is an accurate estimate, then yes. I think when I started there, it was the most
15 people working there that I -- that I experienced.

16 Q Okay. And were you officing out of the D.C. U.S. Attorney's Office at Main Justice, or
17 was there another building that you were at at the time?

18 A There was a building over in Noma.

19 Q Okay. And did you -- your whole tenure with the special counsel's office, did you work
20 out of there?

21 A Yes.

22 Q Did you have a role in bringing anyone else on the team -- I know you said J.P. Cooney
23 reached out to you about the position. Did you reach out to anyone about coming to work for the
24 special counsel's office?

25 A Not that I can recall.

15

1 Q And what was your title while you were with the special counsel?

2 A I was a senior assistant special counsel.

3 Q And what were your primary roles and responsibilities, if you had to distill it down?

4 A I think it was the equivalent of being an Assistant United States Attorney, but in the
5 special counsel context.

6 Q And who did you work most closely with at the special counsel's office?

7 A Probably Thomas Windom.

8 Q Okay. And there were, if you will, two investigations that the special counsel was
9 conducting, one about the documents case and one about the election interference case. Was
10 there an investigation or case that you worked on the most?

11 A Yes. I worked on the D.C.-based case.

12 Q Okay. And did you ever work on the documents case or the case out of the Southern
13 District of Florida?

14 A No.

15 Q Okay. And I know you had a long tenure at the D.C. U.S. Attorney's Office. When did
16 you begin investigating anything related to the 2020 election?

17 A To the 2020 election.

18 Q Correct.

19 A I'm just pausing because I -- the reason I'm pausing is because in the immediate
20 aftermath of January 6th, we worked on a lot of matters related to January 6th.

21 Q Uh-huh.

22 A I'm not sure I would say that that -- I guess it depends on whether you say that that's
23 related to the 2020 election.

24 Q Okay. We can break it down. So when did you start working on matters specifically
25 related to January 6th, 2021, and the events that occurred that day?

16

1 A As best as I can remember, many of us in the office started working on things related to
2 January 6th, 2021, possibly as even -- possibly as early as the night of January 6th.

3 Q Okay.

4 A Or the morning of January 7th, 2021 --

5 Q Okay.

6 A -- because there were a lot of people who had breached the Capitol, and we were
7 seeking to figure it out.

8 Q And on the night of January 6th, or morning of January 7th, what did your work focus on
9 at that point in time?

10 A My memory is that it focused on individuals who had breached the Capitol.

11 Q Okay. And when did you start investigating specifically President Trump and
12 members -- or people within his orbit and their responsibility for events that occurred on January
13 6th?

14 A So when one conducts an investigation, and I'm sure it's similar to what you do here,
15 you don't start with an individual or focusing on an individual. You gather a lot of evidence and you
16 sort of follow the evidence where it leads. And so the -- my experience in sort of coming to a point
17 of investigating the conduct of President Trump and others was really in the special counsel's office.

18 Q Okay. So in the January 2021, February 2021 time frame, did you ever talk about
19 individuals or investigate individuals who are close with President Trump and what their role may
20 have been for the events that day?

21 A When you say close with President Trump, what do you mean?

22 Q Thinking, like, Roger Stone, for example, or any individuals who worked in the White
23 House on that day.

24 A So I thought it was very important to look at individuals who possibly could have had
25 something to do with the breach of the Capitol on January 6th. And so, that was -- that was my

17

1 focus in January and February of 2021.

2 Q Okay. Did that investigation in January and February 2021 ever lead you to any
3 individuals that were associated with the President, whether they be on his campaign or in the White
4 House or, you know, Roger Stone, for example?

5 A So -- sorry. Could you repeat the question?

6 Q Yeah. In the January and February 2021 time frame, you were discussing individuals

7 who were responsible for the breach of the Capitol. During that investigation, in that time frame,
8 did it ever lead you to look at people within President Trump's -- I'll use "orbit" this time
9 around -- but close associates, anyone who worked in the White House, anyone who worked on his
10 campaign?

11 A So I remember that Roger Stone was in Washington on January 6th, 2021, and that
12 there were photographs of him with members of the Oath Keepers.

13 Q Uh-huh.

14 A That is what I remember about Roger Stone at the time.

15 Q Okay. And it has been reported that in this time frame, J.P. Cooney had a proposed
16 investigation to look at individuals within President Trump's orbit. Do you remember this
17 occurrence?

18 A So could we look at the article?

19 Q We can look at the article if you'd like to. Yes. We'll mark it as exhibit number 1.

20 Ms. Duval. Before you mark that, I neglected to ask you to include our letter from last night
21 as an exhibit.

22 . Okay. We can make that number 1, and we'll make this number 2.

23 [Gaston Exhibits Nos. 1 and 2

24 were marked for identification.]

25 Ms. Duval. Thanks. Sorry.

18

1 :

2 Q And if it's helpful, this piece comes from -- looks like it's the -- it's not page numbered.

3 It's like the fifth page, there's a heading that says "A plan to focus on Trump's orbit is batted down."

4 A And let me just say at the outset, I was not a source for this article.

5 Q Okay.

6 A So I can't tell you whether it's accurate or what they're basing stuff on.

7 Q And during your tenure at the D.C. U.S. Attorney's Office, did you ever talk to Carol
8 Leonnig or Aaron Davis?

9 A I had one contact with Aaron Davis.

10 Q Okay. And when was that?

11 A This was actually when I was in ODAG.

12 Q Okay. And then when you were with the special counsel's office, did you ever talk to
13 Carol Leonnig or Aaron Davis?

14 A I did not.

15 Q They wrote this book called "Injustice." You may be aware of it. They published the
16 book. And it talks about the special counsel's time and the, you know, prior investigations that
17 went on. Were you a source for that book?

18 A I was not a source for the book.

19 Q Okay.

20 Ms. Duval. You can talk about the contact with Aaron.

21 Ms. Gaston. Yes. I just want to explain it so that you don't think that I talked substantively
22 with him.

23 . Absolutely.

24 Ms. Gaston. On a Sunday evening, I was having dinner with my family and there was a
25 knock on my door, and I opened the door and Aaron Davis was on my doorstep seeking to speak to

19

1 me, and I told him no, thank you. But what I remember about --

2 . Sorry. I'm just -- let me just jump in here. So he just, like, showed up at your
3 house?

4 Ms. Gaston. He showed up at my house.

5 He didn't text you or email you?

6 Ms. Gaston. Did not text, did not email.

7 That seems like an odd way to develop a source.

8 Ms. Gaston. It seems like an odd way. And I remember it very clearly because I was having
9 my father over for dinner, so my entire family was sitting at my dinner table, and I had to step out
10 onto my doorstep to have this conversation. And the way that I remember it is that he essentially
11 suggested that he knew that I had worked with J.P. Cooney and thought that I could tell J.P.'s side of
12 the story of things. And so the sense I got was that he was frustrated that J.P. was also not speaking
13 to him, and he was trying to find a way around that.

14 . When was this again?

15 Ms. Gaston. This would have been -- I think it would have been in the fall of 2022.

16 Okay. So this is before the special counsel --

17 Ms. Gaston. Yes.

18 . -- tenure.

19 Ms. Gaston. Yes.

20 :

21 Q And looking at the article, I think I directed you to -- below, "A plan to focus on Trump's
22 orbit is battled down." If you look at the third paragraph, just to kind of help orient us where we're
23 going here, it says, "But a group of prosecutors led by J.P. Cooney, the head of the fraud and public
24 corruption section at the U.S. Attorney's Office, argued that the existing structure of the probe
25 overlooked a key investigative angle. They sought to open a new front, based partly on publicly

20

1 available evidence, including from social media, that linked some extremists involved in the riot to
2 people in Trump's orbit, including Roger Stone, Trump's longest serving political advisor; Ali
3 Alexander, an organizer of the "Stop the Steal" rally that preceded the riot; and Alex Jones, the
4 Infowars host."

5 Do you remember J.P. Cooney ever seeking to expand the investigation to look at individuals
6 within Trump's orbit?

7 A So with respect to Roger Stone --

8 Q Uh-huh.

9 A -- I remember there being sort of photographic evidence of him being with the Oath
10 Keepers. And so I think that I thought that we might want to look at whether there was a
11 connection there.

12 Q Okay. And when was this -- when was the time frame of this, if you can remember?

13 A Early -- early 2021.

14 Q Early 2021. Okay. And was there anyone else that you all were interested in besides
15 Roger Stone at that point in time?

16 Ms. Duval. I mean, I think there were many, many people --

17 Ms. Gaston. Yes.

18 Ms. Duval. -- they were interested in.

19 A So let me just pause and say at this time, in the early 2021 period, the effort was
20 massive, as you can imagine. And especially in the immediate time after January 6th, 2021, it felt

21 like the entire office. But I think much of the office was focused on trying to identify people who
22 had breached the Capitol; in particular, people who had attacked police officers and who had been
23 violent. And there was a very real fear that I can remember before inauguration that there might
24 be some sort of additional attack. And I don't know if you were here at the time, but --
25 Q I was.

21

1 A -- you probably remember the military fencing around the Capitol grounds and the
2 photographs of the National Guard sleeping in the Capitol. And so much of our focus was on finding
3 individuals who had been violent or individuals who we worried presented a continuing threat.

4 Q And were there other individuals similarly situated to Roger Stone and their closeness to
5 President Trump that you all sought to connect to the Oath Keepers, if you will?

6 A I don't remember there being photographs of other people with the Oath Keepers, but
7 we were investigating the Oath Keepers who had breached the Capitol.

8 Q Okay. And a little bit further down on that page, three more paragraphs down, the
9 "According to three people," I'll read that. It said, "According to three people who either viewed or
10 were briefed on Cooney's plan, it called for a task force to embark on a wide-ranging effort,
including

11 seeking phone records for Stone, as well as Alexander. Cooney wanted investigators to follow the
12 money -- to trace who had financed the false claims of a stolen election and paid for the travel of
13 rallygoers-turned-rioters. He was urging investigators to probe the connection between Stone and
14 members of the Oath Keepers, who were photographed together outside the Willard Hotel in
15 downtown Washington on the morning of January 6th."

16 Do you know if there was ever a task force that was created?

17 A I'm not sure if task -- I don't know if "task force" is the right word.

18 Q Strike force. Whatever.

19 A I remember there were a group -- I mean, so much of the office was devoted to figuring
20 out how to respond to January 6th. I remember there were a group of us who were trying to figure
21 out, sort of, a structure for the investigation. But I don't know if "task force" is the right word for it.

22 Q Okay. What was Mr. Cooney's role at this point in time in the January 6th-related
23 investigations?

24 A As I recall, he was one of many supervisors in the office who were trying to sort of
25 organize how the office was going to respond.

22

1 Q Okay. And how many prosecutors worked for Mr. Cooney at the time?

2 A So in the fraud and public corruption section --

3 Q Uh-huh.

4 A -- at that time, I would estimate, but this is an estimate, like 20 prosecutors. But it
5 could -- let me take that back. I think it was probably 10 to 20. So that's -- I know that's a broad
6 range. I just can't remember particularly.

7 Q And if you flip the page on the article, the paragraph starting with "Axelrod" -- and he
8 was one of the individuals who went to the Department of Justice for the new Biden administration
9 early on. It said, "Axelrod called a meeting for the last week of February with Sherwin, D'Antuono,
10 Abbate, and other top deputies. Cooney wasn't there to defend his plan, according to three people
11 familiar with the discussion. But Axelrod and Abbate reacted allergically to one aspect of it:
12 Cooney wanted membership rolls for Oath Keepers as well as groups that had obtained permits for

13 rallies on January 6th, looking for possible links and witnesses. The two saw these steps as treading
14 on First Amendment-protected activities, the people said."

15 Then a little bit further down, it says, "All who assembled for the late February meeting were
16 in agreement, with Axelrod making the final call: Cooney's plan would not go forward."

17 Do you remember in this time frame, the January 2021, February 2021 time frame, any sort of
18 dissent between the Washington field office of the FBI and the U.S. Attorney's Office for D.C. in
19 pursuing specific angles of investigation?

20 A So all of these people were very much -- this was very much above my pay grade, so.

21 Q Just to kind of take it back, how often did you interact with -- I believe his first name is

22 Michael -- Sherwin? He was the acting U.S. Attorney at that time. How often did you interact with
23 U.S. Attorney Sherwin?

24 A Not very often.

25 Q Okay. And Steven D'Antuono was the assistant director in charge of the Washington

23

1 field office for the FBI at that time. Did you ever interact with Mr. D'Antuono?

2 A Not that I can remember.

3 Q Not that you can remember. Okay. Who did you interact with most frequently at
4 FBI?

5 A The folks that I interacted with at FBI were generally line agents or supervisory special
6 agents, so not -- the ADIC is, like, pretty high in the organizational structure. So it would not have
7 been -- it would not have been normal for me to have communications with Mr. D'Antuono.

8 Q And the line agents and supervisory special agents out of the Washington field office,
9 you were in the fraud and public corruption section, and there was FBI, WFO, kind of public
10 corruption section which was named CR 15. Are those the agents that you most frequently
11 interacted with, if you can remember?

12 A So in the fraud and public corruption section, we worked -- there are a lot of -- there are
13 a lot of FBI squads around D.C. In terms of my work, because my work was mostly corruption and
14 civil rights, we worked with two different squads. So there's a squad here in D.C. that's, like, a local
15 corruption squad, and so I worked with them. I had a lot of cases of local corruption, cases
16 like -- like bribery in the Office of Tax and Revenue here in D.C. and things of that nature. So I
17 worked with those agents on local corruption matters, and then with agents at CR 15, which was out
18 in Manassas, on Federal corruption matters.

19 Q Okay. And I'm assuming you probably never interacted with the deputy director, Paul
20 Abbate, at the FBI?

21 A I may have met him --

22 Q Okay.

23 A -- and shook his hand when I was in ODAG. But when I was in the U.S. Attorney's
24 Office, I don't think I ever met him.

25 Q But in terms of January 6-related work, you never had any interactions with Sherwin,

24

1 D'Antuono, or Abbate?

2 A Not that I can recall.

3 Q Do you know how frequently Mr. Cooney would have communicated with any of these
4 individuals?

5 A I don't.

6 Q Did he ever -- did Mr. Cooney ever communicate to you any sort of dissent that he
7 received from the Washington field office about pursuing January 6th-related investigations?

8 A I'm not remembering that.

9 Q Okay. And in the January 12th, January 13, 2021, time frame, U.S. Attorney Sherwin
10 and ADIC D'Antuono held a press conference on the progress of the January 6th-related work. Do
11 you remember that press conference at all?

12 A I don't.

13 Q At that press conference, I'll represent to you that he talked about -- Mr. Sherwin talked
14 about a specialized task force or strike force --

15 A Okay.

16 Q -- to examine conspiracy and sedition charges that were -- that was comprised of senior
17 national security prosecutors and public corruption prosecutors. Do you remember a strike force
18 that kind of specialized in that area or looked at that angle?

19 A So my guess is that's a reference to -- when I said there was a group of us trying to figure
20 out how to organize, how to respond.

21 Q Okay.

22 A I did not know that he called it a strike force.

23 Q And when did you -- when did it come about that there were a number of you trying to
24 figure out how to organize and respond to the various investigative angles?

25 A That would have been early 2021.

25

1 Q And who all was on that team, if you will?

2 A So there were a couple of us from the fraud and public corruption section; a few, I think,
3 from the national security section. And then my general memory is that the supervisory structure
4 was sort of the section chiefs, so Mr. Cooney, the section chief of the national security section.

5 Q Okay. And in this team, strike force, individuals who were looking at how to organize
6 how to respond, was there any sort of output from that task force? Was there any sort of, you
7 know, investigative plan or outline that was produced?

8 A I don't remember.

9 Q Okay.

10 Ms. Duval. I'm assuming you guys don't have a document that shows that?

11 Ms. Gaston. If you have a plan, I'd be happy to look at it.

12 :

13 Q We have some messages between you and Mr. Cooney about a task force, and he talks
14 about an outline that was given to Mr. Sherwin? Does that -- and it's dated January 13th, 2021.
15 It's right after the press conference. Is that a helpful point of reference? Does that -- we can give
16 you the message exchange --

17 A Can I look at the message?

18 Q Yes.

19 A Great.

20 [Gaston Exhibit No. 3

21 was marked for identification.]

22 :

23 Q This will be exhibit number 3, and it's just -- the very top few messages kind of talk
24 about a task force and an outline, if this helps jog your memory at all.

25 A So my guess is that we created some sort of outline of the structure we were trying to

26

1 create --

2 Q Okay.

3 A -- and that Mr. Cooney provided it to Mr. Sherwin.

4 Q Okay. And then, you know, this is the January, February time frame that you're talking

5 about. Matthew Graves, the appointed U.S. Attorney, comes in in November 2021. What can you

6 tell us about your investigative efforts on January 6th between February and November 2021?

7 A So as best as I can recall, the office sort of stood up a structure for addressing January

8 6th.

9 Q Uh-huh.

10 A And at some point, I turned my focus back to trying to keep the work -- the other work

11 of the fraud and public corruption section going.

12 Q Okay. And I know you said "at some point." Do you remember when you would have

13 turned back?

