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5 COMMITTEE ON THE JUDICIARY,

6 U.S. HOUSE OF REPRESENTATIVES,

7 WASHINGTON, D.C.

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13 DEPOSITION OF: JACK SMITH

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18 Wednesday, December 17, 2025

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20 Washington, D.C.

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23 The deposition in the above matter was held in room 2237, Rayburn House Office
24 Building, commencing at 10:05 a.m.

25 Present: Jordan, Biggs, McClintock, Nehls, Kiley, Fry, Grothman, Knott, Onder,

- 1 Harris, Fitzgerald, Gooden, Cline, Schmidt, Raskin, Lofgren, Scanlon, Balint, Moskowitz,
- 2 Goldman, Cohen, Neguse, Crockett, Johnson, and Jayapal.

Appearances:

For the COMMITTEE ON THE JUDICIARY:

[REDACTED], CHIEF CLERK

[REDACTED], GENERAL COUNSEL

[REDACTED], COMMUNICATIONS DIRECTOR AND COUNSEL

[REDACTED], DEPUTY GENERAL COUNSEL

[REDACTED], PROFESSIONAL STAFF MEMBER

[REDACTED], CLERK

[REDACTED], DIGITAL DIRECTOR

[REDACTED] CHIEF COUNSEL FOR OVERSIGHT

[REDACTED], PROFESSIONAL STAFF MEMBER

[REDACTED], CLERK

[REDACTED], PROFESSIONAL STAFF MEMBER

[REDACTED] RESEARCH ASSISTANT

[REDACTED], MINORITY OVERSIGHT COUNSEL

[REDACTED], MINORITY SPECIAL COUNSEL

FOR INVESTIGATIONS AND SENIOR ADVISOR

[REDACTED], MINORITY GENERAL COUNSEL

[REDACTED], MINORITY CHIEF COUNSEL AND SENIOR ADVISOR

[REDACTED], MINORITY SENIOR COUNSEL

[REDACTED], MINORITY FELLOW

1 [REDACTED], MINORITY LEGAL INTERN

2 [REDACTED], MINORITY COUNSEL

3 [REDACTED], MINORITY INTERN

4 [REDACTED] MINORITY SENIOR COUNSEL

5 [REDACTED] MINORITY INTERN

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8 For JACK SMITH:

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[REDACTED]: Good morning.

This is a deposition of Mr. Jack Smith, former special counsel. Chairman Jordan has requested this deposition as part of the committee's oversight of the Biden-Harris administration's weaponization of the Justice Department and its misuse of Federal law enforcement resources for partisan political purposes.

Would the witness please state your name for the record?

The Witness. Jack Smith.

[REDACTED]: And you are joined with your counsel. I'll have them introduce themselves.

Mr. Koski. Good morning. Peter Koski.

Mr. Breuer. Lanny Breuer from Covington & Burling.

Ms. Hunt. Lindsey Hunt from Covington & Burling.

[REDACTED]: Good morning.

My name is [REDACTED] I'm with the House Judiciary Committee, Mr. Jordan's staff.

The court reporter will now swear the witness in.

The Reporter. Raise your right hand please.

Do you solemnly declare and affirm under the penalty of perjury that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth?

The Witness. I do.

The Reporter. Thank you.

[REDACTED]: The individuals in the room are either members of the committee or committee staff. And we will have them introduce themselves, starting with my colleague,

[REDACTED].

1 [REDACTED]: [REDACTED] of Chairman Jordan's staff.

2 The Chairman. Jim Jordan, Ohio-4.

3 [REDACTED]: [REDACTED] with Ranking Member Raskin's staff.

4 [REDACTED]: [REDACTED] with Ranking Member Raskin's staff.

5 The Reporter. I need them to speak up, [REDACTED] [REDACTED] I need them to speak up.

6 [REDACTED]: Everybody speak up so the court reporter can hear you.

7 [REDACTED]: [REDACTED], Ranking Member Raskin's staff.

8 [REDACTED]: [REDACTED], Ranking Member Raskin's staff.

9 [REDACTED]: William Ryan, Ranking Member Raskin's staff.

10 Mr. McClintock. Tom McClintock, member of the Judiciary Committee.

11 Mr. Fitzgerald. Congressman Scott Fitzgerald, Wisconsin-5.

12 [REDACTED]: [REDACTED], Chairman Jordan's staff.

13 [REDACTED]: [REDACTED] with Chairman Jordan's staff.

14 [REDACTED] [REDACTED], Chairman Jordan's staff.

15 [REDACTED] [REDACTED], Chairman Jordan's staff.

16 Mr. Gooden. Lance Gooden, Texas-5.

17 [REDACTED] [REDACTED], Ranking Member Raskin's staff.

18 [REDACTED] [REDACTED], Ranking Member Raskin's staff.

19 [REDACTED] [REDACTED], Ranking Member Raskin's staff.

20 [REDACTED] [REDACTED], Ranking Member Raskin's staff.

21 [REDACTED] [REDACTED], Chairman Jordan's staff.

22 [REDACTED] [REDACTED]. I am with Chairman Jordan's staff.

23 Mr. Cline. Congressman Ben Cline, Virginia Sixth.

24 [REDACTED] [REDACTED] with Chairman Jordan's staff.

25 [REDACTED] [REDACTED], Chairman Jordan's staff.

1 [REDACTED]. Thanks, everybody.

2 On December 3rd --

3 Mr. Raskin. Jamie Raskin, ranking member of the House Judiciary Committee.

4 [REDACTED]. Good morning, sir.

5 December 3rd of this year --

6 Mr. Harris. Mark Harris, North Carolina Eighth District

7 [REDACTED]. Oh, I'm sorry.

8 Mr. Schmidt. Derek Schmidt, Kansas-2.

9 Mr. Neguse. Joe Neguse, Colorado Second, Congressman.

10 Mr. Cohen. Steve Cohen, Memphis.

11 Mr. Johnson. Hank Johnson of Georgia Fourth.

12 [REDACTED]. All right.

13 On December 3rd of this month the committee issued a subpoena for you to appear.

14 We're going to mark that as exhibit 1.

15 [Smith Exhibit No. 1

16 was marked for identification.]

17 [REDACTED]. Exhibit 2 is the official notice of the committee.

18 [Smith Exhibit No. 2

19 was marked for identification.]

20 [REDACTED]. Exhibit 3 is a copy of the authorization letter from the Department of
21 Justice dated November 11th, 2025.

22 [Smith Exhibit No. 3

23 was marked for identification.]

24 [REDACTED]. Exhibit 4 is a copy of the letter from the Department of Justice dated
25 December 11th, last Thursday, relating to its view of today's testimony as it relates to

1 Federal Rule of Criminal Procedure 6(e).

2 [REDACTED] Exhibit No. 4

3 was marked for identification.]

4 [REDACTED] I will now review the process we will follow during today's deposition.

5 It will be conducted in accordance with the House's Regulation for Use of Deposition

6 Authority, a copy of which was provided to your counsel when we served the subpoena.

7 We have copies of that regulation available here if you or your counsel need to consult it.

8 Our questioning will proceed in rounds. The majority will ask questions first for
9 one hour, then the minority will have an opportunity to ask questions for one hour, if they
10 choose. We will then proceed to additional one-hour rounds from each side until there are
11 no more questions and the deposition is over.

12 There is a limit of two staff counsels asking questions per side. So everyone here in
13 the room, they are not all going to be firing questions at you. It is just going to be one
14 staffer and then, you know, another staffer might jump in at a time.

15 The Members, of course, can jump in as they please, and that will occur during their
16 particular round. So if Republican Members have questions, that'll be during the
17 Republican round, and the same goes for the Democrats.