14 A I'm sorry. I don't remember specifically.

15 Q That's okay. And so, would you say that there was a period of time in 2021 that you

16 weren't focused on January 6th-related investigations?

17 A There was a time period when I transitioned from my January 6th cases because I

18 had -- I had multiple individual cases.

19 Q Okay.

20 A Like people who had breached the Capitol.

21 Q Okay.

22 A I transitioned those to other people. And so actually I could look at the docket and

23 sort of figure out when that was happening.

24 Q Uh-huh.

25 A I'm sorry. What was the question?

27

1 Q That's okay. Was there a period of time where you weren't solely focused on January

2 6th-related cases in 2021?

3 A Yes. I sort of shifted focus, or at least was trying to do both things.

4 Q And in 2021, was there a period in time when you shifted back to focusing more on

5 January 6th-related cases?

6 A Not that I recall.

7 Q Okay. And as I said, in November 2021, U.S. Attorney Graves is confirmed. He comes

8 to the office. And he approves the detail of Thomas Windom to come to the D.C. U.S. Attorney's

9 Office, and this was in November 2021. Do you remember Thomas Windom being detailed to the

10 U.S. Attorney's Office for D.C.?

11 A I do. Can I -- can I go back to my previous answer and then come back to this?

12 Q Of course.

13 A So I transitioned back to, sort of, general fraud and public corruption work. I did

14 maintain one individual case related to January 6th.

15 Q Uh-huh.

16 A It involved a Capitol police officer who had been in communication with someone who

17 breached --

18 Q Okay.

19 A -- the Capitol. And so that was one that I continued working on while I did other stuff.

20 Q Okay.

21 A And then I remember that Thomas came to the U.S. Attorney's Office.

22 Q And was there ever a period of time when you started working closely with Mr. Windom while he was at the D.C. U.S. Attorney's Office?

24 A There was not.

25 Q There was not? Okay. And do you remember why he was detailed over to the D.C.

28

1 U.S. Attorney's Office?

2 A I do not -- I do not know why he was detailed to the office.

3 Q Okay. In November 2021, to the extent you remember -- this is also from the article.

4 Mr. Windom took an idea to Mr. D'Antuono about subpoenaing the Willard Hotel. Do you remember this occurring at all?

6 A I don't. I was not involved in that.

7 Q Did Mr. Windom ever talk to you about an idea to get records from the Willard Hotel?

8 A Not that I recall.

9 Q And then when did your work shift back to focusing more on January 6th-related cases?

10 A It did not.

11 Q Okay.

12 A So I continued working in the U.S. Attorney's Office until my detail to the DAG's office.

13 Q Okay. At some point in time, I think it was the late 2021 time frame, early 2022 time frame, Mr. Windom asked some National Archives and Records Administration, NARA, Inspector General investigators to kind of help supplement his team that was looking into some investigative threads. Do you remember any involvement with the Archives IG?

17 A I don't.

18 Q Did you ever have any contact with Waleska McLellan?

19 A I don't think so.

20 Q Okay. And when you were at the special counsel's office, to jump ahead a bit, was there -- did you ever have any interactions with the Archives IG in that time frame?

22 A I don't think so.

23 Q Okay. Anyone from NARA at large?

24 A Not that I recall.

25 Q And switching entities here, Mr. Windom also kind of liaised with individuals from the

29

1 U.S. Postal Inspection Service. Did you ever have any interactions with anyone from U.S. PIS?

2 A I don't think so.

3 Q Okay. And in the time frame when you were at the special counsel's office, did you have any interaction?

5 A I don't think so.

6 Q Okay. And while you were detailed to the DAG's office, I think you said September 7 2022 to April 2023, did you have any involvement in January 6th-related work while you were at the DAG's office?

9 A I did. That was in my portfolio.

10 Q Okay. And what can you tell us about your work in the DAG's office on January 6th?

11 A So, sort of, January 6th matters were in my portfolio. So I was tracking the trials that were occurring, the investigations in the U.S. Attorney's Office, that sort of thing.

13 Q Okay. And in the August 2022 time frame, the D.C. U.S. Attorney's Office seized the
14 cell phone of Representative Scott Perry. Did you have any involvement in this episode?

15 A I was not involved in that.

16 Q Okay. Did you ever have any conversations with Mr. Cooney or Mr. Windom involving
17 Mr. Perry's cell phone?

18 A I may have.

19 Q And I know you said you may have, but do you remember what you may have discussed
20 with one of them?

21 A So I think this would have been later, because I think there was litigation occurring
22 related to that, and that was something that I was generally aware of.

23 Q Okay. And in the August 2022 time frame -- I know you said August or September
24 2022 you were detailed to the DAG's office. Were you there in August or --

25 A I think I did not get there until September because I was sort of wrapping up and
30

1 transitioning -- I was -- I was a deputy chief in the -- or unit chief. These names switch over
2 time -- in the fraud, public corruption, and civil rights section, or fraud and corruption section. And I
3 think I was largely focused on sort of transitioning all of my work to other folks so that I could go on
4 the detail.

5 Q And did you ever become aware that prior to executing the search warrant to seize
6 Mr. Perry's cell phone, the FBI surveilled Mr. Perry for a week? Did you ever become aware of that?

7 A I don't -- don't know about that.

8 Q And you didn't have any conversations with Mr. Windom or Mr. Cooney --

9 A I don't remember having any such conversations.

10 Q -- about that?

11 Were you aware of any conversations that were had regarding the Speech Or Debate Clause
12 in relation to seizing Mr. Perry's cell phone?

13 A

So I sort of knew that the Speech or Debate Clause was some of the subject of the
14 litigation that occurred later.

15 Q Okay.

16 Ms. Duval. And I would just ask if you have something showing her talking about any of this,
17 like a text or something that might refresh her, she's giving you --

18 Not on Mr. Perry's cell phone --

19 Ms. Duval. -- what she remembers -- years ago.

20 And I'm not suggesting that such thing exists or that I know anything different than what she's
21 testifying to, but --

22

23 Q And in regards to Mr. Perry's cell phone, when you were detailed to the special
24 counsel's office, did you ever view any information or evidence that came from Mr. Perry's cell
25 phone?

31

1 A I think -- I think so.

2 Q Okay. And do you remember specifically what -- was it, like, a text message or email
3 exchange or the general topic?

4 A I think that there were messages that the judge provided after the litigation, like his text
5 messages.

6 Q And why were Mr. Perry's messages relevant to the investigation that was going on at

7 the time?

8 A As best as I recall, it was related to issues at the Justice Department in the lead-up to
9 January 6th.

10 Q And when the FBI agents executed the search warrant to obtain Mr. Perry's cell phone,
11 a DOJ Inspector General Office agent went with them. Do you know what the IG's involvement was
12 in this matter?

13 A I wasn't involved at that time. What I can tell you is that in my time as a prosecutor, I
14 worked with DOJ IG agents as the law enforcement partner on various cases. And in those
15 instances, it was when a DOJ official was the subject of the investigation.

16 Q Okay. And when you went to the special counsel's office, was the DOJ IG still involved
17 in the investigation at all?

18 A Not involved in the investigation.

19 Q Okay. And did you ever interact with the DOJ IG in relation to any January 6th
20 matters?

21 A I -- yes.

22 Q Okay. And who did you interact with at the IG's office?

23 A So I don't remember the name of the agent.

24 Q Okay.

25 A It was because of the earlier involvement in the special counsel's office investigation,

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1 and OIG had collected evidence, and so if -- if it was evidence that we planned to use at trial, we
2 were going to have to talk to -- the agent was going to have to be ready to testify at trial about
3 collecting the evidence.

4 Q And do you know what evidence was collected by the IG's office?

5 A I can't remember.

6 Q Okay. And one of the investigators for the IG's office, the names that we've come
7 across, is Brian Burnett. Do you remember Brian Burnett at all?

8 A No. That was not the -- the person who --

9 Q Okay.

10 A That's not -- like, that name does not strike me as the person who I spoke with.

11 Q Okay. And in the time we have left in our hour, I want to talk to you about subpoenas
12 for Congress Members' phone records. Were you involved in issuing grand jury subpoenas to
13 service providers for Congressional Members' phone records?

14 A I was -- I was involved in contemplating doing so.

15 Q Okay. And when did the contemplation begin?

16 A I think in the spring of 2023, or my contemplation began then.

17 Q Okay. And what was your involvement in the contemplation, if you will?

18 A Yes. And let me just -- let me explain why I'm using that term.

19 Q Of course.

20 A And I'm not trying to be cute or unhelpful.

21 Q Uh-huh.

22 A But what I am trying to do is to be as helpful as possible and answer as many questions
23 as I can. But what I can't do is confirm matters occurring before the grand jury. And so I'm trying
24 to thread that needle and -- so that's -- that's why I'm using that term.

25 Q I know you said your contemplation began in the spring of 2023. There's a couple of

33

1 subpoenas that we're aware of prior to that time frame, and one is for Chairman Jordan's phone
2 records. That subpoena was issued on April 25th, 2022. Did you have any involvement in that
3 subpoena?

4 A I wasn't part of the investigation at that point. I have -- I don't know anything about it.

5 Q Okay. Did you ever have any conversations with Mr. Cooney or the other -- the
6 prosecutor who signed the subpoena is Timothy Duree, or Duree. I've heard it both ways. Did you
7 ever have any conversations with them about Mr. Jordan's phone records?

8 A I don't remember having any conversations about that.

9 Q And the -- Mr. Jordan's subpoena for his phone records is the largest time frame that
10 we've seen. It was January 1st, 2020, to April 25th, 2022. Do you have any knowledge of why it
11 was such a wide time frame there?

12 A I don't know why.

13 Q Okay. And was there ever a period of time where you contemplated needing
14 Mr. Jordan's phone records?

15 A I -- I don't remember that.

16 Q Okay. The DOJ IG, the special agent Brian Burnett, served the warrant or -- excuse
17 me -- the subpoena on Verizon. Do you know why the DOJ OIG was involved, to the extent you
18 know?

19 A I don't.

20 Q Okay.

21

22 Q Who was leading that matter, if you know?

23 A Who was leading the investigation at that time?

24 Q No, with respect to Mr. Jordan's toll records.

25 A Oh. I don't know. I wasn't involved at that time.

34

1 Q Okay. During your tenure, who was involved with the member toll record subpoenas?

2 Or was it different -- different AUSAs?

3 A So when I got to the special counsel's office, the structure was that Thomas Windom
4 and I were the senior assistant special counsels, and then we led a team of assistant special counsels.

5 Q And during that time frame, did you subpoena member toll records?

6 A I think -- I contemplated subpoenaing member toll records and had communications
7 with the public integrity section about doing so.

8 Q Okay. Which members, do you recall -- contemplating this?

9 A I recall that the members that we contemplated getting the subpoenas for were
10 individuals who President Trump, Mr. Giuliani, and others at the White House had -- we had
evidence

11 that they had tried to contact those members on or around January 6th.

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1

2 [10:59 a.m.]

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4

5

Q And what were the names of those Members?

A I remember -- I can't remember. I remember there were two Members with the same

6 last name, and I think we temporarily confused them.

7 Q You needed to subpoena toll records for two Members with the same last name, or
8 there were two Members with the same last name you needed to subpoena toll records for one of
9 them?

10 A For one of them. So we had evidence that President Trump or Mr. Giuliani, or
11 someone in the White House, had tried to reach a Senator with -- sorry. I'm just trying to
12 remember the last name. I do not know why the name is escaping me, but one of the -- it was a last
13 name that two Senators share.

14 Q Okay. And did you have any discussions with your colleagues at that point about the
15 speech or debate implications?

16 A I think we probably did.

17 Q Okay. And we have a hard time understanding from our perspective how it is that the
18 Department doesn't view toll records, you know, everybody that these Members or Senators are
19 having telephone conversations with a, how that's not a protected data set from the speech or
20 debate standpoint. Can you help us understand the alternative perspective?

21 A So, when you say a protected data set --

22 Q Yes.

23 A -- what do you mean?

24 Q The individuals that Members of Congress or Senators have discussions with, just the
25 fact that these discussions occurred, from our point of view, and we've litigated this, are, you know,

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1 protected by the Speech Or Debate Clause of the Constitution. And I'm asking, what is the contrary
2 argument there? Like why do you not see it that way?

3 A Sorry. See it which way?

4 Q That that is data that you can just go out and get as opposed to being off limits because
5 of it is Speech Or Debate nature?

6 A So I'm not aware of any court case that stands for the proposition that the Justice
7 Department cannot issue a toll record subpoena to a third-party provider for a Member of Congress'
8 toll records.

9 Q You don't think the Rayburn case deals with that?

10 A I don't think the Rayburn case is on point.

11 Q Okay. And why is that?

12 A The Rayburn case dealt with a search warrant of a Member's office here and concerned
13 getting paper, like substantive records from the Member's office.

14 Q Okay. And so why wouldn't a list of telephone numbers that a Member interacted
15 with fall into that type of category?

16 A I think it's very -- it's a very different thing.

17 Q Okay. And what's Public Integrity Section's viewpoint on that, to the extent you can
18 remember?

19 A I think Public Integrity Section's view was the same, that no court has determined that
20 the Justice Department cannot issue a toll record subpoena to a third-party provider for Member
21 records.

22 Q But PIN also decided that it was so unlikely that it would be litigated, that it didn't
23 matter. Is that correct?

24 A I don't think that's right.

25 Q Okay. We've run out of our time, but we have some email traffic on that we can share

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1 during our next hour.

2 A Great.

3 . We'll go off the record.

4 [Recess.]

5 We'll go back on the record.

6 EXAMINATION

7

8 Q Ms. Gaston, nice to see you here today. My name is . I'll be asking the

9 questions for the minority today. I'm joined here by my colleague, , who will also

10 be asking questions.

11 So I wanted to take a moment and go through your background a little bit more. I know our
12 colleagues on the majority covered that, you know, during their hour. But where did you go to
13 college?

14 A I went to Princeton University.

15 Q And then what did you do after that?

16 A Right after college, I worked on a congressional campaign.

17 Q Okay. And did you eventually go to law school?

18 A Yes.

19 Q Where did you go to law school?

20 A Georgetown.

21 Q And, after leaving Georgetown, what was your first job?

22 A I worked for the Energy and Commerce Committee.

23 Q And how long were you there before you went to DOJ?

24 A I think about 2 years.

25 Q And what prompted the move to DOJ?

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1 A A lot of things.

2 Q Sure. And so what, if anything, did you bring to DOJ from your role as a congressional
3 investigator?

4 A So I had worked on congressional oversight matters, and my first job at DOJ was to help
5 facilitate responses to it.

6 Q And, again, the majority covered this a little bit in the last hour, but could you just
7 briefly walk through the positions you've held at DOJ since you joined in, I believe, it was 2011?

8 A Sure. So I worked in the Office of Legislative Affairs and the Office of the Attorney
9 General. I worked in the Public Integrity section, and the D.C. U.S. Attorney's Office.

10 Q And which of those positions involved investigating and bringing cases to trial?

11 A I did that in -- when I was a special assistant United States attorney, when I was a trial
12 attorney in PIN, and when I was an assistant United States attorney.

13 Q And could you estimate how many cases you investigated and brought to trial through
14 the course of your career?

15 A Many, especially including Superior Court in D.C.

16 Q And what type of cases were you working on when you were in PIN and the D.C. U.S.
17 Attorney's Office? Was there, you know, a certain subject matter that you were an expert in?

18 A So, in the Public Integrity's section, that section's mission is public corruption matters
19 and elections crimes. And, in the D.C. U.S. Attorney's Office, I was in the Fraud and Public

20 Corruption Section, which also included civil rights matters.

21 Q And did you have a specific position in the D.C. U.S. Attorney's Office's Public Corruption
22 Section, or were you a line attorney?

23 A I started as a line attorney and then, at some point, became a supervisor.

24 Q And, when the Biden administration began, so January 20th, 2021, what was your
25 position in DOJ?

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1 A I was a supervisor in the fraud, public corruption, and civil rights section, or whatever
2 the name was at that point of the same section.

3 Q And had you served in DOJ during the entire first Trump administration?

4 A Yes.

5 Q So I'll move on to the January 6th investigation, in particular, and recognizing that
6 there's sort of two sides of this, right: the actual breach of the Capitol, and then the what we'll call
7 the election interference, or certification interference, part of the investigation.

8 So how did you come to be involved in the January 6th cases? And I'll refer to that as the
9 breach of the Capitol.

10 A So, in the immediate aftermath of January 6th, many people in the U.S. Attorney's Office
11 sort of worked on whatever cases needed to be worked on.

12 Q And roughly how many January 6th breach cases did you work on?

13 A Between those I personally investigated and prosecuted, and those that I supervised, it
14 would be probably more than 10.

15 Q And you mentioned during the last hour that you gradually transitioned away from
16 some of those cases. Why did that transition occur?

17 A Because we wanted to keep the regular work of the U.S. Attorney's Office going.

18 Q And, again, just for the record, when did you join Special Counsel Smith's team?

19 A April 2023.

20 Q And what were your duties at DOJ immediately preceding joining that team?

21 A I was an Associate Deputy Attorney General.

22 Q And why join Special Counsel Smith's team? Obviously, a position in the Office of the
23 Deputy Attorney General is very prestigious; what brought you to the Special Counsel's team?

24 A I liked being a prosecutor.

25 Q So the chair of this committee has said that Jack Smith's investigation, the Special

40

1 Counsel's Office investigation, was, quote, always about politics and to get President Trump. Do
2 you agree with that statement?

3 A I do not agree that it was about politics or getting anybody.

4 Q Okay. What was it about?

5 A It was about following the facts and the law.

6 Q And I know you can only speak for yourself here, but in the past, had you previously
7 investigated Democratic public officials?

8 A Yes.

9 Q Can you give us some examples?

10 A So, immediately after I was hired by Jessie Liu to be in the U.S. Attorney's Office in D.C.,
11 my first trial was a trial against President Obama's White House Counsel. I worked on the
12 investigation of Representative Henry Cuellar. And some of the cases that I felt most strongly about

13 were of individuals whose political persuasions I have no idea about, things like an investigation into

14 a corrupt official at the D.C. Office of Tax and Revenue who took a lot of bribes in order to write off
15 millions of dollars' worth of taxes in D.C. or at the D.C. fire department, the firehouse manager who
16 was taking kickbacks so that firemen and firewomen in D.C. didn't have the supplies they needed at
17 their firehouses. So I investigated all kinds of -- investigated and prosecuted all kinds of cases.

18 Q Is it fair to say that political affiliation did not factor into your charging decisions during
19 that time?

20 A That is correct.

21 Q And, just for the record, you said that you were involved in a trial of former White
22 House Counsel. What was the White House Counsel's name?

23 A Greg Craig.

24 Q And he was a Democrat?

25 A He was President Obama's White House Counsel.

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1 Q Sure. So, with regards to the Special Counsel's investigation, were you investigating

2 Donald Trump because he was a Republican?

3 A So, in the Special Counsel's Office, we were investigating potential -- we were
4 investigating facts. We were investigating potential crimes and ultimately determined that we
5 should present to a grand jury allegations against President Trump.

6 Q And did his status as a Republican and a Republican candidate for President ever factor
7 into your charging decisions?

8 A No.

9 Q And would you have made the same charging and investigative decisions if he were a
10 former Democratic President who was vying for the Democratic nomination?

11 A Yes.

12 So we'll introduce as, I believe it's exhibit 4, the Special Counsel's report, volume
13 one.

14 [Gaston Exhibit No. 4
15 was marked for identification.]

16

17 Q And I'll give everyone a moment to look at that very large document. And, just a
18 preview, the first page I'll direct your attention to is on page 71.

19 A I'm sorry. Could you explain that again?

20 Q The first page I'll direct you to is page 71.

21 A Oh, okay.

22 Q So, as stated, this is the Special Counsel's report, volume one, into Donald Trump's
23 efforts to overturn the election. Volume two, regarding the classified documents case, is not
24 available and has been blocked and distorted by a judge in Florida. Did you assist in the preparation
25 of this report?

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1 A Yes.

2 Q And you're familiar with its contents, generally?

3 A Generally.

4 Q So what is the purpose of the Special Counsel's report? Why prepare it?

5 A The Special Counsel regulation specifies that the Special Counsel should provide a report
6 of his activities to the Attorney General.

7 Q And what is the purpose of that regulation? Why should the Special Counsel's report
8 be made available to the public?

9 A I don't think the regulation provides that it will be made available to the public.

10 Q Okay. What does the regulation provide?

11 A It provides that the Special Counsel should provide a report to the Attorney General.

12 Q And are these typically made available to the public?

13 A I think that's a determination made by the Attorney General.

14 Q So, in your experience, has Special Counsel reports previously been made available to
15 the public?

16 A I can think of Special Counsel reports that have been made available to the public.

17 Q Okay. In this case, did you think it was important for the public to be generally aware
18 of, you know, Jack Smith and your findings, and your office's findings, in this report?

19 A I don't know that I thought of it that way.

20 Q So, in this report, the Special Counsel documents, Donald Trump's crimes in attempting
21 to overturn the election results, and on page 71, which I just directed you, the Special Counsel's
22 Office wrote, "The conduct of Mr. Trump and co-conspirators, however, went well beyond speaking
23 their minds or contesting the election results through our legal system. Instead, Mr. Trump
24 targeted a key Federal Government function -- the process by which the United States collects,
25 counts, and certifies the results of the Presidential election -- and sought to obstruct or defeat it

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1 through fraud and deceit." Do you stand by this description of Donald Trump's crimes in this
2 report?

3 A Yes. This description is a description of one of the charges in the indictment.

4 Q And which charge is that?

5 A That's fraud against the government.

6 Q And do you believe that, had this case proceeded to trial, Donald Trump would have
7 been found guilty beyond a reasonable doubt of that charge?

8 A The Justice Manual, which is a manual that all prosecutors, all Federal prosecutors
9 review and hopefully abide by, provides that a prosecutor is not to present an indictment to a grand
10 jury unless the prosecutor believes that there is evidence beyond a reasonable doubt of the crimes
11 alleged.

12 Q And did you follow and did your office follow the Justice Manual in this case?

13 A Yes.

14 Q And so did you believe that, if this case had proceeded to trial, Donald Trump would
15 have been found guilty beyond a reasonable doubt of that charge?

16 A Yes.

17 Q Okay. And I'll direct you to page 3 of the Special Counsel report. I'll give you a
18 second to flip through. And, on that page, the office writes, "Indeed, Mr. Trump's cases
19 represented ones in which the offense was the most flagrant, the public harm the greatest, and the
20 proof most certain." Do you agree with that statement?

21 A I'm sorry. This is page three?

22 Q And it's the bottom of the second full paragraph.

23 Ms. DuVal. Is it the page 3 of the report or of the --

24 Sorry. Page 3 of the prelude, I should have said.

25 Ms. DuVal. Of the letter.

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1 . Of the report.

2 Ms. DuVal. Of the cover letter. Okay.

3 Ms. Gaston. So that is -- so this is Mr. Smith's letter.

4

5 Q Okay. And I'll reframe the question. So, in this case, Mr. Smith wrote, "Mr. Trump's
6 cases represented ones in which the offense was most flagrant, the public harm the greatest, and the
7 proof the most certain." Do you agree with Mr. Smith in expressing that sentiment?

8 A Yes. Let me explain what this paragraph represents. So what you just read is a

9 quote, and it is a quote from a famous speech by Jackson about the duties of a Federal prosecutor.

10 And what -- I think what Mr. Smith is doing here is basically explaining the thought process, or the
11 principles behind seeking charges.

12 Q Understood. And what in your view was Mr. Smith saying about Donald Trump's
13 offenses specifically?

14 A He was explaining why he sought charges.

15 Q Okay. And, in invoking Justice Jackson and saying, "the public harm was the greatest
16 and the proof the most certain," in this matter specifically, why do you believe, or why did Special
17 Counsel Smith believe that the public harm was the greatest in this situation?

18 A I don't know why Mr. Smith might have believed that.

19 Q Did you believe that Donald Trump's attempts to overturn the election as reflected in
20 this report was a serious crime?

21 A I believe that the crimes alleged in the indictment and superseding indictment were
22 serious crimes.

23 Q And did you believe that there were significant public harm from these crimes?

24 A Yes.

25 Q What was that public harm?

45

1 A I think there was potentially a great deal of public harm. You know, it was a case that
2 implicated the electoral system and the peaceful transfer of power. So those are serious matters.

3 I just want to touch on, real quick, and I appreciate the caution with the

4 former Special Counsel's reports that were released, and I also appreciate the regulation that the
5 Attorney General has the discretion to release it. I just want to point out a few examples. Was
6 Special Counsel Hur, to your knowledge, was his report or portions of it released publicly after he
7 concluded his Special Counsel investigation?

8 Ms. Gaston. I believe that's right.

9 . And was Special Counsel Robert Mueller's report, or portions of it, released
10 by the Attorney General at the conclusion of their investigation, to your knowledge?

11 Ms. Gaston. I think portions of it were released.

12 . Thank you. And released to the public, just to make sure, make clear. Is
13 that correct?

14 Ms. Gaston. I think that's right.

15 Thank you.

16

17 Q I want to pick up where the majority left off in the last hour with the subpoenas of
18 Members' phone records. And we'll just start generally with how this investigation involved

19 Members of Congress. And I also believe the majority covered this, but did you become aware that
20 DOJ prosecutors issued subpoenas for phone records before you joined the Special Counsel's team?
21 A I was not in the office at that time. So I can't really speak to that.
22 Q Okay. And one of the first Member's subpoenas was Jim Jordan, who is the chair of
23 this committee. Were you involved in or consulted on that subpoena?
24 A I was not involved in that.
25 Q And I believe you also spoke about Representative Perry during the last hour. Were

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1 you involved or consulted in that subpoena?

2 A I did not work on that.

3 Q And, just to sort of put a bow in that timeframe, so to speak, the search of Mar-a-Lago
4 occurred in the late summer of 2022. Were you involved in any of the discussions around that
5 search?

6 A No.

7 Q So, during your time in the Special Counsel's Office, there was a subpoena for records
8 related to a number of Members of Congress, including, but not limited to,
9 Lindsey Graham, Marsha Blackburn, Tommy Tuberville, Josh Hawley, Ron Johnson, and others. Are
10 you familiar with those subpoenas?

11 A I am familiar with contemplating a subpoena to Members of Congress that President
12 Trump and others in the White House may have reached out to.

13 Q And so it's fair to say you were one of the prosecutors who was involved in deciding
14 whether to issue subpoenas on that matter?

15 A I was involved in the contemplation of those subpoenas.

16 Q Okay.

17 We'll introduce as exhibit 5 an FBI document regarding the toll records analysis of
18 this Member subpoena.

19 [Gaston Exhibit No. 5

20 was marked for identification.]

21 Ms. DuVal. And the same caution applies about rule 6(c). Ms. Gaston has been operating
22 with that as a guide on her public comments throughout her career as a prosecutor, and she cannot
23 talk about matters before the grand jury. So we -- if we need to go off the record to try to
24 get -- how to question, let me know.

25 Okay. Yes. Of course.

47

1 :

2 Q I'll give your counsel a moment to review. Do you recognize this document?

3 A I recognize the form, or the format of this document.

4 Q Okay. But you don't recognize this document specifically?

5 A I do not recognize this document specifically.

6 Q And what is the form or the format of this document?

7 A So there are various common forms of FBI recordkeeping. You may be familiar with
8 something called an FD-302; that's a report of investigation that agents write based on their
9 investigative activity. This appears to be an FD-1057, which, I think, but could be wrong, indicates
10 some sort of analysis of evidence.

11 Q And what is the evidence, to the extent you can tell, that is being analyzed in this

12 document?

13 A I can read to you what it says. It says that a special agent conducted preliminary toll
14 analysis on limited toll records associated with the following U.S. Senators, and then it lists
15 individuals.

16 Q And, when you were involved in contemplating the decision whether to subpoena the
17 toll records of Members of Congress, were these some of the Members that you contemplated
18 subpoenaing?

19 A I'm just going to take a moment to think about how to answer that.

20 Q Sure.

21 Ms. DuVal. Would it be easier to answer the question without reference to this document?

22 Ms. Gaston. Yes. I think it would be easier to answer questions about what we
23 contemplated with reference to records of what we contemplated, if that makes sense.

24 . Sure. So we'll introduce it as exhibit 6 a production from DOJ involving
25 deliberations regarding the subpoenas, and we'll go from there.

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1 [Gaston Exhibit No. 6
2 was marked for identification.]

3 . And, to provide to baseline here, this is a number of emails, memos, that relate to
4 the subject we were just discussing. We have provided a larger packet in case there's other context
5 in there. There's several versions of this memo, for instance, that are included within this packet.
6 So feel free to sort of look through if you think another document might sort of also illustrate what
7 the -- the process of what was happening at this time.

8 Ms. DuVal. Take your time to read through this. It's several pages. And am I right that
9 this is not just one email? This is several different emails?

10 . This is a number of emails, but I will be drawing her attention to specific parts of
11 it.

12 Ms. DuVal. This is probably a great time for me to reiterate that Ms. Gaston has not -- if
13 they're not publicly available, Ms. Gaston has not seen documents from her files for years.

14 . Understood.

15 Ms. Gaston. Before I go on reviewing, can I supplement one of my answers to the questions
16 in the first hour? I think I was asked if I contemplated a subpoena for Chairman Jordan, and I don't
17 remember doing so, but there's an email from me here that has his name. I just want to -- on the
18 first page, it's the second email down. So I don't remember this, but I just wanted to point that out.
19 :

20 Q And, for the record, that is an email on the 16th of May, 2023, where you as MGG?

21 A Yes. MGG is me.

22 Q Okay. And you state, quote, "We should also include, to the extent we don't have, Jim
23 Jordan and Lindsey Graham"?

24 A Yes.

25 Q Okay. And so I'm going to direct you to the third page of this, which is a memo, which

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1 is attached to an email that you sent on the 17th of May, 2023.

2 So, in the first page of that memo, beginning on the second paragraph, you state, quote, "We
3 intend to subpoena toll records for January 4th, 2021, to January 7th, 2021, for Senators Marsha
4 Blackburn, Lindsey Graham, Bill Hagerty, Josh Hawley, Cynthia Lummis, Ron Johnson, John

Kennedy,

5 and Tim Scott, Dan Sullivan, Tom Tuberville, and Representative Mike Kelly." And, also, I thought I
6 would just ask, do you recognize this document, this memo?

7 A I don't remember drafting this document, but I am not contesting that I did.

8 Q Okay. To the best of your recollection, do you believe you were involved in the
9 drafting of this document?

10 A Yes.

11 Q Okay. And obviously there's a number of Members of Congress who are listed here.

12 How did you, and the rest of the Special Counsel's team, choose to contemplate sending a subpoena
13 for these Members' phone records?

14 A These are individuals from whom we had evidence that President Trump, Mr. Giuliani,
15 or others in the White House tried to contact with reference to the -- tried to contact with regard to
16 January 6th.

17 Q And how would you describe at this time these Members and their role in the
18 investigation? Were they targets of the investigation? Were they witnesses? Or were they
19 something else?

20 A So, at the Justice Department, in the Justice Manual there is a definition of those kinds
21 of terms. So the term "subject" is an incredibly broad term. It basically means anybody who is at
22 all involved in an investigation. And a "target" is a term that I would almost never use. And
23 frequently in conversations with attorneys for individuals, they'll ask, "Is my client a witness or a
24 subject," and the answer, in layman's terms, is almost always witness. But, under the Justice
25 Manual broad definition, they are a subject because they're somehow involved in the investigation.

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1 And so to put -- to be very technical about it, because these individuals may have been contacted,
2 they -- really they are witnesses, but it depends on the definition of the term.

3 . I'm sure defense counsels love that answer, witness, but subject, technically.

4 I'm sure they love it.

5 . We appreciate technicalities here.

6

7 Q So is it fair to say that these individuals you viewed as primarily witnesses to the
8 conduct that occurred during this time with the understanding that you just stated, that, under the
9 Justice Manual, there could be, you know, other factors?

10 A Yes.

11 Q Okay. And what were they witnesses to?

12 A We had evidence that President Trump and Mr. Giuliani, and others at the White House,
13 may have contacted these individuals related to January 6th.

14 Q Okay. And what crime were they potentially witnesses to? What was -- how were
15 they relevant to the investigation?

16 A So the evidence that we were seeking was to determine what was occurring at the
17 White House on or approaching January 6th. So that's the evidence that we were attempting to
18 gather.

19 Q Okay. And, in calling these individuals, you stated Rudy Giuliani, or Donald Trump,
20 might have been the one calling these individuals, what were they in your mind potentially speaking
21 to the Members of Congress about?

22 A I don't know.

23 . I guess what we're trying to ask, the Special Counsel's report outlines some of

24 the conspiracies, or what was going on with the President, Mr. Giuliani, although Mr. Giuliani is not

25 named in the Special Counsel report, in terms of trying to get Senators maybe to not vote to certify

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1 the election. Is that the evidence that you're talking about here when you're answering the
2 questions?

3 Ms. Gaston. We were really just seeking to figure out everything that was occurring at the
4 White House on January 6th and in the days leading up to it.

5 . Okay.

6 :

7 Q And so that brings me to my next question, why did you consider seeking these
8 Members' toll records? Why not just rely on the White House's toll records, or Rudy Giuliani's toll
9 records?

10 A I think this memo reflects some of the reasons why we were seeking them.

11 Q And, in your own words, what were some of those reasons?

12 A So I think some of the evidence that we had -- like this memo says, for instance, that we
13 had gaps in the records we had already collected.

14 Q Okay. And so why was it important if it was to fill those gaps?

15 A I think, if you look at the indictment that was ultimately returned by the grand jury, the
16 timing of what occurred leading up to and on the day of January 6th was important.

17 Q Okay. And apologies for just asking very simple questions, but like why was it
18 important? Why was the timing so important to the indictment and the crimes that were being
19 charged?

20 A It was important for many different reasons. So we could look at the indictment, but I
21 think the timing was important in terms of understanding the allegations.

22 Q And it states here on the first page, it gives times for Mr. Giuliani's toll records,
23 6:59 p.m. to Blackburn; 7:02, for example, to Tuberville; was that timing significant, the fact that
they

24 were later in the day?