18 We'll keep a clock and we'll stop it if the witness needs to confer with counsel.
19 When counsel is speaking, sometimes we stop it if it gets into a whole, you know,
20 back-and-forth. And if Members from the opposite side likewise start speaking, we will
21 stop the clock.

22 Ordinarily, we'll take a short break at the end of each hour, but if you would like to
23 take a break apart from that, let us know.

24 As you can see, there is an official House reporter taking down everything we say to
25 make a written record. So we ask that you give verbal responses to all questions.

1 When the transcript is delivered by the House Office of Official Reporters -- usually it
2 happens within 2 days -- we will let your counsel know and you guys can come and review it
3 at our offices.

4 We also have a committee videographer here today recording today's proceedings.
5 She introduced herself, Ms. Munoz. And a copy of that video will also be made available as
6 soon as it's prepared and mastered and so forth. Sometimes that takes more than 2 days.
7 We'll let your counsel know and you guys can review the video.

8 So our reporter can make an accurate and clear record, we will encourage everyone
9 here today that's speaking not to speak over one another and not to interrupt each other
10 and to speak loud enough so our amazing House reporters can capture everything.

11 We want you, sir, to answer our questions in a complete and truthful manner, as
12 required by law. If you do not know the answer to a question or do not remember, please
13 tell us what you do know and what you do remember. It's okay to tell us if you learned
14 information from someone else, you know. That might be hearsay in a court, but for
15 today's proceedings we're perfectly happy to get as much information from you as we can.

16 And as you know, you are required by law to answer questions from Congress and
17 congressional staffers truthfully.

18 Do you understand that?

19 The Witness. I do.

20 [REDACTED] This also applies, like I said, when congressional staffers are asking
21 question, not just the Members.

22 Witnesses that knowingly provide false testimony could be subject to criminal
23 prosecution for false statements or perjury. This includes, for example, stating that you do
24 not recall or remember something when in fact you do.

25 Do you understand that?

1 The Witness. I do.

2 [REDACTED]. Furthermore, you can't tell half-truths or exclude information
3 necessary to make statements accurate. You're required to provide all information that
4 would make your response truthful. A deliberate failure to disclose information can
5 constitute a false statement.

6 Do you understand that?

7 The Witness. I do.

8 [REDACTED]. Is there any reason you are unable to provide truthful answers to
9 today's questions?

10 The Witness. No.

11 [REDACTED] The Federal Rules of Evidence, Federal Rules of Criminal and Civil
12 Procedure are not applicable for today's deposition like they might be in an ordinary civil
13 deposition.

14 Under the House deposition regulations, a witness's attorney may not instruct a
15 witness to refuse to answer a question except to preserve a privilege. We have discussed
16 that with your counsel so I don't foresee any issue there.

17 The House recognizes constitutionally based privileges and not necessarily those
18 privileges derived from common law.

19 Finally, I will make a note for our Members and our staff that the content of what we
20 discuss, under House rules, the House deposition regulations, is confidential until the
21 ranking member and the chairman consult regarding the release. And that includes
22 release of, you know, the full transcript or, you know, special vignettes that happen today.

23 So, please, if any staffers get the desire to go out and talk with the press, please
24 don't do that.

25 For this reason, the marked exhibits that we will use today, even if they're exhibits

1 that you have or are publicly available, we will keep them with the court reporter.

2 We've made another room here in the Rayburn House Office Building for you to
3 confer with your counsel if you need to. And if you do leave the room, we would just ask
4 that you leave the exhibits that we're using.

5 Before we begin the first round of questions, we will offer the minority a chance to
6 make any welcoming remarks, and then certainly Mr. Koski or Mr. Breuer as well, and then
7 we will get rolling with the first hour.

8 Mr. --

9 [REDACTED]. Thank you, Mr. Smith, for being here. I'd like to hit a couple notes
10 before we begin.

11 First, this committee's proceeding with this deposition today without access to
12 Volume Two of the special counsel's report. And this is despite the Eleventh Circuit's ruling
13 that Judge Aileen Cannon must address her order regarding Volume Two by January 2nd of
14 2026. It might seem obvious, but that's just two weeks away.

15 President Trump and his co-conspirators have sought to prevent Volume Two of the
16 report from becoming public, including to Congress.

17 Recently, President Trump petitioned Judge Cannon to continue keeping Volume
18 Two of the report under seal, and that amounts to gagging Mr. Smith today and preventing
19 him from telling this committee about his investigation into President's Trump's crimes.

20 And, specifically, these crimes include stealing and lying about classified documents
21 he kept in the ballrooms and bathrooms of his Mar-a-Lago clubhouse. And there is no
22 reason at all to continue to keep Volume Two under seal -- besides, of course, the fact that
23 Mr. Trump doesn't like what it says.

24 Second, the Department of Justice forwarded what appears to be investigative files
25 and communications related to the Special Counsel's Office to counsel for the minority just

1 yesterday, on Tuesday, December 16th, with another series of files that came in on Monday,
2 December 15th.

3 Now, I can only speak for the minority, but that gave us less than 24 hours to review
4 all these new materials prior to this deposition.

5 Mr. Smith, I know that you requested a public hearing where the American people
6 could directly hear from you and hear your testimony. But despite not being afforded that
7 opportunity, I want to say thank you for being here, and we look forward to hearing your
8 testimony today.

9 Ms. Crockett. And for purposes of the record, Jasmine Crockett, Texas-30, is
10 present.

11 [REDACTED]. Good morning, Congresswoman.

12 Thank you, [REDACTED].

13 Mr. Koski. Mr. Breuer.

14 Mr. Koski. Thank you, [REDACTED]

15 On behalf of Lanny Breuer and myself, we do have some preliminary remarks that
16 we would like to make.

17 Mr. Smith is committed to providing information to this committee about the work
18 of the Special Counsel's Office, while following all laws and rules restricting a former
19 prosecutor's ability to disclose certain information.

20 To that end, we appreciate the committee's assistance in working with the
21 Department of Justice to provide Mr. Smith with authorization and clarification on the
22 parameters around Mr. Smith's testimony today.

23 Of course, some restrictions remain on Mr. Smith's testimony, two of which I would
24 like to highlight before we begin.

25 First, as the committee is aware, in its letter of Decembers 11th, 2025, the Justice

1 Department admonished Mr. Smith that he is not authorized to divulge information that is
2 prohibited by law or courts, including that which is subject to Federal Rule of Criminal
3 Procedure 6(e).

4 It is our understanding from communications with the committee and the Justice
5 Department that DOJ is interpreting a matter under Rule 6(e) to be limited to the inner
6 workings of the grand jury.

7 On a call with committee staff and with the Department of Justice on December 11th
8 to discuss the scope and application of grand jury secrecy requirements, Assistant Attorney
9 General Patrick Davis agreed with [REDACTED] statement that, based on DOJ's authorization
10 letter and its interpretation of Rule 6(e), it would be virtually impossible for DOJ to
11 prosecute Mr. Smith for violating grand jury secrecy restrictions.

12 Second, according to the Justice Department, discussion of Volume Two of the
13 special counsel's reports and any information or conclusions in Volume Two or in drafts
14 thereof is specifically prohibited by Judge Cannon's January 21st, 2025, order.

15 This morning, just over an hour ago, the Department of Justice sent us an email
16 affirming its view that Judge Cannon's order applies to Mr. Smith and that it precludes him
17 from disclosing any nonpublic information that may be contained in Volume Two, including
18 but not limited to interview transcripts, search warrant materials, business records, toll
19 records, video footage, records obtained by grand jury subpoenas, attorney-client
20 communications, and potential for Rule 404(b) evidence.

21 This restriction significantly limits Mr. Smith's ability to discuss the classified
22 documents case. Nevertheless, Mr. Smith is committed to doing his best to answering
23 questions consistent with the Department's guidance.