25 A I think all of the timing on the day of January 6th was important.

52

1 Q Okay. So what kind of process is there, if there is any, for seeking records related to a
2 Members of Congress? Is it business as usual, or is there special things that a prosecutor can and
3 should do?

4 A I would, in that context, I would consult with the Public Integrity Section. I don't know
5 whether that was required or advisable.

6 Q And why consult with Public Integrity?

7 A They are sort of the experts in the field on these areas of law.

8 Q And what areas of law specifically are implicated by this type of subpoena, or
9 consideration of a subpoena?

10 A I think, if you look at the Justice Manual, it recommends consulting with the Public
11 Integrity Section in matters involving Members of Congress.

12 Q Okay. And did you, in fact, consult with the Public Integrity Section on these potential
13 subpoenas?

14 A Yes.

15 Q Okay. And we'll go just a few pages further in this document and we'll -- it will be page
16 7.

17 Ms. DuVal. So ours aren't numbered. If you could give us -- you've numbered them?

18 Ms. Gaston. No. They numbered them.

19 Ms. DuVal. Ours aren't numbered.

20 Last minute thought. Apologies, we don't get these from DOJ with sort of

21 numbers in them, but we are on page 7, which is an email, 17th May 2023, at 11:12, at the very top.

22 Ms. DuVal. Again, this is a separate email from what we were talking about.

23 Uh-huh.

24 Ms. DuVal. A new document in terms of how it would have occurred in the files.

25 Exactly.

53

1

2 Q And I'll give you a second. It's a two-page email, and it is a chain that I believe is

3 forwarded to different individuals. So I'll give you a full period of time. Do you recognize this

4 email chain?

5 A I don't remember this email exchange, but this is my email exchange.

6 Q Okay. So, on the second page, which is the beginning of the email chain, you state,

7 quote, "I'm ready to consult with PIN on some narrowly tailored subpoenas that we plan to issue for

8 toll records belonging to Members of Congress," end quote.

9 Just to start off, what are toll records?

10 A Toll records are -- you might not be old enough to have received a paper phone bill, but

11 it is essentially similar to old school paper phone records. It reflects the number; there's the subject

12 of the subpoena, calls that that number placed or received, the time, and the duration.

13 Q Thank you for getting my youthful appearance on the record. I appreciate that. So,

14 when you receive the toll records in relation to a subpoena, what would you typically do after

15 receiving those toll records?

16 A Toll records are useful to an investigation because they -- normally prosecutors and

17 agents, or prosecutors or agents, would analyze the toll records to determine their evidentiary value.

18 Q And what is the difference between toll records and other investigatory, you know,

19 processes, tools that you have, such as a 2703(d) order?

20 A A toll record does not provide any content. A 2703(d) record may not reflect any

21 content, either. But a toll record does not contain any content.

22 Q Are there other tools that DOJ can use to obtain the content of calls?

23 A I'm not aware of a way to retroactively get the content of -- the content of a phone call.

24 Q What about affirmatively for the future?

25 A So there is a tool called a Title 3, which is a wiretap, in which the government is able to

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1 get realtime content from a phone call.

2 Q And it's fair to say that's not what this memo to PIN concerned. It concerned toll

3 records, the records that were in the past?

4 A That is not what this concerned.

5 Q Okay. And it says here that these are narrowly tailored subpoenas. And, when you

6 were contemplating requesting or seeking these Members' toll records, how did you narrowly tailor

7 them? And we're still on that first sentence.

8 A One aspect of tailoring, I think, is the time period for which we were contemplating

9 seeking these.

10 Q And what was the time period?

11 A January 4th to January 7th, 2021.

12 Q And did you believe that there could be relevant communications that fell outside of
13 that timeframe?

14 A There could have been.

15 Q Then why only seek 3 days of toll records?

16 A We were most focused on this time period.

17 Q Okay.

18 To be clear, January 6th was within this time period that you just stated,

19 correct?

20 Ms. Gaston. Yes?

21

22 Q And we'll proceed to sort of the memo itself, which is on the next page. And this is the
23 subpoena -- or, sorry, excuse me, the memo that you sent -- attached to this email chain.

24 A Which page are we talking about?

25 Q So the page directly after the one we were just looking at. Page 8 in your numbering.

55

1 A So I'm looking at page 9?

2 Q I believe it's page 8, but it is a copy of the memo that you sent to J.P. Cooney and Ray

3 Hulser.

4 Ms. DuVal. So you're representing that, as they occurred in the normal course, that this
5 memo to J.P. Cooney and Ray Hulser from the election investigation team regarding limited toll
6 record subpoenas for Members of Congress is an attachment to the email that precedes it in this
7 packet of documents?

8 . That's correct.

9 Ms. DuVal. From May 17th, 2023, an email chain involving Ms. Gaston cc'g Mr. Windham,
10 going to Mr. Hulser and Mr. Cooney, I think is who those --

11 That's correct. And I know Ms. Gaston has not necessarily been shown these
12 records, but you'll see in attachments, at the top of the page, it's 2023.05.17, toll record memo.

13 Ms. Gaston. Okay.

14

15 Q So, at the bottom of this toll record memo, it states, "Finally, we propose subpoenaing
16 records related to Senator Johnson and Rep. Kelly because there is evidence that campaign officials
17 involved in the electors scheme asked staff to Johnson and Kelly to accept Wisconsin's fake
18 certificates and provide them to Vice President Mike Pence on January 6th." Do you see that?

19 A I do.

20 Q Can you elaborate on this? What occurred regarding the transfer or acceptance of
21 fake certificates that lead you to request Senator Johnson and Representative Kelly's toll records?

22 Ms. DuVal. To contemplate requesting them?

23

24 Q To contemplate requesting them, yes.

25 A Do you have a copy of the indictment?

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1 Q I don't necessarily in front of me. We can get that for you if it would be helpful

2 to -- we'll go off the record for a second.

3 [Recess.]

4 We'll go back on the record. And I'll mark what has just been handed to

5 Ms. Gaston as exhibit 7, the superseding indictment in the matter of U.S. versus Trump in the U.S.
6 District Court.

7 [Gaston Exhibit No. 7

8 was marked for identification.]

9 Ms. Gaston. Som if you look at page 28 of the superseding indictment, paragraph 83, it
10 reads, "On the morning of January 6th, an agent of the defendant contacted a United States Senator
11 to ask him to hand-deliver documents to the Vice President. The agent then facilitated the receipt
12 by the Senator's staff of the fraudulent certificates signed by the defendant's fraudulent electors in
13 Michigan and Wisconsin, which were believed not to have been delivered to the Vice President or
14 Archivist by mail. When one of the Senator's staffers contacted a staffer for the Vice President by
15 text message to arrange for delivery of what the Senator's staffer had been told were alternative
16 slates of electors for Michigan and Wisconsin because the Archivist didn't receive them, the Vice
17 President's staffer rejected them."

18 So we had evidence that these documents from Wisconsin had, I believe, but I am not certain
19 of this, had been provided to Representative Kelly's office, and then they were transferred from that
20 office to Senator Johnson's office to try to provide them to the Vice President.

21

22 Q And, to back up just slightly, what were these fraudulent certificates in the portion you
23 just read? Could you elaborate on how they came into being, and how they were involved in this
24 sort of conspiracy?

25 A So the -- if you look at the manner and means of the indictment, which is on page 5, and

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1 if you look at paragraph B, it describes activity by individuals to create fraudulent documents
2 representing individuals as valid electors under the Electoral Count Act to have their electoral votes
3 presented at the certification.

4 Q And it says here in this portion, and, again, this is the superseding indictment, that you
5 just described that there was -- you know, they were, quote, attempting to mimic the procedures
6 that the legitimate electors were supposed to follow under the Constitution, and other Federal and
7 State laws. And, when you're speaking of these fraudulent certificates, how are they attempting to
8 mimic procedures related to the electoral process?

9 A My recollection is that the certificates were worked up to resemble, you know, electoral
10 certificates, that the electors met these people who would have been President Trump's electors had
11 he won the election in those States, would have met and voted and sent them to the Archivist and
12 the Vice President.

13 Q But they were not legitimate certificates from the electoral college. Is that right?

14 A They were not the electors that the executives of those States had appointed.

15 Q Okay. And who were the staff mentioned here trying to get those fraudulent electoral
16 certificates to?

17 A Sorry. Could you repeat the question?

18 Q This mentions campaign officials asked Johnson and Kelly to accept Wisconsin fake
19 certificates. You stated that there was staff potentially involved in that. Who were they trying to
20 get these fake certificates to?

21 A I believe that the agent described in the indictment was hoping to get the certificates to
22 the Vice President.

23 Q And were they eventually able to get them to the Vice President?

24 A No.

25 Q And what was their intention in trying to provide them to the Vice President? What

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1 were they hoping the Vice President would do with these certificates?

2 A So I would have to guess if I'm talking about somebody else's intention.

3 Ms. DuVal. Don't guess.

4 What was the role the Vice President played on January 6th?

5 Ms. Gaston. The Vice President on January 6th, as the President of the Senate, counts

6 electoral votes -- or -- sorry. Let me retract that. The Vice President presides over the certification
7 proceeding where the votes are counted.

8 Okay.

9

10 Q And so what, to your knowledge, was the intention of giving the Vice President fake
11 elector certificates?

12 A Presumably to create, either confusion, or have the fraudulent certificates counted.

13 Q And so we'll -- I'll redirect you to the consultation, the memo that we were discussing

14 earlier, and specifically PIN's response to that. So page 7. Yeah, page 7 of the toll records. And

15 who is John Keller, who is giving you a response to your original email regarding the justification
16 for

16 seeking, or potentially seeking these toll records?

17 A John Keller was the Principal Deputy Chief of the Public Integrity Section.

18 Q And what was his reaction to your email seeking -- I guess, what was the purpose of
19 emailing John Keller?

20 A The purpose was to consult with the Public Integrity Section.

21 Q And what was John Keller's reaction to your email outlining a potential plan to subpoena
22 toll records?

23 A He responded that PIN concurred in seeking the subpoenas.

24 Q Okay. And, when PIN concurs in something along these lines, what is it saying? Is it
25 saying that it's legally justified? Is it saying that it's good investigative stuff? What exactly is PIN

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1 trying to tell you here?

2 A PIN is concurring in the investigative step, and sort of agreeing that the proposed step
3 can go forward. If PIN has concerns about the step, then it would not concur. It would seek
4 further discussion of the step.

5 Q Okay. And what would be the process if it did not concur? Would that be a formal
6 discussion, or informal discussion?

7 A I think it depends. I think there would probably be -- the discussion, there would
8 probably be more emails, that sort of thing.

9 Q Okay. And so, at the bottom of John Keller's response, he states, even putting aside,
10 quote, "even putting aside the government's potentially meritorious argument that the calls over the
11 relevant period, especially unsolicited incoming calls, would not constitute protected legislative acts,
12 given my understanding that the low likelihood that any Members listed below would be charged,
13 the litigation risk should be minimal here."

14 What did Mr. Keller mean here by "litigation risk" in this context? And I'm asking that
15 question generally; what is litigation risk?

16 A Well, litigation risk is omnipresent. So I think -- sorry. That is my reaction to the
17 phrase, "litigation risk."

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1 [12:12 p.m.]

2

3 Q Okay. And in layman's term, what is litigation risk?

4 A It is the potential that -- that an issue might arise in litigation.

5 Q And as you stated, that is omnipresent. Does the presence of litigation risk mean you
6 should not send a subpoena or that it's otherwise illegal to do so?

7 A No.

8 Q Okay. And so, by saying that there was litigation risk in this matter, was Mr. Keller
9 saying that these records were protected by the Speech and Debate Clause?

10 A I do not understand him to be saying that.

11 Q Okay. So was it your view that these records were protected by the Speech and
12 Debate Clause?

13 A I did not believe that seeking the records violated the Speech or Debate Clause.

14 Q And why was that?

15 A No court has held that seeking toll records of a Member of Congress from a third-party
16 provider violates the Speech or Debate Clause.

17 Q And do you believe that Mr. Keller would have stated that these were covered by the
18 Speech or Debate Clause if that was indeed the case?

19 A I think if -- sorry. Could you ask the question again, please?

20 Q If Mr. Keller believed that the records had been stated -- had been covered by the
21 Speech and Debate Clause, would he have stated that to be the case? Is that the type of thing that
22 PIN would consult on?

23 A I think if Mr. Keller had concerns about the propriety of the investigative step, we would
24 have had further conversations.

25 Q And in your mind, he -- and based off your reading of this email -- he did not have

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1 concerns about the propriety of the investigative step?

2 A That is not how I read the email.

3 Okay. We'll go off the record.

4 [Recess.]

5 . We can go back on the record. The time is now 12:20 p.m.

6

7 Q Ms. Gaston, I know last hour you were going through this packet of information with my
8 colleagues on the subpoenas. Just quickly to go back to page 1 of that packet.

9 A Do you have the same packet?

10 Q Yes, I do.

11 A Okay.

12 Q In your email where you said, "We should also include, to the extent we don't have, Jim
13 Jordan and Lindsey Graham," did you ever become aware at that point in time that you already had
14 the toll records of Mr. Jordan?

15 A I don't remember. I don't remember becoming aware, and so I'm just not -- I'm not
16 sure why I said to the extent we don't have them.

17 Q And why at this point in time did you think that Mr. Jordan needed to be included in this
18 list?

19 A I don't remember that either.

20 Q Okay. And earlier on in the chain, before you emailed about Mr. Jordan and Senator

21 Graham, Mr. Cooney suggested that they needed Speaker McCarthy's phone records.

22 Were you aware at that point in time that you had already received Speaker McCarthy's toll
23 records?

24 A I don't remember that either.

25 Q And that occurred in January 2023, and I know you hadn't come onto the special

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1 counsel's team yet, but was there any discussion about, you know, the constitutionality of Speech or

2 Debate Clause regarding getting the Speaker's toll records?

3 A I don't remember knowing that that had happened, so I don't remember conversations
4 about it.

5 Q And beyond this email exchange here, was there any other contemplation or

6 consideration of other Members to include on this list?

7 A Not that I recall. Not that I recall. And in the list that's in the bottom, I believe it was

8 Senator Scott that was the name I was thinking of before where there were two Senators with the
9 same last name.

10 Q And which Senator were you interested in? Were you interested in both of the

11 Senators or --

12 A I think we were interested in the Florida Senator Scott.

13 Q Okay.

14 A Or that the indications were that that was the Senator Scott that folks at the White

15 House had contacted.

16 Q And in the previous hour, you had discussions about how the Members' records -- the

17 team needed those records because of evidence of President Trump, Mayor Giuliani, and White

18 House officials being in contact with Members of Congress. And I know my colleague asked several

19 times, you know, why did you need the Members' records. I'm going to ask it again.

20 But if you had all of the phone records and you were really interested in what was happening

21 at the White House, why go to Members of Congress?

22 Ms. Duval. Or why consider going to --

23 Ms. Gaston. Yes. Why consider -- so my memory is that we didn't have complete records

24 of the phone calls. So I think there were some inconsistencies in Mayor Giuliani's toll records. I

25 think it was difficult to get reliable records of phone calls being placed from -- from the White
House

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1 switchboard.

2 . Uh-huh.

3 Ms. Gaston. And then some of the evidence we had that calls had taken place were from I

4 think text messages or emails or even a handwritten note. So there were -- there was a -- there

5 were various kinds of evidence that calls had taken place and it was not all from other toll records.

6 . And what did you think was occurring on these phone calls between the White

7 House and Members of Congress?

8 Ms. Gaston. So we wouldn't get content from a toll record. So part of the -- part of the

9 use of the evidence was establishing the timeline of what was occurring at the White House.

10 And you had no other way to build the timeline without going and getting toll

11 records from Members of Congress.

12 Ms. Gaston. We were building the timeline in many ways, by gathering lots of evidence of
13 what was happening at the White House on January 6th.

14 :

15 Q So on January 6th, the Members were going through the deliberations of whether to
16 certify the election or not, correct?

17 A I think at times during the day, the Members were on the floor.

18 Q Right. But even when they're not on the floor, they're thinking through what they're
19 going to do when it comes time to vote, correct?

20 A Possibly.

21 Q And that's an official duty, right?

22 A An official duty?

23 Q Of a legislator? That is the official duty of a legislator, to consider how they're going to
24 vote on the floor; in this case, how to vote on the certification of the electors on January 6th, right?

25 A Sorry. What is the question?

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1 Q I'm asking you -- I mean, it's very obvious that the telephone calls placed or received by
2 Members of Congress on January 6th, as they're considering whether they're going to vote to certify
3 the election results, is part of their official, you know, legislative duties, correct?

4 A I don't necessarily agree with that.

5 Q And why not?

6 A I think you said that it was obvious that -- I think you said it was obvious that, basically,
7 everything occurring that day was a legislative duty.

8 Q The In Re Grand Jury Investigation case states -- and Keller quotes this -- "Thus,
9 telephone calls placed or received by the Member or his staff in gathering from outsiders information
10 which is weighed in the process of deciding how to vote, drafting legislation, and then preparing for
11 argument may still be privileged as to use against him, even if not as to use against third parties."

12 So it certainly is a consideration that the records of who the incoming and outgoing calls of
13 Members are -- you know, touches the Speech or Debate protections.

14 A So I think one thing that is important to step back and understand about the cases that
15 Mr. Keller cited is that they are from different circuits with different law. So I have not read In Re
16 Grand Jury Investigation in a long time, but my memory of it is that it involved a legislator in the
Third

17 Circuit who was himself under investigation and was challenging a grand jury subpoena because it
18 was being used against him. And use immunity under the Speech or Debate Clause is something
19 that is common in all circuits. In the D.C. Circuit, there is use immunity, and then there is compelled
20 production privilege from Rayburn.

21 And so this citation of the two different cases is sort of mashing together two different kinds
22 of immunity that no court has mashed together, if that makes sense.

23 Q Okay. But Keller concludes that it doesn't really matter because none of these
24 Members are ever going to find out and they won't have a chance to challenge it.

25 A That's not how I understand his conclusion.

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1 Q Well, how do you -- I'm just looking at the last sentence. "Even putting aside the
2 government's potentially meritorious argument that the calls over the relevant period, especially

3 unsolicited incoming calls, would not constitute protected legislative acts" -- that's DOJ's position.
4 Given my understanding of the low likelihood that any of the Members listed below would be
5 charged, the litigation risk should be minimal here, right?

6 So, I mean, I think we can all agree that, you know, Members -- there are instances when
7 Members have an opportunity to intervene and oppose the use of materials that they believe are
8 Speech or Debate protected, correct?

9 A Yes.

10 Q But in this instance, that would never come to fruition because none of these Members
11 are ever going to know about it.

12 A So he does not say it's because they're not going to know about it.

13 Q I mean, that's the implication, though, that because the Members aren't being charged,
14 the litigation risk is nonexistent or minimal.

15 A So that is not the implication I take from it.

16 Q Okay.

17 A The implication I take from it is that he's saying the use immunity that exists when
18 seeking to use Speech or Debate Clause-protected material against a Member doesn't exist because
19 we would not be using materials against these Members.

20 Q Okay. The evaluation provided by PIN is strictly -- you know, it's strictly guidance to
21 Justice Department lawyers about how they can use this information. Is that right? I mean,
22 there's no -- nobody's looking out for, you know, the Members of Congress and their speech or
23 debate privileges here.

24 A I don't agree.

25 Q Okay. So you think the Public Integrity Section is, in fact, evaluating the Members'

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1 speech or debate constitutional protections?

2 A I think that the Public Integrity Section and the special counsel's office was attempting
3 to be mindful of the Speech or Debate Clause protections and all other applicable law.

4 Q Okay. The toll records -- I mean, it provides an extraordinary amount of information.

5 Not content. Nobody is saying that the Justice Department is seeking to tap the Members'
6 telephone calls or to get the content of their text messages. But the toll records do capture a lot of
7 information. I mean, it records every incoming, outgoing call, correct?

8 A Depending on what the subpoena asks for. If the subpoena asks for incoming and
9 outgoing calls, yes.

10 Q Okay. You know how long a call lasted? Subpoenas seek that information.

11 A If the subpoena seeks duration, then yes.

12 Q The subpoena can tell you whether a voicemail is left. Is that correct?

13 A In my experience, some providers can -- have that information to provide, whether a
14 voicemail was left.

15 Q Right.

16 A I think some are not able to.

17 Q And so, you know, for example, the toll records subpoenaed for the chairman of the
18 Judiciary Committee or the Speaker of the House, you know, that's pretty valuable information for
19 political adversaries, a list of all people calling Speaker McCarthy. I mean, don't you agree that that
20 is pretty valuable information for a political adversary to have?

21 A I -- I can't speculate as to what a political adversary would want.

22 Q And so, you know, the concern here is that the Justice Department is just creating a, you
23 know, long list of telephone calls that the Speaker, the Senators, chairman of the Judiciary

24 Committee, you know, was having during these relevant times. And it just doesn't seem like -- I
25 mean, we've spoken to a number of your colleagues at this point, and it doesn't seem like the special

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1 counsel's office factored that in at all.

2 A It was certainly not the special counsel's office's intention to make some sort of, like,
3 database of all of the calls. The intention in contemplating these subpoenas was to gather the
4 limited evidence for the case.

5 Q But they do make the database. I mean, like, there's a whole section at the FBI --

6 . What's the name of it?

7 . Oh, the CAST.

8 . The CAST?

9 . Cellular Analysis Survey Team, I believe.

10 Ms. Gaston. I'm familiar with the acronym, but I did not know till now what it stood for.

11 . Right. That digests this information and creates a pretty robust record of who,
12 you know, the targets here, the recipients of the toll record subpoenas were telephoning.

13 Ms. Gaston. I'm actually not familiar with -- with that, with some sort of database.

14 What is the -- what's -- the CAST team?

15 CAST.

16 :

17 Q So what's your understanding -- what does the CAST team do with this data?

18 A So my understanding is that FBI agents receiving toll records in general look through the
19 toll records for the specific evidence that is relevant to the investigation, and we use that -- that
20 evidence in a case.

21 Q Okay. And it's limited to that?

22 A That is my understanding.

23 Q Okay. Can you tell us what was done with this information, you know, after you
24 acquired the toll records, you know, via subpoena?

25 A So I think that the indictment reflects some information about phone calls placed by the

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1 President and Mr. Giuliani.

2 Q Okay. Is that the extent that that information was used?

3 A To the best of my memory, the evidence that we gathered from myriad sources in the
4 course of the investigation was used purely for evidentiary value in the course of the prosecution,
5 not for -- not for making a database or anything like that.

6

7 Q And in looking at the email from Mr. Keller that we've been on for a while, it says,

8 "Based on the email below and our conversation, PIN concurs the subpoena for toll records for the
9 identified Members," and then, "As you are aware, there is some litigation risk regarding whether
10 compelled disclosure of toll records of a Member's legislative call violates the Speech or Debate
11 Clause in the D.C. Circuit."

12 What was the litigation risk? Did Mr. Keller ever explain that to you in your conversation?

13 A So I think -- and, you know, I -- I have had conversations with Mr. Keller about the D.C.

14 Circuit in my role in the D.C. U.S. Attorney's Office completely separate from this. I think what he's
15 saying is a court has not decided this issue -- or has not held something entirely on point on this
16 issue.

17 Q So there could have been a litigation risk in that the toll record subpoenas could have
18 violated the Speech or Debate Clause. Is that what Mr. Keller's analysis was?
19 A No. I think he's just saying that there's litigation risk in sort of what I was saying
20 before, about the mashing of the -- sort of the Rayburn principles and this case law from other
21 circuits.
22 Q And how would it -- how would this litigation have come about?
23 A I don't know.
24 Q I guess, what was the remedy for the Members who had their toll records subpoenaed?
25 What was their remedy to litigate their Speech or Debate Clause privileges?

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1 A So I -- my understanding is that -- sorry. Could you ask the question again?
2 Q What was the remedy for Members who wanted to assert that their toll records fell
3 under the privilege of the Speech or Debate Clause?
4 A So I don't think that there is a potential violation under the case law of the privilege
5 through this proposed course of action.
6 Q And I get that that is your understanding. But Members of Congress and the House
7 believes that these are protected by the Speech or Debate Clause. So what remedy did these
8 Members who were affected by these toll record subpoenas, what remedy did they have to assert
9 their Speech or Debate Clause privileges?
10 A So the records were not being used against them, and so there's not -- there's not a way
11 to seek a remedy for a privilege that is not violated.
12 Q And I understand that that is your interpretation. But the House and Members believe
13 that their toll records are covered by the Speech or Debate Clause. What remedy did they have,
14 prior to their records being turned over to the Justice Department, to assert their speech or debate
15 privilege? What remedy did they have?
16 A So -- and this goes back to the two different kinds of privileges. So there is a privilege
17 against compelled disclosure that is described in Rayburn --
18 Q Uh-huh.
19 A -- in a Member's -- in the Rayburn context, it is in -- compelled disclosure of legislative
20 materials from the Member's physical office. That is the compelled disclosure privilege.
21 Then there is the use privilege that is the -- the fact that the government cannot use
22 legislative materials against the Member of Congress. So the potential to seek a remedy for the use
23 privilege would come if the government tried to use the records against the Member of Congress.
24 And in the compelled disclosure privilege, my understanding and my reading of Rayburn, which
25 obviously is a very different case and very different circumstances, is that it is not a compelled

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1 disclosure in the meaning of Rayburn if it's from a third-party provider.
2 Q Okay. And as I said, I get that that is your understanding, and Members believe that
3 they have speech or debate privilege over their toll records. And what could they do -- prior to DOJ
4 getting these records, how could they assert those privileges?
5 A I'm not sure.
6 Q Okay. Because there were nondisclosure orders that accompanied these subpoenas.
7 Is that correct?
8 Did you contemplate nondisclosure orders to accompany these subpoenas?
9 A Thank you. So this discussion doesn't mention nondisclosure orders. I don't

10 remember a nondisclosure order being part of this discussion or analysis or contemplation. So that
11 just did not -- that was not part of the thinking or consideration of the subpoenas, as I remember it.

12 Q So there were no discussions about whether or not to seek a nondisclosure order to
13 accompany these subpoenas.

14 A I don't remember any such discussions.

15 Q And to the extent there were nondisclosure orders sought -- I will represent to you that
16 there were nondisclosure orders that accompanied the specific May 2023 subpoenas -- the
17 subpoenas for the toll records -- was there any conversation about whether or not to tell judges that
18 you were seeking toll records of Members of Congress with these subpoenas?

19 A So I don't remember a discussion of a nondisclosure order in this context. I -- I will
20 leave it at that.

21 Q Okay. And when Mr. Smith came before the committee, we asked him the same
22 question. He said, We did not tell judges that we were seeking toll records for Members of
23 Congress. Does that match your recollection?

24 A So I don't have a recollection. What I can say is, in my larger experience, I am not sure
25 that the identity of the holder of the phone number would be in an application to the judge.

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1 Q Okay. So it wouldn't surprise you if Judge Boasberg didn't know that he was signing an
2 NDO that covered subpoenas for Members of Congress' phone records?

3 A I'm going to leave it at the way I tried to answer.

4 Q And had you sought nondisclosure orders during your tenure at the Justice Department
5 that accompanied toll record subpoenas?

6 A I sought nondisclosure orders for all kinds of subpoenas in the course of my work at the
7 Justice Department.

8 Q And in the text of the nondisclosure orders, it says, you know, the court finds reasonable
9 grounds to believe that such disclosure will result in flight from prosecution, destruction of or
10 tampering with evidence, intimidation of potential witnesses, and serious jeopardy to the
11 investigation.

12 Was there any contemplation or discussion of how revealing to a Member of Congress that
13 you were seeking their toll records could cause them to flee?

14 A I don't remember discussions about nondisclosure orders.

15 Q Okay. And so you don't remember talking about how Members could destroy
16 evidence or tamper with evidence?

17 A I don't remember discussions of nondisclosure orders.

18 Q Okay. Are you aware of how the telecommunication companies responded to the
19 subpoenas for lawmakers' data?

20 A I'm not sure what you mean.

21 Q Did they provide the toll records to you?

22 A Is there -- is there a different way to --

23 Q If it's helpful, I can enter an exhibit and talk to you about how a telecommunications
24 company pushed back against the special counsel's office -- is that helpful? -- in providing toll
25 records for a Member of Congress.

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1 A You can -- you can show me anything, and then I'll figure out --

2 Q Okay. This will be exhibit No. 8.

3 [Gaston Majority Exhibit No. 8

4 was marked for identification.]

5 Ms. Duval. Could we go off the record for just a second?

6 . Yes. We'll go off the record.

7 [Discussion off the record.]

8 We can go back on the record.

9 :

10 Q Okay. In exhibit 8 that I just gave to you, the second bullet point -- and this is a letter

11 from an AT&T vice president to Chairman Grassley in response to Senator Grassley's request for
12 information regarding subpoenas for Members of Congress' toll records.

13 The second bullet, it says, "In May 2023, Special Counsel Smith sent AT&T a grand jury

14 subpoena that included a request for phone records associated with AT&T accounts for two other
15 Members of Congress. However, when AT&T raised questions with the Special Counsel Smith's
16 office concerning the legal basis for seeking records of Members of Congress, the special counsel
did

17 not pursue the subpoena further, and no records were produced. For your convenience, attached
18 is a copy of that subpoena and associated nondisclosure order, which expired in May 2024."

19 I introduced this to help your recollection with how telecommunication companies responded
20 to the subpoenas for lawmakers' data, and if it's helpful.

21 Was AT&T the only telecommunications company that pushed back on providing records?

22 A I --

23 Ms. Duval. I think this is a 6(e) issue in part because it's premised on subpoenas.

24 Ms. Gaston. So let me --

25 :

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1 Q Did you have discussions with AT&T regarding records for Members of Congress?

2 A So let me take a step back and just explain. I'm not trying to be difficult.

3 In the grand jury context, the recipient of a subpoena is free to go out into the world and hold
4 it up and say, I was subpoenaed. And a witness to the grand jury is free to walk out of grand jury
5 testimony and say, I just testified in the grand jury, and I said A and B and C.

6 Even when that happens, lawyers for the Justice Department are not able to comment on it
7 or confirm it, if that makes sense. And that might seem, like, weird. The reason for it -- part of the
8 reason for it is the secrecy of the grand jury process to basically protect witnesses. Like, when I
9 used to be a prosecutor, when I would be explaining the grand jury process to a witness, I would tell
10 them that they were free to tell the world that they were a witness but that the government and the
11 grand jurors were not, and so if they wanted that status to stay a secret, it would stay a secret. And
12 the reason for that is so that people feel free to provide testimony without fear of outside influences
13 and stuff like that.

14 So that is just -- that is what I am trying to be careful of. So I just -- I want you to know that I
15 am trying to be helpful.

16 I think a safe way to answer to just, like, get this behind us is I don't remember conversations
17 with AT&T.

18 Q Okay. Do you remember conversations with your fellow special counsel office

19 employees regarding AT&T raising the Speech or Debate Clause?

20 A I do not.

21 Q Do you remember any conversations with your colleagues at the special counsel's office
22 regarding whether or not to pursue records from AT&T further?

23 A I don't think I can answer that question, but I think the answer to the previous
24 question --
25 Q Okay. You don't have any --

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1 A -- gets us through it.

2 Q Okay. What conversations did you have with your colleagues at the special counsel's
3 office regarding 2 U.S.C. Section 6628, which is a statute that says, you know, if it is a Senate phone
4 line -- are you familiar with the statute, first of all?

5 A I am generally familiar with the statute.

6 Q Okay. So what conversations did you have about that statute with your colleagues and
7 how it would apply to seeking records from Members of Congress, specifically Senators?

8 A I don't remember having conversations about the statute.

9

10 Q Were you aware of the statute at the time?

11 A I believe I was generally aware of the statute.

12 Q So the office was aware of the statute?

13 A I believe I was aware of the statute.

14 Q Okay. And so if you're aware of the statute, it says some of these documents or some
15 of these records cannot be produced, what's the thinking? You're just hoping the judge won't know
16 about it and hoping the carrier doesn't bring it up? What's the thinking there?

17 A I did not think that the steps that I was contemplating implicated the statute.

18 Q How come?

19 A My memory of what I understood about the statute was that it applied to Senate phone
20 lines.

21 Q One of the lines -- like, one of Senator Cruz' lines was his landline to his office. Did you
22 know that?

23 A I did not think I was contemplating subpoenas for a landline.

24 Q Okay. But one of the landlines was included, and so it was subpoenaed.

25 . Do you know who -- who all was involved in the contemplation of the

75

1 subpoenas for Members of Congress? Was it just Ray Hulser and J.P. Cooney, or were there other
2 individuals involved as well?

3 Ms. Gaston. I think it's the folks on the emails.

4 . Okay. And when the -- you obviously have to contemplate which numbers to
5 include in a subpoena. Is that correct? And so who was in charge of finding the numbers and
6 deciding which numbers should be included?

7 Ms. Gaston. I think the numbers were gathered by the FBI.

8 :

9 Q Nobody told the judge that any of these numbers were for Senators, right?

10 So you're just submitting the toll records subpoena request and accompanying NDOs, just
11 "These are the numbers." And so there's no reason a judge would know that they were Senators or
12 Senate landline numbers, correct?

13 A I'm sorry. What is the question?

14 Q You didn't tell the judge that the numbers you were seeking belonged to United States
15 Senators, their staff, including potentially landlines.

16 A Tell the judge in what context?

17 Q In seeking the NDO.

18 A So I don't -- I don't remember matters related to NDOs.

19 Q Okay. So is there any way for the court to know that these numbers were from United States Senators?

21 A So stepping back from specifics here, one issue that is a little bit of a catch-22 in this context is that when the government seeks a subpoena for a toll record, it is not -- I think it is fair to say it is usually and almost always not certain about the association between the number and the -- and the owner of the number.

25 Q Uh-huh.

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1 A Often, a toll record subpoena includes a request for the name of the owner of the number.

3 Q Uh-huh.

4 A And so, when seeking the subpoena, the government can't be sure of who the owner of the number is. And so --

6 Q They can't be sure but, like, your memo is pretty clear that you're seeking these Senators' toll records, correct?

8 A It was contemplated to get those records. But that is my attempt to explain why I did not think we were contemplating a landline record.