24 And I ask that that email from the Department of Justice that was sent earlier this
25 morning be made part of the record.

1 [REDACTED]. That'll be exhibit 5.

2 [Smith Exhibit No. 5]

3 was marked for identification.]

4 Mr. Koski. Thank you.

5 I also want to clarify that the email from the Department of Justice says that
6 Mr. Smith can disclose information in answering questions where that information is in the
7 public record and has been made publicly available through authorized means.

8 And I want to specifically cite that language because yesterday the Department of
9 Justice disclosed to Senator Grassley some emails related to the execution of the search
10 warrant at Mar-a-Lago.

11 I anticipate that those emails may be used during today's deposition and that Mr.
12 Smith may be asked questions about that search warrant and the probable cause supporting
13 the search warrant that was signed by a judge in the Southern District of Florida.

14 And I just want to confirm our understanding that, because those emails were
15 released by the Department of Justice to Chairman Grassley, everyone here has a mutual
16 understanding that those emails were made publicly available through authorized means.

17 [REDACTED]. And we would concur with that. In our discussion with the Justice
18 Department -- and it was in the context of the Member toll records subpoenas -- they
19 indicated that documents that are in the public realm are fair game for discussion and don't
20 apply to the 6(e) prohibition on the disclosure of 6(e) material.

21 And we would further acknowledge that if Senator Grassley posted these materials
22 on his official website, that is an authorized release. I mean, these are materials that were
23 produced to the House and the Senate. And if Senator Grassley posted them publicly, they
24 are certainly part of the public record.

25 Mr. Koski. Thank you, [REDACTED]. We are in agreement.

1 [REDACTED]: [REDACTED] I just want to note one thing for the record: that
2 counsel for the minority have not been involved in any of the discussions that Mr. Koski just
3 discussed between the Judiciary Committee and the Department of Justice. I just want to
4 make that clear for the record.

5 [REDACTED]: All right, noted.

6 Mr. Koski. Thank you.

7 My understanding is that if for whatever reason the questions today move into an
8 area that we believe Mr. Smith cannot answer because of some legal restriction, we have
9 reached an agreement with the committee staff that we will raise our concern in the
10 moment to see if we can navigate around the restriction, and if we are unable, we will move
11 on to another topic and then revisit that issue during a break or at the end of the day.

12 Mr. Breuer. Just to augment what my partner said.

13 We had proposed to the Department of Justice that it have a lawyer here present
14 today, so that if any issue came up, we could immediately resolve it, because Mr. Smith is
15 committed to answering every question he can lawfully. The Department of Justice chose
16 not to have a lawyer here today.

17 Mr. Koski. Thank you.

18 Finally, I feel compelled to make an observation about the risks of participating in
19 this deposition.

20 The most powerful person in the world has said that Mr. Smith should be in jail
21 because of his work as special counsel, not because Jack did anything wrong, but because he
22 had the audacity to follow the facts and the law and apply them to that powerful person.
23 And through its actions, this Justice Department has demonstrated its eagerness to follow
24 President Trump's orders, despite the facts and the law.

25 Yesterday the President's chief of staff is reported to have confirmed in interviews

1 that the President is indeed pursuing criminal prosecutions against his perceived adversaries
2 as part of a retribution campaign.

3 In the face of those threats, Mr. Smith appears today undaunted, comforted by the
4 knowledge that not only did he do nothing wrong, he conducted his work as special counsel
5 with integrity, impartiality, and an uncompromising commitment to the rule of law.

6 If the committee will allow, Mr. Smith has some remarks that he would like to share.

7 [REDACTED]. Okay. Before that, I would just note from exhibit 4, the
8 December 11th Justice Department letter, they specifically say -- it's the last paragraph on
9 page 2 -- "As to your question about the Department's recent disclosure to Congress of
10 certain internal communications considering whether to authorize toll records subpoenas,
11 which Congress publicly released on November 25, 2025, you are correct that the
12 Department does not believe that the specific materials it produced to Congress are covered
13 by 6(e), for the reasons described above."

14 Mr. Koski. Thank you, [REDACTED] That's helpful. We are in agreement on that.

15 My concern is that that doesn't address Judge Cannon's order, which the
16 Department has said Mr. Smith is still bound by, because the toll record subpoenas were not
17 part of the classified documents case. And so Judge Cannon's order is a separate legal
18 restriction that exists independent of Rule 6(e).

19 [REDACTED] Okay. And I would just note, on our call with the Justice Department,
20 their position was of course he can talk about it if it's in the public realm. And that
21 admonition from the Department was not limited to the toll records question or something
22 in Judge Cannon.

23 Mr. Koski. Thank you.

24 [REDACTED] Mr. Smith, do you have remarks as well?

25 The Witness. Yes. Thank you.

1 Thank you for the opportunity to discuss my work as special counsel.

2 I was taught as a young prosecutor to follow the facts and the law, and to do so
3 without fear or favor, to do the right thing, the right way, for the right reasons.

4 For nearly three decades I have been a career prosecutor. I have served during
5 both Republican and Democratic administrations and I've been guided by those principles in
6 every role I've held. I continued to honor those principles when I was appointed to serve
7 as special counsel in November of 2022.

8 The decision to bring charges against President Trump was mine, but the basis for
9 those charges rests entirely with President Trump and his actions, as alleged in the
10 indictments returned by grand juries in two different districts.

11 Our investigation developed proof beyond a reasonable doubt that President Trump
12 engaged in a criminal scheme to overturn the results of the 2020 election and to prevent the
13 lawful transfer of power.

14 Our investigation also developed powerful evidence that showed that President
15 Trump willfully retained highly classified documents after he left office in January of 2021,
16 storing them at his social club, including in a ballroom and a bathroom. He then
17 repeatedly tried to obstruct justice to conceal his continued retention of those documents.

18 I remain grateful for the counsel, judgment, and advice of my team as I executed my
19 responsibilities. I am both saddened and angered that President Trump has sought
20 revenge against career prosecutors, FBI agents, and support staff simply for doing their jobs
21 and for having worked on those cases.

22 These dedicated public servants are the best of us, and they have been wrongly
23 vilified and improperly dismissed from their jobs.

24 I made my decisions in the investigation without regard to President Trump's
25 political association, activities, beliefs, or candidacy in the 2024 Presidential election. We

1 took our actions based on the facts and the law, the very lessons I learned early in my career
2 as a prosecutor. We followed Justice Department policies and observed legal
3 requirements.

4 The timing and speed of our work reflects the strength of the evidence and our
5 confidence that we would have secured convictions at trial.

6 If asked whether to prosecute a former President based on the same facts today, I
7 would do so regardless of whether that President was a Republican or a Democrat.

8 Recent narratives about my team's work are false and misleading, including stories
9 about our collection of toll records.

10 Toll records were sought for historical telephone routing information, collected after
11 calls had taken place, identifying the incoming and outgoing call numbers, the time of the
12 calls and their duration. Toll records do not include the content of calls. Those records
13 were lawfully subpoenaed and were relevant to complete a comprehensive investigation.

14 January 6th was an attack on the structure of our democracy in which over 140
15 heroic law enforcement officers were assaulted. Over 160 individuals later pled guilty to
16 assaulting police that day.

17 Exploiting that violence, President Trump and his associates tried to call Members of
18 Congress in furtherance of their criminal scheme, urging them to further delay certification
19 of the 2020 election.

20 I did not choose those Members, President Trump did.

21 I hope that my testimony today serves to correct these mischaracterizations about
22 my work. And to that end, I welcome your questions.

23 Chairman Jordan. Do you have a copy? Do you have another copy?

24 Mr. Koski. We can get you a copy, yes.

25 EXAMINATION

1 [REDACTED]:

2 Q You just made some pretty definitive statements about your belief that
3 President Trump was guilty of these charges. Is that correct?