10 Q Okay. But I guess my question is whether there was any way for Judge Boasberg -- I think he was the judge that okayed this one -- to know that the numbers related to -- the intent of the Justice Department was to get toll records for Senators Blackburn, Graham, Hagerty, Hawley, Lummis, Johnson, Kennedy, Sullivan, Tuberville, Scott.

14 A So, sorry. This is part of what I was trying to express. So at the time when the subpoena is issued, the government might think that it is going to get numbers associated with a particular person, and that is the point at which the government might seek an NDO. But it doesn't know until the provider --

18 Q Right.

19 A -- responds. And so --

20 Q But you had a good idea -- I mean, this was a pretty unusual set of circumstances, correct?

22 Ms. Duval. I think it's -- I think Ms. Gaston can talk about the contemplation, whether contemplating getting toll records that are potentially related to a Member of Congress is unusual in her experience.

25 Ms. Gaston. So toll record subpoenas are very common. They are a frequently used

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1 investigative tool. It is less common to get records associated with Members of Congress.

2 :

3 Q Was there any thinking among you or your colleagues at the Department about whether to alert Judge Boasberg that some of these numbers here were related to United States Senators?

5 A I don't remember discussions of an NDO.

6 Q Okay. But an NDO was sought, and there's no -- there's no mention that these are Senators that you're seeking.

8 I only ask because, I mean, a lot of United States Senators are calling for the impeachment of

9 Judge Boasberg for okaying this. And so we're just trying to figure out, you know, if the Department
10 didn't tell Judge Boasberg, it gets a little tricky to impeach him on that ground.

11 A I will just say, I don't think -- I don't think Judge Boasberg did anything wrong. I also
12 think, if you look at the language of 18 U.S.C. Section 2705, which I think is the nondisclosure
13 provision, I think the language is that the judge shall approve it. And so I would just -- I think that
14 language gives you an idea of the limited discretion of a judge in that context.

15 Q But I guess one of the concerns that the Senate and the House Members have here is
16 that, you know, if nobody flagged this issue, then there was no opportunity to -- no opportunity to
17 litigate it, no opportunity for the judge to have, you know, oral argument on it. There was just no
18 real opportunity to consider the unique issues here.

19 A In my experience at the Justice Department, I can say I am not sure that a nondisclosure
20 order -- a nondisclosure order application would necessarily describe the individuals suspected to be
21 associated with the phone number.

22 Q Okay.

23 :

24 Q And in total, how many Members of Congress had their toll records swept up in the
25 special counsel's investigation?

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1 A So I know that we contemplated subpoenas for the Members listed in the documents
2 that we just described. I don't remember contemplating others.

3 Q So that was the only time that you contemplated subpoenaing a Member of Congress'
4 toll records?

5 A In the special counsel's office.

6 Q Okay.

7

8 Q So the other Members that had their toll records captured, you were not involved with?

9 A So I don't remember contemplating subpoenas to -- to Members of Congress outside of
10 the context of these communications --

11 Q Okay.

12 A -- in the special counsel's office.

13 Q I mean, it's been publicly -- you know, Senator Grassley published information related to
14 Congressman Fitzgerald, Wisconsin. It's been publicly disclosed that Congressman Chip Roy of
15 Texas -- you know, those two Members had their phone records acquired.

16 So you don't have any recollection of contemplating?

17 A I don't remember contemplating subpoenas outside of those described in those
18 communications with PIN.

19 Q Okay. Does the same go for Speaker McCarthy?

20 A Outside of the context of this email chain.

21 Q Okay. So that was perhaps a different AUSA or a different Justice Department
22 prosecutor?

23 A I don't think that I was in the office at the time that I have heard that happened.

24 Q Okay.

25

79

1 Q What can you tell us about discussions related to interviewing Members of Congress

2 related to the January 6th investigations?

3 A I don't remember discussing interviewing Members of Congress.

4 Q Okay. I have a -- some messages between you and Mr. Cooney. Would that be
5 helpful if --

6 A Yes.

7 Q Okay. And it's a long packet. Feel free to -- it's not long, long. But just feel free -- it
8 doesn't take long to read.

9 A Oh. You mean outside of the context of the special counsel's office.

10 Q Yes. In relation to the January 6th investigation.

11 A Okay.

12 Q Is that helpful? Sorry.

13 A Got it.

14 . This will be 9. I apologize.

15 [Gaston Majority Exhibit No. 9

16 was marked for identification.]

17 Ms. Duval. So these are 2021. Have you seen them since 2021? Five years ago. Almost
18 exactly 5 years ago.

19 This seems to be from several -- from different days, but I can't tell -- or is it all somehow --

20 . On the date, it says -- at the top it says February 14th, 2021.

21 Ms. Duval. Okay. But then it runs through to 7:16 p.m., and then it starts at 11:47 a.m.

22 . Uh-huh.

23 Ms. Duval. Is that --

24 . So it could very well be two different days.

25 Ms. Duval. Or does the 11:47 a.m. predate the 2:08 on February 14th?

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1 . It could very well include more than one day. I'm not sure. I'm not going to

2 ask her specifically about is it February 14th that she said this, but --

3 Ms. Duval. Just trying to understand what we've got here. I think it's got to be two
4 different days.

5 Ms. Gaston. Do you have a sense of what days these things are happening?

6 :

7 Q All we have at the top is February 14th, 2021. So this was happening in the February
8 2021 timeframe.

9 A Okay.

10 Q I'm not going to ask you about the specific dates because it's unclear from the messages
11 because we just have the time --

12 A Okay.

13 Q -- so I'll -- February 2021 timeframe.

14 A Okay.

15 Q If you go -- it's five pages from the back page. I think it's the --

16 A From the back.

17 Ms. Duval. And it's a nine-page packet?

18 . Yes.

19 :

20 Q And the very top message says, "also, sorry to bug you on this," at the very top --

21 A Very top message. Okay.

22 Q And at the end of the page before, it says Joseph Cooney, 11:50 a.m. So this is a

23 message from Mr. Cooney. It says, "also, sorry to bug you on this, but am I correct to say that the
24 timing of rep interviews, Cohen, Yarmouth, Gosar, Boebert, are all day-to-day evaluations. I agree
25 with" -- this is in the context of a different message, but "I agree with you. You could just omit the

81

1 DMV stuff altogether."

2 And a couple of messages down, at 11:51 Cooney writes back, "for weekly -- I'm including:

3 Stone, Mastriano/Straka; deconfliction of Ali and Hostetter; Boebert allegation on mileage; how we
4 backed into Taylor Greene. Anything else I should include?"

5 Then you respond, "Yarmouth, Boebert, then Gosar, Biggs, Brooks. Sorry, I'll send you a
6 weekly now."

7 Did you ever interview Mr. Gosar or Ms. Boebert?

8 A I don't think so.

9 Q Do you remember the context in which this was coming up? Why were you

10 contemplating, it appears from the messages, interviewing Members of Congress?

11 A As best I can remember, there was an allegation that Representative Boebert had
12 brought individuals into the Capitol complex in advance of January 6th.

13 Q Uh-huh.

14 A And my memory of that, by the way, is that we investigated it and pretty quickly

15 determined that she -- she brought, like, family and friends to see the Capitol, and it had no
16 connection to January 6th.

17 Q Did you ever interview Members of Congress in relation to January 6th investigations at
18 large, whether it be at the U.S. Attorney's Office or with the special counsel?

19 A I don't think that I personally did.

20 Q Okay. Are you aware of others interviewing Members of Congress?

21 A I remember that -- I think an AUSA who I supervised was assigned to try to interview a
22 Member of Congress related to the allegations about Representative Boebert.

23 Q Okay. And that's the only context in which you remember a Member of Congress
24 being interviewed or that coming up in a discussion?

25 A I think so.

82

1 Q Okay. And on the page before that, there's a message from you to Mr. Cooney at 7:16

2 p.m. It's kind of in the middle, and it says, "well, I'm very much looking forward to finding out who
3 the "eight Members of Congress" "fighting all the BS" and being guarded by the Oath Keepers were."

4 Did you ever investigate whether Members were guarded by Oath Keepers?

5 A So I think -- and I could be very wrong about this -- that that was a reaction to

6 messages -- at this time, I was working on what ultimately became the Oath Keepers investigation.

7 Q Uh-huh.

8 A I think that that might have been quoting things that the Oath Keepers were

9 communicating to one another.

10 Q And did you ever investigate eight Members of Congress who were being guarded by

11 the Oath Keepers, or did that just get chocked up to something that the Oath Keepers were saying
12 that was untrue?

13 A I didn't work on that through trial, but I don't remember -- I don't remember that

14 panning out.

83

1 [1:19 p.m.]

2

3 Q And we'll go back to the Ms. Boebert allegations, but I wanted to stick with this packet
4 here.

5

6

7

8

9

10

11

If you flip one page over from the "also sorry to bug you" page --

A Back or forward.

Q Forward. Go towards the back of the packet.

A Okay. So the also sorry to bug you, or the following?

Q The following. Flip one over.

A Losing track of time?

Q Yes.

12 A Okay.

13 Q At the very end there's a discussion about nuns who were photographed next to oath
14 keepers. Did you ever run this allegation down, or any connection between the nuns and -- you
15 know, the nuns are seen with the stand with Trump photo, and I think the Oath Keepers -- alleged
16 members of the Oath Keepers are in the background. Did you ever discover a connection between
17 the nuns and the Oath Keepers?

18

19

A I don't remember that.

Q Okay. And then a little bit further down you said I would like to take a special
20 assignment of finding and prosecuting them. Was there any investigative effort put forward on this
21 specific angle?

22 A

23 assignment to find and prosecute them.

I don't. And I think that that is sort of an attempt to joke, and I did not take a special

24 Q Okay. And then going to the Ms. Boebert allegation, what can you tell us about what

25 investigative steps were taken to determine whether she was leading a tour of individuals who were

84

1 seeking to come in to the Capitol rather than just view it as a tourist?

2 A So my general recollection is that the primary step we took was to review a lot of video
3 footage, and that the video footage reflected that she -- she took a small group of, what looked to be
4 like family and friends, around the Capitol.

5 Q Okay. And in this context, we can enter it as an exhibit, or I can just read it to you, it's
6 one message, if it's helpful, Mr. Cooney wrote to you on January 16th, 2021, this is in the Boebert
7 context, I'm telling you, though, this two-way map thing has legs, this makes perfect sense to me.

8 Proving members' intent might be impossible, but I am fairly confident that we are going to put a
9 map, or some other information relevant to coordinated activity in the hands of an extremist group
10 and trace it back to a congressional office. And then you responded, Yep. But did you investigate
11 other Members of Congress in this similar vein, or was it just Ms. Boebert?

12 A Could I see the messages?
13 Q Yes, you totally can. This is number 35.
14 . This is a different exhibit?
15 . Yes.
16 [Gaston Exhibit No. 10
17 was marked for identification.]
18 . Our hour is up, so we're going to go off the record, and then we'll have to come
19 back to this in our next round.
20 Ms. Gaston. Okay.
21 [Discussion off the record.]

85

1 [2:05 p.m.]

2

3 We'll go back on the record.

4

5 Q Ms. Gaston, I would like now to return to what has been marked exhibit 9 by the
6 majority. And the same page, which I believe is five from the back, discussing interviews with
7 Cohen, Yarmouth, Boebert --

8 A And actually, one thing that I would just like to note that I noticed when I was reading
9 through this earlier is that there are things in here that refresh my memory of some things. Like, for
10 instance, I think at one point I used the acronym ISF in here, and I remember that stood for
11 insurrection strike force, which was what we used to describe that group of trying to figure out like
12 how to organize. So I said before I didn't remember using the term, "strike force." We did use the
13 term, "strike force," so --

14 Q Okay. And that's actually very helpful because I think if we're looking at one of the
15 pages where ISF is mentioned, and, again, that's exhibit 9, and it's five from the back.

16 A Five from the back.

17 Q And the top of the page says "also, sorry to bug you."

18 A Okay.

19 Q So, I just want to ask a couple of questions and sort of clarify what's going on here.

20 Obviously, these are fairly out of context in terms of just sort of your conversations over the course
21 of the day. But it states that there are potential rep interviews with Cohen, Yarmouth, Gosar,
22 Boebert. Are those related to the January 6th investigation broadly? Were they separate
23 investigative matters? Were they, you know, something else altogether?

24 A I think that is in the context of the investigation into whether people let folks into the
25 Capitol complex.

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1 Q Okay. So I'm going to go a little further down the page, and Joseph Cooney's message
2 at 11:51 a.m., and it states that there's a Boebert allegation on mileage. Was that also in relation to
3 that same January 6th investigation, or is that a separate investigation?

4 A I think that is not within the authorization from the Justice Department.

5 Q And it's not within the authorization from the Justice Department authorizing you to
6 speak on matters related to the January 6th investigations. Is that right?

7 A Yes.

8 Q Okay. And then a little further down the page, Joseph Cooney sends a message at

9 11:58 a.m., and I will just read a portion of this. It says, quote, "SARS obtained from FinCEN led us
10 to issue process that backed into a PAC and a campaign account of Greene. An examination of
11 those accounts revealed a common signatory, which suggests electioneering coordination in
violation
12 of FECA," which is F-E-C-A. "In consultation with PIN, as required by the USAM, we have opened
a
13 FECA investigation that will be handled by Liz Aloï and Molly Gaston. This investigation is
separate
14 from ISF, and there's some other information in there as well. And you stated earlier that ISF refers
15 to insurrection strike force. Is that right?
16 A That is my memory, yes.
17 Q Was this investigation -- and I should ask, when Joseph Cooney was referring to a
18 campaign account of Greene, was he referring to Marjorie Taylor Greene?
19 A I don't remember what this was. I don't remember what this was.
20 Q Okay. Was there a separate investigation into campaign money being related to
21 January 6th?
22 A I don't remember there being a separate investigation into campaign money.
23 Q Okay. I think we'll leave that document there for now. In the meantime, I would like
24 to introduce what will be marked as exhibit 11, which is a CBS news article concerning Jack Smith
25 Attorney's reaction to the Republican investigation.

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1 [Gaston Exhibit No. 11
2 was marked for identification.]
3 :

4 Q So in this news article -- and just a preview, we're returning to the discussion
5 surrounding member toll records, and any investigation of the same. On page 4, it states the
6 reaction of certain Senators who had their toll records searched at some point by DOJ, and their
7 reaction is the second paragraph down on page 4, and it says, quote, "without any sufficient
8 rationale or cause, Jack Smith's team used a Federal grand jury subpoena to obtain the phone
9 records of sitting United States Senators and Member of the House of Representatives," and it says
10 Senators continued. Do you see that statement?
11 A I see that statement.
12 Q And do you agree with that statement, and specifically the idea that there wasn't any
13 sufficient rationale or cause to at least consider a subpoena of these Senators' toll records?
14 A I think that the memorandum that was part of exhibit 6 describes some of the reasons
15 we contemplated issuing subpoenas.
16 Q So in your mind, there was a sufficient rationale to consider issuing those subpoenas?
17 A I think that the rationale is described in the memo.
18 Q Okay. The article also repeats criticism that the special counsel's office spied on these
19 lawmakers, and tapped the lawmakers' phones. Is it accurate to say that these law -- that the
20 special counsel's office tapped the lawmakers' phones?
21 A A subpoena is not the same as a Title 3. And I think recognized that before.
22 I don't think is suggesting that there was a wiretap.
23 Q Sure. And just specifically regarding this article, and claims that have been made,
24 would you characterize your subpoena, or consider your subpoena for toll records to be an attempt
25 to spy on U.S. Senators, or tap their phones?

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1 A A subpoena is not a wiretap.

2 Q Okay. And just speaking in general terms, when you or another prosecutor issues a
3 grand jury subpoena for toll records, I believe you stated earlier that a nondisclosure order is
4 common in that circumstance. Is that right?

5 A Nondisclosure orders are an investigative tool used frequently with many different kinds
6 of subpoenas.

7 Q Okay. And specifically, when a nondisclosure order is issued, what are the grounds
8 that a judge grants a nondisclosure order? What has to be found?

9 A So the statute providing for nondisclosure orders is 18 U.S.C. 2705, and I believe the
10 bases set forth in the law, and I'm probably going to get these wrong, and/or out of order. The first
11 one is physical harm to an individual, tampering with evidence, flight from prosecution, general
harm

12 to the investigation. I think I'm probably missing one. But the statute sets forth the various bases.

13 Q Would you agree that intimidation of potential witnesses could also be a grounds?

14 A I think when I said -- I think when I said tampering with evidence I was sort of sweeping
15 in intimidation of witnesses.

16 Q Okay. So it would be fair to say that NDO, under 18 U.S.C. 2705 could be issued if the
17 court finds any one of the following, destruction of or tampering with evidence, intimidation of
18 potential witnesses, and/or serious jeopardy to the investigation?

19 A I think those are three of the five bases stated in the statute.

20 Q And in this case, the case against Donald Trump, and, you know, in the D.C. District
21 Court, did you ever encounter the intimidation of potential witnesses?

22 A So if I can look at the indictment again.

23 . Just to save you, that's exhibit 7, just for the record, the superseding
24 indictment.

25

1 Q And if helpful, we can also introduce the government's motion that raises these same
2 issues. And we can do that now, if helpful.

A We can start with the indictment. If you look at page 12 of the indictment, or

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3

4 paragraph 31, that describes death threats that election workers received. There may be other
5 examples in the indictment, for instance.

6 Q Okay. We'll introduce as exhibit 11 the government's motion to ensure that extra
7 judicial statements do not prejudice these proceedings.

8 . Exhibit 12.

9 Is it 12? Exhibit 12. My apologies.

10 [Gaston Exhibit No. 12

11 was marked for identification.]

12 Ms. DuVal. And this is a motion regarding a grand jury subpoena?

13 It is not solely a motion regarding a grand jury subpoena. I actually don't
14 believe it has much grand jury material in it. It's all very public. But I will give you a second to
15 review.

16 We'll try to keep our questions anchored to the public filing, which is exhibit
17 12.

18

19 Q Do you recognize this document?

20 A Yes.

21 Q And how do you recognize this document?

22 A This was a filing in the course of litigation.

23 Q Okay. And that litigation specifically being U.S. versus Donald Trump. Is that correct?

24 A Yes.

25 Q And so I'll direct your attention to the second sentence on the first page, which is,

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1 "Through his statements, the defendant threatens to undermine the integrity of these proceedings
2 and prejudice the jury pool." What does it mean to undermine the integrity of the proceedings?

3 Just as a general matter, not in any specific relation to this case.

4 A Well, I think it's difficult for me to answer as a general matter.

5 Q Okay.

6 A With reference to this filing, this was -- this litigation was about restricting the
7 statements of parties to the litigation, you know, in the outside world that might, for instance,
8 intimidate witnesses.

9 Q Okay. And were these statements made by any particular individual, or a set of
10 individuals?

11 A I think many of the statements in this filing were made by President Trump.

12 Q And what actions or statements had Donald Trump undertaken that in the government's
13 view here threatened to undermine the integrity of these proceedings?

14 A Well, the -- on page 3 and page -- on pages 3 to 5, there are some examples. And then
15 on page 6, there is a Truth Social post that President Trump made, if you go after me, I'm coming
16 after you. He also made some posts about the judge in the case, and promptly the judge received
17 racist death threats.

18 Q Okay. And so on page 2 here it says that there are disparaging and inflammatory
19 attacks on the citizens of the district, the court prosecutors, and prospective witnesses. Is that
20 what this motion was sort of raising for the court's consideration?

21 A Those are kinds of statements that are discussed in the motion.

22 Q Okay. And we'll take them one at a time. What inflammatory and intimidating
23 statements had Donald Trump made about witnesses in this case?

24 A So there are examples from the course of the investigation that are on the first couple
25 of pages. I also recall from the litigation that there was concerning statements about General Mark

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1 Milley, who was a potential witness, and suggesting that he should be executed. And statements
2 about Vice-President Pence and Chief of Staff Meadows, both of whom were potential witnesses.

3 Q And to clarify, Chief of Staff Meadows and Vice-President Pence were prospective
4 witnesses. Was General Milley, was he also a potential witness?

5 A Yes.

6 Q Okay. So with regard to those specific statements, how were they harmful to the
7 proceedings? In what manner?

8 A Well, it is harmful with respect to the individual witness, it has the potential to
9 intimidate a potential witness, but it is also potentially intimidating for witnesses who do not have as
10 high a profile as those individuals basically to see, see those kinds of posts being public.

11 Q And were there witnesses that were not named in this motion that had been subject to
12 intimidation by -- or I will say those comments, similar comments by Donald Trump?

13 A There are redactions on pages 3 to 5, redactions of identifying information.
14 Q And in your view, was there actual harm that came from this? Obviously you're filing a
15 motion to stop, you know, these intimidating statements from being issued. Was there actual harm
16 to your investigation based off of Donald Trump's statements?
17 A Well, the case law says that the court should act at the earliest point possible to prevent
18 harm to the integrity of the judicial process. So that is -- that is why we sought the motion.
19 Q Okay. So on page -- we'll go to page 15. And the first full paragraph on that page
20 begins, quote, "The government seeks a narrow well-defined restriction that is targeted at
21 extrajudicial statements that present a serious and substantial danger of materially prejudicing this
22 case," end quote. So what does a narrow, well-defined restriction mean in this case?
23 A Well, I think probably the narrow, well-defined restrictions is what the D.C. Circuit
24 ultimately issued. So this litigation proceeded, and ultimately the D.C. Circuit narrowed an order
25 that the district court judge had issued. And so, that would be the narrowly-tailored order that sort

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1 of was in effect in the course of litigation.
2 . When you were litigating this, what was the balance that you were trying to
3 strike in protecting the integrity of the ongoing proceedings, as well as, you know, possible First
4 Amendment considerations?
5 Ms. Gaston. So -- and I think the D.C. Circuit discussed this as a balancing. Obviously,
6 President Trump had a First Amendment right. He had a First Amendment right to make political
7 speech, and we were not seeking to restrict his political speech. But at the same time there was an
8 ongoing court case, and the judge has an obligation to preserve the integrity of the judicial
9 proceeding. And so, that was the balancing that we were seeking, and that the D.C. Circuit sought
10 as well.
11 . Just to be clear, you all as a team, from your recollection, did consider
12 President Trump's First Amendment Constitutional Rights when seeking this order?
13 Ms. Gaston. Yes.
14 . And you also considered the integrity of the ongoing proceedings and
15 tampering the witnesses, threats to judges, threats to prosecutors, you all considered that as well?
16 Ms. Gaston. Yes.
17 . Thanks.
18 :

19 Q So with regard to this, the D.C. Circuit litigation obviously set the actual extent of the
20 order, but the government also submitted what it thought to be the order, and that's also on page
21 15. Is that correct?
22 A I think these were the things that the proposed order was trying to get at.
23 Q Okay. And so the government, it says here, the government's proposed order specifies
24 that such statements would include statements regarding the identity, testimony, or credibility of
25 prospective witnesses, and statements about any party witness, attorney, court personnel, or

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1 potential jurors that are disparaging, inflammatory and intimidating. Is that right?
2 A Yes.
3 Q And in specifically asking for those two categories of communications to be prohibited
4 by the order, and to my colleagues' question, how are you trying to balance Donald Trump's concern
5 of First Amendment Rights with the integrity of the proceedings?

6 A Well, I think, you know, these two provisions are focused on the court proceedings.
7 They're focused on witnesses and, you know, parties to the litigation.
8 Q So under your proposed order, Donald Trump would have been free to speak on issues
9 falling outside of the court proceedings, or not directed at the court proceedings?
10 A So, I think it's -- I think in order to answer that question, I would have to like know what
11 the statement is and we would have to go through sort of an analysis of it. So I'm hesitant to make
12 a broad statement about what would or would not be covered.
13 . We understand this is a case-by-case determination on each given statement
14 at any given time. Is that correct? Your analysis, at least, would have to be on a case-by-case
15 determination of each individual statement?
16 Ms. Gaston. I think so. Yes.
17 :
18 Q So, for example, on page 12 there's a Truth Social post that states, quote, "Wow, it's
19 finally happened. Little Mike Pence, a man who was about to be ousted as Governor Indiana until I
20 came along and made him VP has gone to the dark side." Would that, for instance, be the type of
21 comment that would be prohibited by the court's order if it was found that the dark side was in
22 reference to cooperating with the prosecution?
23 A So, I think there are a lot of considerations about this. So Vice-President Pence was a
24 potential witness in litigation, and I think those words, too honest, I think, but I would have to spend
25 time looking, I think that is from the indictments, and so, I remember being concerned about this

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1 social media post.
2 Q Okay. But otherwise, criticism of Mike Pence as a Vice-President, or as a, you know,
3 runner, really anything else, would that have been covered by the proposed order that the
4 government submitted?
5 A That was not the intent.
6 Q Okay. So what happened, and you referenced this a little bit already, within the court
7 proceedings when the government submitted its motion?
8 A So we resubmitted the motion, the defense responded, we had a hearing, and the
9 district court judge issued an order under Rule 57.7 in D.C., which is a local rule for the district court.
10 Q And in broad terms, what does 57.7 hold?
11 A It is the local rule that allows a judge to issue an order pertaining to extrajudicial
12 statements.
13 Q And what did the district court find in regard to the government's submission of specific
14 statements, and whether that had constituted threats or harassment in this case?
15 A I don't remember the details of the court's opinion. I remember that the court issued
16 an order restricting some statements.
17 Q So the court, it's fair to say, found that there was a risk of harm to the proceedings
18 based off these statements?
19 A The court found that there was a basis to issue an order.
20 Q Okay. And we'll introduce exhibit 13, which is the D.C. Circuit Court opinion from this
21 matter as well.
22 [Gaston Exhibit No. 13
23 was marked for identification.]
24 :
25 Q And obviously, this is a very long document, so I won't ask you to read the whole thing.

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1 But you mentioned that the district court opinion was narrowed by the circuit court ruling.

2 A Yes.

3 Q And do you remember how it was narrowed?

4 And you might want to direct her to page 55.

5 Ms. Gaston. Thank you. So I think, although I have not taken time to read the entire
6 document, the circuit narrowed the provision related to witnesses because the district court had
7 used the word "target," and there was concern that that word could be broad, and so it added that it
8 needed to involve the witness' potential participation in the investigation or criminal proceeding?
9 :

10 Q Okay. And would it be correct, then, that the appellate court here, the district -- the
11 D.C. Circuit did not fully overturn the district court's order?

12 A It did not overturn the order. It narrowed it.

13 Q Okay. And I'll direct you to page 31. And on that page it says, The record shows that
14 Mr. Trump has repeatedly attacked those involved in his case through threatening public statements,
15 as well as messaging daggered at likely witnesses and their testimony. For example, the day after
16 his initial appearance in court, Trump issued a warning, quote, If you're coming after me, I'm
17 coming
18 after you.

18 So is it fair to say that the D.C. Circuit adopted the district court's factual rulings regarding the
19 fact that Donald Trump had repeatedly attacked witnesses in this case?

20 A I think that the circuit relied on the record in the district court.

21 Q Did it question the, to your recollection, the record in the district court?

22 . If you turn to page 35, and I'll direct you to the last paragraph on page 35, the
23 court says, Based on the record, the district court made a factual finding that, quote, when
24 defendant, Donald Trump, has publicly attacked individuals, including on matters related to this
25 case,

25 those individuals are consequently threatened and harassed. Mr. Trump has not shown that factual

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1 finding to be clearly erroneous, and we hold that the record amply supports it.

2 So I'll go back to the question that my colleague asked, does it appear that the circuit court
3 relied on the factual record adopted by the lower court?

4 Ms. Gaston. It appears that way.

5 . Thank you.

6 :

7 Q Okay. And so based on that statement, and the circuit court opinions, did the circuit
8 court agree that Donald Trump was issuing statements that were intimidating witnesses?

9 A I think the circuit court agreed that there should be an order in place limiting the
10 extrajudicial statements in the case.

11 Q And did it agree that these extrajudicial statements had real-world consequences, or
12 had the potential to have negative real-world consequences? And I'll just direct you to page 36,
13 which is the very next page.

14 A I see here the court wrote, Mr. Trump's documented pattern of speech and it's
15 demonstrated real-time, real-world consequences pose a significant and imminent threat to the
16 functioning of the criminal trial process in this case in two respects.

17 Q Okay. And just to go all the way back to the question relating to the standard and

18 nondisclosure order, based off the record established by the district court, and then adopted by the
19 circuit court, is it fair to say that there's a record of intimidation of witnesses in this case?

20 A I think -- I'm not trying to be too technical.

21 Q Sure.

22 A But I think it's important to specify that in this order, the circuit court found that
23 statement that we just read, and still thought it was appropriate to issue an order for the litigation.

24 And separately, the indictment lists some instances in which individuals were threatened or
25 intimidated in the course of events leading up to January 6th. I think that's how I would put it.

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1 . We'll go off the record.

2 [Discussion off the record.]

3 :

4 Q We'll go back on the record. The time is now 2:43. Ms. Gaston, at the end of our last
5 hour we were talking about, you know, an allegation that the Justice Department was looking at in
6 regards to Representative Boebert and a tour that she had provided in proximity to January 6th.
7 And I wanted to draw your attention to one of the text exchanges that I read previously, or message
8 exchanges, excuse me, from Mr. Cooney at 10:59, "I'm telling you, though, this tour/map thing has
9 legs. This makes perfect sense to me. Proving the member's intent might be impossible. But I
10 am fairly confident that we are going to put a map or some other information relevant to
11 coordinated activity in the hands of an extremist group, and trace it back to a congressional office."
12 And you then responded, "yep."

13 What investigative activity was conducted to run this allegation down?

14 A So my recollection of it is that we reviewed voluminous video footage, and did not find
15 evidence in the video footage. And then in investigations of groups that had reached the Capitol, I
16 don't think we found a connection to a congressional office in that direction either.

17 Q And were there other congressional offices that you investigated in this context?

18 A The allegations that I remember -- the primary allegations that I remember was
19 Representative Boebert.

20 Q Okay.

21 A And we pretty quickly determined that -- because it was a specific allegation related to
22 her taking a group through the Capitol, and so the footage ruled that out pretty quickly, as I
23 remember. I think there was also an allegation we received about Representative Gosar, and I
24 don't think that that bore out either, and I think that that was resolved pretty quickly as well.

25 Q There were also, in this time period there were also allegations that Barry Loudermilk, a

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1 Representative from Georgia, led a tour, and the Democrats with the Select January 6th Committee
2 were calling it a recognizance tour. Did you ever investigate any allegations surrounding that?

3 A I don't remember hearing that allegation.

4 Q So to the extent that the allegation had come to the Justice Department that Mr.
5 Loudermilk was leading a recognizance tour in advance of January 6th, that didn't rise to your level at
6 the Justice Department?

7 A I don't remember receiving that allegation.

8 Q Okay. I want to turn back to your time on Jack Smith's team, and you were just putting
9 everything in context. You had had a discussion with my colleagues in one of their previous hours
10 about comments about politics of the investigation. And, you know, at the time, Jack Smith is

11 appointed, you know, November 15th, 2022, President Trump announced his campaign for
12 re-election November 18th, Jack Smith is appointed, and so at that time, you know, Jack Smith is
13 investigating President Biden, who's in charge of the Justice Department, you know, his top political
14 opponent. So how did the Smith team insulate itself from attorneys that were politically aligned
15 with the Democratic Party?

16 A Just to go back, I think -- when you say that there was an investigation of President
17 Biden, do you mean by Mr. Hur?

18 Q No. I'm sorry.

19 A Sorry.

20 Q I must have misspoke. But if, you know, the team, the Jack Smith team was under
21 Merrick Garland's Justice Department that's led by President Biden, and, you know, Jack Smith's
22 team is investigating his top political opponent, Donald Trump, so how did the Smith team insulate
23 itself from attorneys that were politically aligned with Democrats?

24 A So I think the first, the first step is that in appointing a special counsel, the Attorney
25 General was attempting to do something about the fact that the Justice Department was part of the

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1 executive branch under the direction of President Biden, and the special counsel process is the way
2 that is provided in the code to give some independence to a prosecutor, and then there was
3 no -- there were no political considerations, in my experience, in the special counsel's office.

4 Q And were there -- was there any efforts to insulate from just all having attorneys with
5 one point of view on the team?

6 A I don't know what the political views of the attorneys on the team were.

7 Q Because, you know, Jack Smith says, I'm a registered independent, a typical prosecutor,
8 but that's not the case with his number two, J.P. Cooney. Is that correct?

9 A What is not the case?

10 Q J.P. Cooney was President of College Democrats at Notre Dame, he's now running for
11 Congress as a Democrat. Is that correct, is he running for Congress as a Democrat?

12 A He is running for Congress.

13 Q Okay. So he would be aligned with the Democrat party. Is that correct?

14 A So he is now running as a Democrat. In the special counsel's office, I don't know what
15 his -- I don't know what his political views were, and political views were not something that we
16 discussed. And I think, I am familiar with situations, for instance, Representative Gowdy was,
17 before he was a Representative, he was a prosecutor. I believe Representative Fitzpatrick was a
18 prosecutor and an FBI agent. Individual's personal -- in my experience at the Justice Department
19 writ large, individuals' personal views don't come into it when we're doing our work.

20 Q But this is different because you're investigating the top political opponent of the Biden
21 administration, and, you know, it's one thing if you have -- if your team is full of people who donate
22 to Democrats, and, you know, pretty similar if it's all people who align with the Democrat thinking.
23 You've got J.P. Cooney who's now running to be a Member of Congress under the Democrat Party,
24 and then, you know, I know you worked for a Democrat member of Congress, served Attorney
25 General Holder who was appointed by a Democrat, Lisa Monaco who was appointed by a
Democrat.

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1 So how did it insulate from just having attorneys that were aligned politically with Democrats?

2 A So in my time at the Justice Department, I worked for Attorney General Holder, and

3 Attorney General Sessions, and Attorney General Barr. I was hired into the D.C. U.S. Attorney's
4 Office by U.S. Attorney Jessie Liu who was an appointee of President Trump.

5 And so, in my experience at the Justice Department, I'm not familiar with what people's
6 political views are, and they don't enter into the equation.