4 A Yes, I believe we had proof beyond a reasonable doubt in both cases.

5 Q And doesn't the Justice Manual prohibit prosecutors from asserting that a
6 defendant is guilty of something before a jury makes a determination?

7 A When a case is pending, yes.

8 Q Okay. And so you think you're free from that, from the Justice Manual rules,
9 once a case is dismissed?

10 A No, I think that it's important to state clearly the amount of evidence we had
11 and the basis for why we proceeded. Why we proceeded as we did is because we had a
12 strong case, as I set forth in the final report.

13 Q But your final report makes what seems to be conclusive determinations of
14 President Trump's guilt, as opposed to laying out simply the facts and the evidence that you
15 have. I mean, you draw those conclusions that in your view he's guilty. Is that not the
16 case?

17 A Well, to be clear, the cases were never tried. We were never put to our
18 burden before a jury. So we didn't conclusively prove it.

19 The reason the report was written the way it was written and the reason I said what I
20 just said is because it was our belief that if we went to trial we would prevail.

21 Q But your report differs, you know, if you look at Special Counsel Hur's report
22 and Special Counsel Mueller's report. The language that you use and the way you describe
23 the things that you believe President Trump committed, you know, is different.

24 You know, Hur was careful to use words like jurors could find or might, at most,
25 would likely conclude, whereas the language you use is pretty definitive.

1 A The Hur report states his assessment of the evidence. Mine does as well.
2 And as I said, I feel -- and feel to this day -- that we had a very strong case, and so I
3 communicated that.

4 Q Okay. But you would agree that it's the role of a jury, not the special counsel,
5 to weigh the facts and determine guilt?

6 A Ultimately, yes.

7 Q Okay. And then one other thing about -- relating to your statement. And
8 we'll get into this a little later on.

9 But the toll record subpoenas from Members of Congress, you know, have some
10 very -- we have some very serious concerns about acquiring these toll records, you know,
11 relating to Senators and Members of the House.

12 I mean, Members of the House and the Senate have protections under the
13 Constitution that allows them speech or debate protections. And the toll record
14 subpoenas, in our view, and if we had to litigate it, you know, the House lawyers would take
15 the position that those toll record subpoenas violated the speech or debate protections.

16 Is that something you disagree with?

17 A Yes.

18 Q Okay. We'll get into that a little bit later.

19 We first wrote to you on October 14th inviting you to testify. And then we worked
20 with the Justice Department and your counsel to make sure you had access to everything
21 you needed to prepare for today.

22 Did that occur? Did you have enough access to the information you needed to
23 prepare?

24 A I -- yes.

25 Q Okay. So we asked the Justice Department to make all your files available to

1 allow you to go to the Justice Department whenever you wanted to, with your lawyers,
2 whoever you wanted to. And I just wanted to confirm that you had the opportunity to
3 review whatever you needed in your files before today.

4 A Yes, we reviewed the files.

5 Q Okay.

6 A That's correct.

7 Q There might be an issue with classified materials. We don't intend to ask you
8 anything about anything classified. Obviously, if your security clearance is no longer valid,
9 there's an issue on that front.

10 But everything except classified information was supposed to be made available to
11 you, and I just want to confirm that that was the case?

12 A I'm not sure if everything was. For example, the emails with people on my
13 staff, I'm not sure I had access to that. But we did spend, consistent with what you said --

14 Q Okay.

15 A -- time at the Department of Justice --

16 Q Okay.

17 A -- and we had the opportunity to review files.

18 Q Okay. And that access was made available, like, November 10th, if I'm not
19 mistaken. And I think you guys started reviewing it somewhat shortly thereafter?

20 A That sounds about right.

21 Q Okay. You have referenced in your pleadings, I believe, and also in public
22 statements you've made, the famous Robert Jackson speech entitled "The Federal
23 Prosecutor" that he delivered at the Second Annual Conference of United States Attorneys
24 in 1940. You're familiar with the Robert Jackson speech?

25 A I am, yes.

1 Q Okay. And this is widely available on the internet. I didn't make copies for
2 everybody. Everybody can google it right now as long as your phones are working.

3 And I'm just going to flag some things that Robert Jackson said and just get your
4 reaction to see if you agree with it or not.

5 He says in the second sentence: "The prosecutor has more control over life, liberty,
6 and reputation than any other person in America. His discretion is tremendous."

7 Do you agree with that?

8 A I agree with prosecutors have a lot of discretion, yes.

9 Q Jackson stated: "While the prosecutor at his best is one of the most
10 beneficent forces in our society, when he acts from malice or other base motives, he is one
11 of the worst."

12 Do you agree with that?

13 A I do.

14 Q On page 4 of his remarks, in the penultimate paragraph, Attorney General
15 Jackson states: "What every prosecutor is practically required to do is to select the cases
16 for prosecution and to select those in which the offense is the most flagrant, the public
17 harm the greatest, and the proof the most certain."

18 Would you agree with that?

19 A Yes.

20 Q "If a prosecutor is obliged to choose his cases, it follows that he can choose his
21 defendants. Therein is the most dangerous power of the prosecutor: that he will pick
22 people he thinks he should get, rather than pick cases that need to be prosecuted.

23 "With the law books filled with a great assortment of crimes, a prosecutor stands a
24 fair chance of finding at least a technical violation of some act on the part of almost anyone.

25 "In such a case, it's not a question of discovering the commission of a crime and then

1 looking for the man who committed it, it is a question of picking the man and then searching
2 the law books, or putting investigators to work, to pin some offenses on him."

3 Do you agree with that?

4 A I do, I think, yes.

5 Q "It is here that law enforcement becomes personal, and the real crime
6 becomes that of being unpopular with the predominant or governing group, being attached
7 to the wrong political views, or being personally obnoxious to or in the way of the
8 prosecutor himself."

9 Do you agree that that is a concern?

10 A These are principles, and I agree with these principles.

11 Q Okay.

12 "In times of fear or hysteria, political, racial, religious, social, and economic groups,
13 often from the best of motives, cry for the scalps of individuals or groups because they do
14 not like their views."

15 Do you agree with that?

16 A Yes.

17 Q He concludes by saying: "The qualities of a good prosecutor are as elusive
18 and as impossible to define as those which mark a gentleman. And those who need to be
19 told would not understand it anyway.

20 "A sensitiveness to fair play and sportsmanship is perhaps the best protection
21 against the abuse of power, and the citizen's safety lies in the prosecutor who tempers zeal
22 with human kindness, who seeks truth and not victims, who serves the law and not factional
23 purposes, and who approaches his task with humility."

24 Do you agree with that?

25 A Fully.

1 Q And do you think during the pendency of your special counsel work that you
2 tried to live up to those standards?

3 A I do.

4 Q Was there ever a prospect after you were appointed special counsel when you
5 thought maybe you would not bring an indictment against President Trump?

6 A Absolutely. When I took this case, I did not know enough about the facts or
7 the law to have a judgment about whether we should proceed in either case, both cases or
8 neither case. I used my time when I was appointed to get up to speed on the facts and the
9 law.

10 But if the facts and the law did not justify going forward in this case, I would have
11 been perfectly comfortable in doing that as I have throughout my career in cases involving
12 political figures when I was in public integrity and throughout my career.

13 So I did not have a preconceived outcome in mind when I took this job.

14 Q Was there any point where you and your prosecutors that formed your team
15 debated not bringing charges against the President?

16 A Of course. I mean, that is the process of being a prosecutor, is you are
17 analyzing evidence, you are collecting facts, and you're debating whether it's -- what the
18 facts mean, the inferences to be drawn from the facts, or debating what the law is and
19 whether you can prove what you think is happening here or not.

20 And so that was a continual process to decide if, in fact, we could go forward. And,
21 again, just to be clear, that is a process that I have undergone in my career personally and
22 with prosecutors I've supervised.

23 Q When was the decision made that you believed you needed to move forward
24 with both indictments, both in Florida and D.C.?

25 A Well, so the decision wasn't made at the same time. To the best of my

1 recollection, in both cases the final decision was shortly before we sought indictments.

2 Q Okay. In June of 2023, you had a meeting with the Attorney General to
3 present a prosecution memo and basically asking for his blessing to bring the indictments.
4 Is that correct?

5 A I did -- we did have a meeting, and I think it was around that time. I didn't
6 think about it as his blessing. I was presenting what I intended to do and he had the ability
7 to countermand it if he wanted to.

8 Q Okay. But certainly you couldn't bring an indictment without his
9 authorization.

10 A He could block me from doing that, that's correct.

11 Q Okay. And during that June 2023 meeting with the Attorney General, did you
12 guys discuss both indictments -- potential indictments -- or just the Florida indictment or just
13 the D.C. indictment?

14 A If it was -- I don't have a specific recollection of dates, and so you can check me
15 on public records, but I believe by late June the classified documents case had already been
16 indicted.

17 Q Okay.

18 A So, again, this is my recollection, but that would have been -- a discussion in
19 late June would have likely been about just the elections case --

20 Q Okay.

21 A -- if it was about an indictment.

22 Q Okay. And the Attorney General in the June meeting, it's been reported that
23 he expressed some reservations about the D.C. case. Is that correct?

24 A I had several meetings with the Attorney General about both cases, and in
25 those meetings we regularly discussed legal issues, factual issues, things of that nature.

1 Never in those meetings did he tell me I couldn't or shouldn't go forward or should
2 go forward. It was more talking through with another experienced lawyer the legal issues
3 present in the cases, as well as, if I was going to go forward, how to best frame those.

4 Q Okay. Coming out of the June meeting, it's been reported that he asked you
5 to spend some time with the Solicitor General to review the D.C. case. Is that correct?

6 A Again, I don't recall specific conversations. What I can share with you is we
7 consulted with the Solicitor General regularly during my time as special counsel. That was
8 a choice I made. We wanted to make sure not only that we got the facts right but that we
9 got the law right as well. And so I would be surprised if the first time I consulted with the
10 Solicitor General would have been in late June. That would surprise me.

11 Q Okay. But you did have a one-on-one meeting with the Solicitor General in
12 person?

13 A I've met the Solicitor General in person. My recollection is most often it
14 would be members of my senior staff speaking with her staff about these legal issues. I did
15 have conversations with her as well, but the majority of that was her staff and my staff
16 speaking about things.

17 Q Okay. And it's been reported the Attorney General at the time was concerned
18 that the proposed indictment or the proposed prosecution plan, you know, may have relied
19 too heavily on statements that the President had made and infringed on his free speech if
20 you were going to prosecute him for it. Is that fair?

21 A As I sit here right now, I can't remember specific conversations.

22 I do remember that we knew that a sort of First Amendment defense would be part
23 of the case. And I think when I had mentioned to you earlier about how to frame the case,
24 we wanted to make clear that this was not about trying to interfere with anyone's First
25 Amendment rights, that this was a fraud. And as you know, under Supreme Court

1 precedent, fraud is not protected by the First Amendment.

2 And so in my mind it was important to make that clear in the indictment, and that's
3 why when we litigated this issue before the district court we prevailed.

4 Q But the President's statements that he believed the election was rife with
5 fraud, those certainly are statements that are protected by the First Amendment, correct?

6 A Absolutely not. If they are made to target a lawful government function and
7 they are made with knowing falsity, no, they are not. That was my point about fraud not
8 being protected by the First Amendment.

9 Q I mean, there is a long list of disputed elections, I mean, the election of 1800,
10 1960, year 2000, where candidates believed they were wronged by the -- you know,
11 because they lost. And there's a long history of candidates speaking out about they
12 believe there's been fraud, there's been other problems with the integrity of the election
13 process. And I think you would agree that those types of statements are sort of at the core
14 of the First Amendment rights of a Presidential candidate, right?

15 A There is no historical analog for what President Trump did in this case. As we
16 said in the indictment, he was free to say that he thought he won the election. He was
17 even free to say falsely that he won the election.

18 But what he was not free to do was violate Federal law and use knowing -- knowingly
19 false statements about election fraud to target a lawful government function. That he was
20 not allowed to do. And that differentiates this case from any past history.

21 Q A lot of these statements, though, you know, people come into the Oval
22 Office -- I mean, the President isn't conducting his own due diligence. He is receiving
23 people in his office that are telling him these things, whether it be Rudy Giuliani, whether it
24 be John Eastman, whether it be Jeffrey Clark, whether it be Sidney Powell. And, you know,
25 for the most part, he is just receiving this information and, you know, his statements are

1 almost just regurgitating what these people have told him. I mean, isn't that the case?

2 A No. And, in fact, one of the strengths of our case and why we felt we had
3 such strong proof is all witnesses were not going to be political enemies of the President.
4 They were going to be political allies.

5 We had numerous witnesses who would say, "I voted for President Trump. I
6 campaigned for Trump President Trump. I wanted him to win." The Speaker of the
7 House in Arizona. The Speaker of the House in Michigan.

8 We had an elector in Pennsylvania who is a former Congressman who was going to
9 be an elector for President Trump who said that what they were trying to do was an attempt
10 to overthrow the government and illegal.

11 Our case was built on, frankly, Republicans who put their allegiance to the country
12 before the party.

13 And so the President got information from people he trusted on other issues. He
14 rejected it whenever it didn't fit him staying in office.

15 And there was a pattern in our case where any time any information came in that
16 would mean he could no longer be President he would reject it. And any theory, no matter
17 how far-fetched, no matter how not based in law, that would indicate that he could, he
18 latched on to that. And we had -- we were confident that we had very strong proof of that
19 pattern.

20 He also, I would just add, very consciously did not try to reach out to the sort of
21 people who have the most expertise on these issues. He reached out to people who he
22 thought could back him up.

23 Q Yeah, but let's be honest. The President doesn't reach out to anyone.
24 People are brought to him. I mean, you know, he doesn't, like -- the people you
25 mentioned that you were going to call at trial, those aren't -- you know, some Pennsylvania

1 Republican official, I mean, that's not somebody who was in the Oval Office communicating
2 with the President, right?

3 A Well, with respect to the Arizona Speaker of the House, that is someone the
4 President reached out to. He also reached out to governors, he reached out to the
5 governor of Arizona. He reached out -- and, again, to Republicans, his allies.

6 Our case was a case in which the President was preying on the party allegiance of
7 people who supported him. And, again, the record is rife with examples of him reaching
8 out to those people, inviting them to the White House.

9 Another example, sir, is the folks from Michigan. He invited them to the White
10 House. They told him, "You lost because you underperformed with educated females."
11 They told him that when he brought them there. And, again, our case was filled with
12 examples of that.

13 Q Were you planning on calling John Eastman as a witness?

14 A I do not believe we would have, but we would have welcomed if the defense
15 called him.

16 Q Okay. It gets tricky, though, for the defense to call him because the people
17 like Eastman and Clark and, you know, Rudy Giuliani and Sidney Powell, I mean, you know,
18 they were shrouded by the special counsel as, you know, co-conspirators one through six.
19 And so they all feared that they were going to be prosecuted if they said anything. Isn't
20 that fair?

21 A Well, they were co-conspirators. I can't get into what was in their mind or
22 not. I can tell you some of the co-conspirators met with us in proffers and did interviews
23 with us.