7 Q And you were counselor to Attorney General Holder. Is that correct?

8 A Yes.

9 Q Were you similarly a counselor to Attorney General Sessions?

10 A I was a prosecutor for the Justice Department under Attorney General Sessions.

11 Q So you didn't work in the Office of the Attorney General for Attorney General Sessions?

12 A I did not.

13 Q Did you work in the Office of the Attorney General for Attorney General Barr?

14 A Neither of them asked me to work in their office.

15 Q So was it only Attorney General Holder that you were a counselor to?

16 A I was also a counselor to Attorney General Lynch when she took over for Attorney

17 General Holder.

18 Q Okay. And my questions may jump around a bit, but I'm just trying to be expedient

19 here. Prior to the indictment on August 1st, 2023, in the D.C. case, there's been reporting about a
20 prosecution memo that was given to Attorney General Garland in June 2023. Do you have any
21 knowledge about the prosecution memo?

22 A I worked on a prosecution memo.

23 Q Okay. And what can you tell us about the prosecution memo?

24 A So prosecution memos generally are something that, in my experience, I worked on for
25 every case that I sought to indict. It's sort of a recitation of the facts. It's a discussion of legal

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1 issues. And in my experience, it's just sort of making sure that you have really weighed all of the
2 considerations before considering seeking an indictment.

3 Q And did you ever have any conversations with Attorney General Garland regarding the
4 prosecution memo?

5 A I do not remember.

6 Q Okay. Do you remember Attorney General Garland's reaction to the prosecution
7 memo?

8 A No.

9 Q It's been reported that the Attorney General had concerns about the First Amendment
10 implications of the case and wanted Mr. Smith to go back and work with Elizabeth Prelogar on the
11 prosecution memo to soften it a bit. Did you ever learn about this?

12 A I don't remember that specifically. I know that our office consulted the Solicitor
13 General's office, consulted the Office of Legal Counsel, obviously consulted PIN, consulted others
in

14 the Justice Department as we were figuring this out because we were trying to take it very seriously.
15 But I don't know the details of those discussions.

16 Q And did anyone ever raise any First Amendment concerns with the indictment that
17 you're aware of?

18 A Well, I think we understood that the First -- that there were First Amendment
19 implications to this case, and took that very seriously and tried to think through the First
Amendment

20 implications, and I think even tried to reflect that in the indictment.

21 Q Okay. And the gag order in the case on the President, I know you were discussing the

22 motions with my colleagues the last hour. What discussions can you tell us about were had at the
23 special counsel's office regarding restricting the political speech of a presidential candidate?

24 A So that is another circumstance in which we took it very seriously that there was a First
25 Amendment implication to it, and we were trying to find the balance between President Trump's

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1 extremely valid First Amendment right to political speech, and also, protecting witnesses and the
2 integrity of the judicial proceeding.

3 Q Did the special counsel's office ever identify any violations of 18 U.S.C. Section 1512, the
4 witness tampering statute, by President Trump?

5 A I don't think that we ever alleged anything like that.

6 Q Did the special counsel's team ever allege that President Trump violated the terms of his
7 release?

8 A I don't think we alleged that either.

9 Q And did the special counsel's office ever identify specific witnesses who were
10 intimidated by President Trump, or failed to come forward because of his statements?

11 A So I think in our pleadings we identified individuals who might be intimidated based on
12 social media posts. I don't think we would know if somebody was chilled from coming forward.

13 Q Did you play any role in setting the trial date, or the proposed trial date for the D.C.
14 case?

15 A Yes.

16 Q What was your role there?

17 A I think I was involved in proposing a trial date.

18 Q Okay. And what was the first proposed trial date from the special counsel's office, if
19 you remember?

20 A I don't remember.

21 Q Would January 2024 surprise you?

22 A No. That sounds right.

23 Q And that was 5 months after the August indictment. Is that correct?

24 A Approximately, yes.

25 Q And were you aware of an order to get ready for a trial in January 2024, the indictment

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1 happened in August 2023, how many pages of documents that President Trump's defense team
2 would have had to review in 5 months?

3 A I don't remember.

4 Q Would 13 million pages surprise you?

5 A So I think we had pleadings about whether that was the accurate number of pages,
6 whether there were duplicates, and that kind of thing, and how much of that material had come
7 from President Trump, or entities affiliated with him in the course of the investigation.

8 Q And how many pages of documents total did you -- you're taking issue with the 13
9 million number. What number did you think they would have to review?

10 A I would have to look at the pleadings in our hearing transcript.

11 Q So it says 13 million in the pleadings. But does the January 2024 trial date, did that
12 seem like a reasonable schedule?

13 A I think we thought it was reasonable.

14 Q And then Judge Chutkan initially ordered that the trial start in March 2024. Is that

15 correct?

16 A I think that's right.

17 Q Okay. And as you know, there's the whole immunity issues that goes up to the

18 Supreme Court, it comes back, there's a superseding indictment. And after the superseding

19 indictment is filed, there was a 165-page brief on immunity decisions. Are you familiar with that
20 brief?

21 A I remember that brief. I don't remember the exact number of pages.

22 Q Okay. What role did you play in drafting the brief?

23 A I helped draft it.

24 Q Okay. And do you know what the standard length of brief is for the D.C. District Court?

25 A There is a page limit for standard briefs. I can't remember anymore what it is.

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1 Q It's 45 pages.

2 A Okay.

3 Q Do you remember having to ask for more pages, an extended brief?

4 A Yes.

5 Q Okay. And this was filed on August 2nd, 2024. Does that jive with your recollection?

6 A I don't remember specifically, but that would not surprise me.

7 Q And that was within 60 days of the November 2024 election. Is that correct?

8 A That sounds like within 90 -- August to September, September to October, October to

9 November. Yep. Is that 90 days?

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1 [2:59 p.m.]

2 :

3 Q Well, October -- the brief is filed October 2nd, 2024. The election is --

4 A Oh, okay. Yes, yes.

5 Q -- November 2024. Was there any consideration of the 60-day rule?

6 A We consulted with the Public Integrity Section.

7 Q And what did that consultation look like?

8 A We -- we consulted with them about our proposed -- sorry. I actually don't remember

9 the details of -- we consulted with the Public Integrity Section about the superseding indictment. I

10 don't remember the details of discussion of the brief with them.

11 Q Was there any discussion internally about the 60-day rule and filing the 165-page brief
12 so close to the election?

13 A We were conscious of -- I think at times it's been called the 60-day rule. At times it's

14 just been called the election sensitivities policy.

15 Q Uh-huh.

16 A We were aware of it and we were in consultation with the Public Integrity Section at the
17 time.

18 Q Because the brief was filed out of order, if you will, the typical order, because typically

19 you file the indictment, the defense responds, and then the prosecution may come back with

20 another motion. But in this case, the superseding indictment happened, and then the prosecution

21 filed the brief before the defense could respond. And it gives the appearance that the team was

22 attempting to influence the election, and then the Harris team capitalized on some of the

23 information.

24 Was there any concern with how this may influence the election?

25 A It was not an attempt to influence the election. And we were in consultation with the

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1 Public Integrity Section.

2 Q On the brief.

3 A I don't remember specifically about the brief.

4 Q Okay. So what were you in consultation with the Public Integrity Section on?

5 A We were certainly in consultation with them about the superseding indictment.

6 Q Okay. But not the brief that was filed a month before the election?

7 A I don't remember.

8 Q Okay. And are you aware that Judge Chutkan called the brief atypical and procedurally
9 irregular?

10 A I'd be happy to look at the transcript if you have it.

11 Q I don't have the transcript, but she called it atypical and procedurally irregular. Does
12 that -- you just don't remember her doing that or --

13 A I don't remember her words. I remember generally the hearing in which we were
14 discussing it.

15 Q Does it concern you that the Harris campaign used parts of the brief to -- in their
16 campaign ads?

17 A I'm not aware of that happening, so I'm --

18 Q Okay. If they did, would that concern you?

19 A I'd have to see what you're talking about.

20 Q Okay. So there would be instances where you would be okay with the Harris team
21 using parts of a criminal brief?

22 A I just don't know what it is that you're talking about. If you have -- if you have the ad
23 or if you have how they used it, I'd be happy to look at it.

24 Q Okay. Because it just sounds like you're trying to distinguish that in some cases it may
25 be okay, other cases it may not be okay?

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1 A I just am not familiar with them using it, and so I don't really know how to answer.

2 Q Got it. What kind of interactions did you have with the January 6 Select Committee
3 while you were at the Department of Justice?

4 A So while I was at the special counsel's office, I did not have contacts with the January 6
5 committee.

6 Q Uh-huh.

7 A When I was in the U.S. Attorney's Office, I worked on some cases in which staffers for
8 that committee were witnesses, and so I had interactions with the committee in that capacity.

9 Q So staffers for the committee were witnesses in what context? Sorry.

10 A So I prosecuted a contempt of Congress case coming from that committee, and so had
11 contacts with them in that capacity.

12 Q And was that the only interactions you had with the January 6th Select Committee?

13 A So there were two contempt of Congress cases flowing out of that committee, and some
14 other referrals, I believe, that were not -- not proceeded upon. I think that those are the instances
15 in which I had contacts with the select committee.

16 Q And was it Steve Bannon that the contempt of Congress was --

17 A That was the trial, yes.

18 Q Okay. And you ran that before you went to Jack Smith's team. Is that correct?

19 A I worked on that before I worked in the deputy attorney general's office.

20 Q Okay. Another individual was Peter Navarro.

21 A Yes.

22 Q Did you work on that case?

23 A I worked on the beginning of that case, but I -- I was on a detail when it -- when it went
24 to trial.

25 Q Detail to the special counsel's office or --

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1 A I don't remember when it went to trial, so I don't know whether I was in the deputy
2 attorney general's office or the special counsel's office.

3 Q And while you were on the special counsel's team, did you review transcripts or
4 evidence that was collected by the January 6th Select Committee?

5 A Yes.

6 Q And what kind of evidence did you review that the January 6th committee sought?

7 A We received transcripts of their interviews, so I remember reviewing some of those.

8 That's primarily what I remember reviewing from them.

9 Q And did you rely upon those transcripts or did the Justice Department conduct its own
10 interviews?

11 A We conducted our own interviews.

12 Q Okay. Did you have any contact or communication with Fani Willis? She's the district
13 attorney for Fulton County.

14 A I do not think so.

15 Q And Nathan Wade was another prosecutor that worked with her. Did you ever have --

16 A No.

17 Q -- any communication?

18 Ms. Duval. Let her ask her full question before --

19 Ms. Gaston. I'm sorry. Please answer [sic] the full question and then I'll answer.

20 :

21 Q Were you ever aware of any communications that occurred between the Justice
22 Department and Ms. Willis' team?

23 A I don't think so. Let me sort of give a broader answer, which is that we -- we made a
24 decision not to have substantive contacts with other prosecuting entities, and we did not reach out
25 to them. I can remember on one or two occasions some other prosecuting entity, like, called or

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1 sent us a letter, and our contact with them was to basically say, like, no, thank you. I don't
2 remember what prosecuting entities those were, but I do not think they were Georgia or any New
3 York prosecution.

4 Q So no contact with DA Bragg, Alvin Bragg?

5 A Do not think so.

6 Q Did you ever have any conversations with Michael [sic] Colangelo, who was at the Biden
7 Justice Department and then went to Mr. Bragg's office?

8 A Not outside of the Justice Department.

9 Q Okay. Not after he left the Justice Department.

10 A Right.

11 Q Is that correct? Okay.

12 Did you ever have any communication with any state attorney generals -- attorneys general?

13 A I don't think so, unless it was a State attorneys general representative who placed a
14 phone call to us, to which we said, politely, like, No, thank you.

15 Q And we previously had former Assistant Attorney General Kenneth Polite in. He was
16 over the criminal division. And he talked about a couple of calls that he convened with state
17 attorneys general in relation to the 2020 election and investigations involving the 2020 election.
18 Were you aware of those calls?

19 A I don't think so. And I don't think so in that it sounds like that would have been before
20 the special counsel's office, but --

21 Q That's correct.

22 A Okay. I don't think --

23 Q Okay.

24 A -- I knew about that.

25 Q So you weren't on -- he said there were two calls. You weren't on any calls with state

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1 attorneys general?

2 A I don't think so.

3 Q Okay. Did you ever interact with the Biden White House?

4 A Not when I was at the special counsel's office.

5 Q Okay. When did you have contact with the Biden White House?

6 A When I was in the office of the deputy attorney general.

7 Q Okay.

8 A I was consider -- DOJ has this thing called the contacts policy meant to sort of shield
9 litigators from political influence.

10 Q Okay.

11 A And so some leadership offices are sort of designated to have communications when
12 necessary with the White House. And so there were times when I had communications with the
13 White House.

14 Q Did any of those communications ever involve investigations into President Trump?

15 A So I can think of a couple occasions in which they related to the special counsel's office
16 when I was in ODAG, if that makes sense.

17 Q Okay. And what can you tell us about those contacts, if you will?

18 A So the special counsel's office wanted to have no contact with the White House.

19 Q Uh-huh.

20 A And so on one occasion, or a related cluster of communications, the classified
21 documents investigation needed to interview career officials stationed at the White House. And so
22 I facilitated those, setting up those interviews so that the special counsel's office was not contacting
23 the White House.

24 Q And were there any other communications on behalf of the special counsel's office to
25 the White House other than the setting up the interviews?

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1 A Then for the election investigation --

2 Q Okay.

3 A -- when they were receiving records from the January 6th committee, there were a
4 handful of interviews that had been conducted under some agreement between the White House
5 and the January 6th committee, because I think that they were career people at the White House
6 who were interviewed. And so I needed to get the White House's -- the way I remember it is I
7 either needed the White House to tell the January 6th committee that it could release those
8 interviews or the White House was the holder of those interviews. I can't remember which it was, if
9 that makes sense.

10 Q Okay. So the White House needed to tell a congressional committee that they could
11 release their transcripts?

12 A There was some agreement -- like, there were conditions placed upon the interviews --

13 Q Okay.

14 A -- because of the -- I think because of the sensitivity of those folks' rules or something
15 like that.

16 Q Okay. Other than those two topics, we'll say, was there any other contact with the
17 White House in the context of the special counsel's office?

18 A There is possibly one more that I remember.

19 Q Okay.

20 A Which is, at some point, some Senators wanted some information about the documents
21 that were the subject of the classified documents investigation. And in an attempt to help provide
22 that, I may have spoken to someone at the National Security Council to try to facilitate providing
23 that

24 information to the Senate.

25 Q Okay. And then you didn't have any more communications with the Biden White
House after you went to the special counsel's team?

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1 A Not that I recall.

2 Q Okay. I want to talk to you a bit about the confidential human sources.

3 So the Department of Justice Inspector General released a report, I believe it was December
4 2024, about 26 confidential human sources from the FBI who were in the D.C. area on January 6th.
5 Did you see that report at all?

6 A I don't remember.

7 Q Okay. When you were at the D.C. U.S. Attorney's Office doing your January 6th-related
8 work, did you ever receive information that was from a confidential human source?

9 A I don't think so.

10 Q Okay. And there were four confidential human sources who were at the Capitol and
11 went inside of the Capitol on January 6th. Were you ever involved in the decision whether or not to
12 prosecute those CHSes for entering the Capitol?

13 A I don't think so.

14 Q Okay. There's also been some reporting there was an internal FBI document regarding
15 a payment to a confidential human source for \$20,000 in June 2023. Were you aware of this
16 payment?

17 A Do you have that document?

18 Q Yes, I do.

19 [Gaston Majority Exhibit No. 14
20 was marked for identification.]

21 :

22 Q Okay. And the document is an electronic communication from the FBI's side of things

23 that kind of memorializes the special counsel office's concurrence and a payment for \$20,000 to a
24 confidential human source. Were you aware of this payment while you were at the special
25 counsel's office?

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1 A I think I was generally aware.

2 Q Okay. And if it's helpful in testimony, Special Counsel Jack Smith, when he was at the
3 hearing, talked about how this specific confidential human source was -- reviewed video and
4 photographic evidence. Does that match your recollection?

5 A Yes.

6 Q Do you know if this was the only payment that was made to a confidential human
7 source in terms of the special counsel's investigation?

8 A I don't know.

9 Q Okay.

10 A But I think this is the only one I'm aware of.

11 Q This is the only one that you think you're aware of?

12 A Yes.

13 Q And it's been reported that this individual was part of the group Sedition Hunters.

14 Does that match your recollection at all?

15 A I have no idea. I mean, I remember -- my recollection of what this individual was doing
16 is consistent with Mr. Smith's. I don't know what they were affiliated with.

17 Q And does the FBI have the capability to review photographic and video evidence?

18 A I think that the FBI does review photo and video evidence.

19 Q I think the question is, is why did the special counsel's office and the FBI need a
20 confidential human source to review video and photographic evidence if the FBI had that capability.

21 Do you have any insight in that?

22 A I don't.

23 Q Okay.

24 . We can go off the record.

25 [Whereupon, at 3:17 p.m., the interview was adjourned.]

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1 Certificate of Deponent/Interviewee

2

3

4 I have read the foregoing ____ pages, which contain the correct transcript of the answers made
5 by me to the questions therein recorded.

6

7

8

9

10 _____
10 Witness Name

11

12

13

14 _____
14 Date

15