24 And so the idea that someone like Rudy Giuliani, who sat with a proffer with us, he
25 was available as a witness, and we would have welcomed President Trump calling him as a

1 witness.

2 Boris Epshteyn sat for an interview with us. We would have welcomed calling him
3 as a witness.

4 Kenneth Chesebro. We would have welcomed it.

5 Q Why didn't you charge any of those?

6 A I'm sorry?

7 Q Why didn't you charge any of those, those co-conspirators?

8 A As we stated in the final report, we analyzed the evidence against different
9 co-conspirators. We -- my staff determined that we did have evidence to charge people at
10 a certain point in time. I had not made final determinations about that at the time that
11 President Trump won reelection, meaning that our office was going to be closed down.

12 Q Right. You're a -- you've had a 30-year career as a prosecutor. You
13 prosecuted gang members, right?

14 A Yes.

15 Q You prosecuted organized crime members, right?

16 A Not as much.

17 Q But surely one of the fundamental principles of prosecutorial work is you work
18 from the bottom up and you try to get as many fact witnesses to work with you. And a lot
19 of times those fact witnesses have criminal liability.

20 And a lot of times those lower fact witnesses, the smaller fish, almost always
21 they're -- they're either prosecuted or they are given an immunity because they fear they're
22 going to be prosecuted. But here you didn't -- you know, you kept laser focused only on
23 President Trump.

24 A Two points.

25 One, as I said, we were considering prosecutions of these people, and I think -- I

1 don't want to say what the ultimate conclusion of that would have been, but that was
2 something that was being considered.

3 The second thing I think to understand contextually is this was a case where the issue
4 was how to present it in a concise way.

5 We had so many witnesses, again, so many witnesses who were allies of President
6 Trump available to us to testify. This was not a case where we needed more witnesses, it
7 was a case where we needed to be able to present the case in a streamlined way because
8 there was so much evidence.

9 Q In this book by the Washington Post reporters, on page 310 -- you're familiar
10 with this book. Have you read it? It's called "Injustice," by Leonnig and Davis?

11 A No, I have not read it.

12 Q Are you familiar with it?

13 A I have not seen it. I mean, I saw that it came out in the news, but I have not
14 read it.

15 Q Okay. Did you cooperate with the book? Did you talk to Carol Leonnig or
16 Aaron Davis?

17 A They reached out to my counsel. I did not speak to them.

18 Q And did you ever speak with them during your tenure at the Justice
19 Department?

20 A No.

21 Q Anyway, they report -- and, you know, these are reporters, they get some
22 things wrong. They called Chairman Jordan the chairman of the Senate Judiciary
23 Committee, they said Speaker McCarthy voted in favor of the second impeachment, and I
24 can confirm that it is just laughably inaccurate. And so reporters get things, you know,
25 wrong. And so if that's the case, you know, please flag it.

1 But in the book, on 310, the reporters write: "As each new tranche of information
2 about fake electors came in, members of Smith's team intermittently raised the idea of
3 opening separate case files on Giuliani, Eastman, and others each time. Each time -- each
4 time -- however, Smith dismissed the idea. He said he did not want the office getting
5 bogged down in potentially prosecuting those around Trump."

6 Is that --

7 A I don't think that's accurate. I did make the decision that the first case we
8 brought was going to be Donald Trump. And I was aware that there was evidence against
9 other people. But I don't think that characterization is accurate.

10 Q Okay. Now, people with different views than you can say the Special
11 Counsel's Office is only interested in prosecuting President Trump because an election is
12 coming up and he is -- he's going to be the Republican nominee. And the special counsel
13 works for a Democratic President, the special counsel works for a Democratic Attorney
14 General. And so the special counsel's laser focus on President Trump is simply to prevent
15 him from, you know, either being the party's nominee or being a successful party's
16 nominee -- or, at the very least, keeping him off the campaign trail.

17 How do you respond to that?

18 A All of that is false, and I'll say a few things.

19 The first is the evidence here made clear that President Trump was by a large
20 measure the most culpable and most responsible person in this conspiracy. These crimes
21 were committed for his benefit.

22 The attack that happened at the Capitol, part of this case, does not happen without
23 him. The other co-conspirators were doing this for his benefit.

24 So in terms of why we would pursue a case against him, I entirely disagree with any
25 characterization that our work was in any way meant to hamper him in the Presidential

1 election.

2 I would never take orders from a political leader to hamper another person in an
3 election. That's not who I am. And I think people who know me and my experience over
4 30 years would find that laughable.

5 Q So did you develop evidence that President Trump, you know, was responsible
6 for the violence at the Capitol on January 6th?

7 A So our view of the evidence was that he caused it and that he exploited it and
8 that it was foreseeable to him.

9 Q But you don't have any evidence that he instructed people to crash the Capitol,
10 do you?

11 A As I said, our evidence is that he in the weeks leading up to January 6th created
12 a level of distrust. He used that level of distrust to get people to believe fraud claims that
13 weren't true. He made false statements to State legislatures, to his supporters in all sorts
14 of contexts and was aware in the days leading up to January 6th that his supporters were
15 angry when he invited them and then he directed them to the Capitol.

16 Now, once they were at the Capitol and once the attack on the Capitol happened, he
17 refused to stop it. He instead issued a tweet that without question in my mind
18 endangered the life of his own Vice President. And when the violence was going on, he
19 had to be pushed repeatedly by his staff members to do anything to quell it.

20 And then even afterwards he directed co-conspirators to make calls to Members of
21 Congress, people who had were his political allies, to further delay the proceedings.

22 Q Did you- -- you sought gag orders in both the Florida case and the D.C. case.
23 Is that correct?

24 A We sought an order in the D.C. case under a rule -- I think it's 57.2 -- and we did
25 that because Donald Trump was making statements that were endangering witnesses,

1 intimidating witnesses, endangering members of my staff, endangering court staff.

2 As you might remember, in the -- right around when the indictment was released, he
3 issued a tweet saying: "If you come after me, I'll come after you." He called -- in a tweet
4 he called General Mark Milley a traitor and mentioned that what he'd done in olden times
5 people would be put to death. As a result of the things he was saying, the judge in this
6 case was put -- received vile death threats.

7 And with respect to D.C., both the district court and the court of appeals, a panel of
8 judges, found that his actions were, in fact, causing what we said they caused. They were
9 causing witnesses to be intimidated and endangering people.

10 And I believe it was the court of appeals also found that in addition to intimidating or
11 chilling witnesses who existed, it would chill witnesses who had not yet come forward
12 because they were afraid that they would be next.

13 So, yes, we did file that and I make no apologies for that.

14 Q Which witnesses do you think he would have intimidated? I mean, are there
15 any specific witnesses that you could identify for the court?

16 A We did a filing. I don't recall the specifics in that filing right now. But as I
17 said, one of the issues from my perspective was not only the witnesses who he had
18 specifically called out and caused threats to be issued, this phenomena that was found by
19 both courts, it was the result of that is that a rational witness who maybe had not come
20 forward would be completely afraid to because they would see that they would be next.
21 And I think the courts -- both courts agreed with that.

22 Q Well, I mean, the circuit court of appeals ultimately slimmed down the gag
23 order. Isn't that correct?

24 A It did, yes.

25 Q And what was the difference between the gag order you proposed and Judge

1 Chutkan agreed to and the final gag order that the D.C. Circuit approved?

2 A Okay. I'm going off my recollection.

3 I know one of the differences was him making threatening statements towards me
4 personally was no longer -- no longer -- I'm sorry, was allowed in the -- I think in the district
5 court. In our application we thought that shouldn't be allowed.

6 I will share with you that I told my staff that it was much more important to me that
7 he not be able to issue threats to court staff and my staff than me. And so the court of
8 appeals did narrow it in that way. And as we're sitting here now, I'm not debating you that
9 they narrowed it, I just can't remember the specific details.

10 Q Okay.

11 A But the phenomena, they concurred that the phenomena I'm describing to you
12 today was real --

13 Q Okay.

14 A -- and it had real world consequences.

15 Q 18 United States Code 1512 deals with tampering with witnesses. Did you
16 identify any violations of 18 U.S.C. 1512?

17 A We did not bring any charges.

18 Q And did the President -- did you allege that he violated any terms of his
19 release?

20 A We did not.

21 Q I want to turn to the Member toll records topic.

22 What's the difference between a subpoena for toll records and a 2703(d) order?

23 A Well, a subpoena for toll records is noncontent, doesn't have any content,
24 doesn't have, like, the header of, say, an email, things of that nature. Whereas I think a
25 20 -- if I'm correct in the terminology, I think a 2703(d) would be regarding emails and could

1 have information like that.

2 Q Could it have content?

3 A Well, at least, again, this is my recollection. I haven't looked at this issue in
4 some time.

5 Q Okay.

6 A But I think it means it's not content but it could at least have, say, the header,
7 like, of the message, like, not the content of the message but it might include the header.

8 Q Did you use any 2703(d) orders on Members of Congress or Senators or their
9 staff?

10 A I do not recall that at this time.

1 [11:06 a.m.]

2 [REDACTED]
3 Q Did you use any pen registers? Let's have you just walk us through what a
4 pen register is, and trap and trace.

5 A Yes. My understanding or my recollection is a pen register or trap and trace is
6 a thing where you're watching who someone is calling going forward. Like so, you know, if
7 there was a trap and trace on my phone, it would see going forward from today who I
8 called.

9 And a pen register -- I'm mixing up the terminology, but one is like calls in and the
10 other one calls out.

11 Q Okay. And did you use any of those techniques on Members of Congress,
12 Senators, or their staff?

13 A I don't recall anything like that.

14 Q Okay. And when you say you don't recall, you think the answer is no, but you
15 don't -- you're not able to give a definitive answer or --

16 A Yeah, I have nothing in my memory that tells me that we did anything like that.

17 Q Okay. And so with the toll record -- so as it relates to Members and their staff
18 and Senators, it's just the toll records, as far as you remember?

19 A That's my recollection.

20 Q Okay. And --

21 A Well, I'm sorry. I'm sorry to interrupt you. Before I was special counsel, the
22 people who were working on one of the investigations did get a search warrant for the cell
23 phone of one Congressman, Congressman Perry.

24 Q Congressman Perry. Yes, we are very familiar with that.

25 With the toll records subpoena, maybe just walk us through like what you get. You

1 get the -- you get the incoming, the telephone numbers that call a particular cell phone,
2 right?

3 A That is correct.

4 Q And you get the time that the call occurred?

5 A Yes.

6 Q And you get the -- do you get the length of time of a call?

7 A I believe that's correct.

8 Q Okay. And you also get the list of numbers that -- the outgoing. You get the
9 incoming and the outgoing, right?

10 A That's correct.

11 Q And is there any other information that the toll record subpoenas provide?

12 A That -- that is the -- what I understand is the major thing you're seeking to get
13 with the toll records.

14 Q Okay. And when you get one of these subpoenas, you just send it to the
15 carrier, correct? It doesn't involve the judge?

16 A The subpoena? Yes, that is correct.

17 Q Okay.

18 A It doesn't require a judge.

19 Q The only time a judge gets involved is if you're seeking a nondisclosure order.
20 Is that right?

21 A If it's a subpoena for toll records, that is correct.

22 Q Okay. And do you always seek the -- you know, is it the practice of your team
23 to always seek the NDO?

24 A Well, in this particular case, there was a grave risk of obstruction of justice,
25 given the obstructive conduct of President Trump as is set forth, for example, in the

1 indictment in Florida. President Trump tried to obstruct that case in multiple ways.

2 Then -- as I mentioned earlier, in the litigation we had regarding 57.2, we had
3 numerous instances of him attempting to, in our view, intimidate witnesses or keep them
4 from cooperating.

5 And so, given that reality, we did seek nondisclosure orders for the toll record
6 subpoenas you're talking about.

7 Q Okay. The -- and ordinarily, you just go to -- how do you pick your judge for
8 that when you're seeking the NDOs? Some of them were signed by the chief judge and
9 then others were signed by a magistrate, Magistrate Judge David Baker, at least as relates to
10 the Members. How do you pick the judge, or do they pick it for you?

11 A I don't know that we pick the judge. I have to say in my role in this, I wouldn't
12 have been -- I wouldn't have known that. I don't -- I don't know that even a prosecutor can
13 pick the judge.

14 Q Okay.

15 A But I don't know what local practice in Washington, D.C., would be on that.

16 Q Sometimes, you -- I think Boasberg signed the NDOs for the Senators. And
17 then as it related to Speaker McCarthy and some of our members on the Judiciary
18 Committee, it was Magistrate Judge David Baker.

19 So you don't have any idea why the --

20 A Well, a common practice, in my experience as a prosecutor, certainly when I
21 was a prosecutor in Brooklyn, is there will be a duty judge or a duty magistrate. And so
22 whoever has duty that day is who you go to.

23 Q Okay.

24 A I just want to be clear, in this case, I don't have a recollection --

25 Q Okay.

1 A -- if that's how it works in D.C., but it may well have been that way.

2 Q Okay. And these NDO orders, at least the ones we've seen, are all the same.
3 Is that a fair -- is that a fair statement?

4 A I think they're usually very similar, yes.

5 Q Okay. And you submit a proposed order, correct, for the judge to sign?

6 A That is correct.

7 Q And part of the language in this states that the Court finds reasonable grounds
8 to believe that such disclosure will result in flight from prosecution, destruction of or
9 tampering with evidence, intimidation of potential witnesses, and serious jeopardy to the
10 investigation.

11 Is that something you remember?

12 A Yes. These are the -- in the -- in the law -- and the number is escaping me
13 right now, but in the law that sets forth the reasons why you could get a nondisclosure
14 order, I believe those are the different prongs, if you will, of that statute.

15 Q Right. As it relates to Members of Congress and Senators and definitely their
16 staff as well, I mean, that presents concern that we don't have an opportunity to, you know,
17 quash the subpoena.

18 How does your office deal with that prospect?

19 A Well, the nature -- and I should also be clear that when you're getting an NDO,
20 say, for toll records, it's not based on an allegation that necessarily the person who has the
21 phone number is personally going to obstruct the investigation. It's that if this gets out,
22 people could obstruct the investigation. So I want to make that clear.

23 The second point would be, you are correct in that inherent in getting an NDO is that
24 at various times, people who might have arguments about why to quash a subpoena won't
25 be able to make those arguments.

1 In our investigation, this came up with Twitter. We wanted to get records from
2 Twitter regarding President Trump. Twitter -- and we applied for an NDO from the judge.
3 Twitter refused to provide the records unless they could tell President Trump about that.

4 And so we had litigation with this in the District Court. The District Court agreed
5 that there are situations -- and there it was that Twitter argued that President Trump should
6 be able to assert executive privilege over the records we wanted.

7 And as a result of that litigation, the Court of -- the District Court found that it was
8 proper of us, given the level of obstruction in this case, to get that NDO.

9 That decision by the District Court was upheld by the Court of Appeals. And then
10 that decision by the Court of Appeals, Twitter -- my recollection is Twitter sought to get the
11 Supreme Court to overrule that, and the Supreme Court refused to.

12 And so I tell you all that to say --

13 Q And then you fined them, right?

14 A Well, actually, that's before. They refused to comply even after she ruled.

15 And she set a schedule of fines, and so part of the appeal was --

16 Q And you sought the fines, right?

17 A Absolutely, yes.

18 Q Okay.

19 A But the point of telling you that was that inherent in an NDO is it may be that
20 certain arguments about why a subpoena should be quashed can't be made. So that
21 happens, and I think there's a parallel in those situations.

22 Q When it comes to Members of Congress, though, there are, you know, the
23 Speech or Debate protections, which you totally sidestepped.

24 I mean, the toll records provide enormous valuable information, because it shows
25 who a Member of Congress, who a Senator is taking calls from and who they're calling.

1 And if you map it up against the Senate or the House calendar, you can see, you know, what
2 the inputs are to their legislative decision-making, which is at the core of Speech or Debate.

3 Do you agree with that?

4 A My office and I personally take the protections of the Speech or Debate Clause
5 seriously. I think they're part of our Constitution. They're an important part of
6 separation of powers. I think our respect for the Speech or Debate Clause is evidenced by
7 the litigation we engaged in in this office. We conducted litigation with Congressman Perry
8 and also Vice President Pence, taking that very seriously.

9 And I would just -- I would just also add that my office had folks who were really the
10 Department experts on Speech or Debate. And when we sought these subpoenas, we got
11 approval from Public Integrity, who are the sort of keepers of that issue, and they concurred
12 in us getting these subpoenas.

13 Q They did. And we saw some of that email traffic, and I would respectfully
14 disagree with their view of the Speech or Debate law, as you might imagine.

15 When you sought these nondisclosure orders, the judge didn't know it was a
16 Member of Congress. Is that correct?

17 A I don't think we identified that, because I don't think that was Department
18 policy at the time.

19 Q Okay. And you had some litigation with -- substantial litigation with
20 Congressman Perry over the seizure of his phone, but you didn't have any litigation with us
21 over the seizure of members of the Judiciary Committee's phones because we never knew
22 about it.

23 A That is correct.

24 Mr. Koski. Sir, I just want to clarify. I think you said regarding the seizure of any
25 Senators' phones.

1 [REDACTED] Representative Perry had his phone seized.

2 Mr. Koski. Yes, but are you suggesting that there was a seizure of a Senator's
3 phone?

4 [REDACTED] No.

5 Mr. Koski. Okay. I just wanted to clarify that. Thank you.

6 BY [REDACTED]

7 Q The only seizure I'm aware of is Congressman Perry. Do you know of any
8 other seizures?

9 A That's the one I recall.

10 Q Okay. So no other Members of Congress, no other Senator had their phone
11 seized?

12 A I don't -- no.

13 Q Did you seek search warrants for the content of any of the telephone calls
14 or -- you know, the content relates mostly to text messages.

15 Did you seek a search warrant for the content of any text messages from Members?

16 A From Members?

17 Q Yes.

18 A No, I don't recall that.

19 Q Okay. It was just toll records?

20 A Correct.

21 Q Okay. But by not telling the Members, you know, by going through this NDO
22 process, I mean, they didn't have an opportunity to litigate the Speech or Debate concerns.

23 A That is correct.

24 Q And that's unfair, in our view.

25 A I understand your position. And, as I said before, we respect the Speech or

1 Debate Clause. I'm aware of no case in the Supreme Court or the D.C. Circuit that says that
2 getting noncontent toll records from a third party violates the Speech or Debate Clause,
3 particularly where -- and I think an important point here is these records were not sought to
4 use against Members of Congress who are targets.

5 The investigation we were conducting was of President Trump and his
6 coconspirators, who were all obviously not Members of Congress, but also private -- not
7 even members of the White House.

8 Q I mean, the House and DOJ has a big disagreement on this. I mean, the
9 William Jefferson case. Are you familiar with the Rayburn House Office Building case?

10 A I am.

11 Q Okay. And so when issuing grand jury subpoenas for toll records, do you
12 consider yourself bound by that opinion?

13 A Yes, but I would say that opinion does not -- that is a case where there was a
14 search warrant of a Congressman's office. That Congressman was a target of the
15 investigation.

16 Q Right.

17 A The -- the search warrant wasn't seeking noncontent toll records. It was
18 seeking the actual records of legislative material of the Congressman to be used against that
19 Congressman.

20 Q But, I mean, the Court in the Rayburn case concluded that there is a
21 documentary nondisclosure privilege, not just a prohibition on the evidentiary use of that
22 material against Members.

23 A I'm not debating the Rayburn case exists. What I'm saying is in the Supreme
24 Court or the D.C. Circuit, there is no case that says noncontent -- Rayburn dealt with
25 content -- noncontent records not secured from a Member, but secured from a third party

1 are subject to the Speech or Debate Clause.

2 And if I may, the correspondence we talked about, that reading, which was the
3 reading of my staff who are very familiar with this, was consistent with the Department's
4 position on those issues. And Public Integrity, which was sort of a keeper of this issue,
5 concurred in our getting these subpoenas.

6 [REDACTED] We're going to make an exhibit. Are we up to number 6?

7 [Smith Exhibit No. 6
8 was marked for identification.]

9 BY [REDACTED]

10 Q And this is some back-and-forth. Exhibit 6 is going to be an email between
11 your office and Public Integrity regarding the Senate, the toll records for the Senators.

12 The relevant -- these documents are helpfully not Bates stamped.

13 A If you want to show me yours, I can look for it here.

14 Q So the Department has, you know, if you're going to -- has requirements for all
15 prosecutors that, you know, if you're going to bring a tax prosecution, you have to consult
16 with the Tax Division, right?

17 A Correct.

18 Q If you're going to bring a national security-related case for classified
19 documents, mishandling of classified documents, you need the National Security Division to
20 okay that, right?

21 A Correct.

22 Q And as it relates to, you know, sensitive political matters, the Attorney General
23 has to okay. And there's been a series of memos both from Attorney General Barr and
24 Garland and so forth, correct?

25 A Sensitive political matters? I'm not sure if that's a terminology. There's an

1 election year sensitivity memo, and there's also regulations, specific regulations for specific
2 situations, yes.

3 Q Right. And the FBI calls it a sensitive investigative matter and, you know, they
4 need to get the -- they can't do anything without getting the Director of the FBI to okay
5 getting search warrants against Members of Congress and so forth, correct?

6 A I'm not as familiar with the FBI regulations as the DOJ regulations.

7 Q But is Public Integrity -- before you seek member toll records, is the hoop you
8 have to jump through Public Integrity?

9 A So it was for my office, because I directed my staff to consult them anytime we
10 were going to do that. I understand that that was more of a practice and tradition. It's
11 since become a specific requirement after these toll records were issued.

12 But it was my policy to do that and it was, again, consistent with my policy of
13 wanting to sort of leverage the expertise in the Department. So we did that.

14 Q Is this back-and-forth -- and your staff had a memo that it I think, you know,
15 basically put in email, and then Public Integrity responds with this message.

16 Is that essentially the extent of the back-and-forth with Public Integrity?

17 A I don't know that it -- that this is the extent of it. I don't -- it's -- there's a line
18 here that says, "as you are aware." That makes me think that there was also a telephone
19 conversation, but I don't -- just to be clear, I don't have a specific recollection of that.

20 I told my staff that in this situation, if we're going to seek these toll records, you
21 need to consult with Public Integrity. As you can see from the email chain, I wasn't on that
22 email chain.

23 Q Were there any other boxes you had to check? Did you have to tell the
24 Attorney General or the DAG to get these toll records, or was it just you and Public Integrity?

25 A The -- my direction was to tell -- for our staff to go to Public Integrity. It may

1 well have been that this is the sort of thing either I would have briefed the Attorney General
2 on or J.P. Cooney, who was our contact with the leadership of the Department, may have
3 told them about.

4 But the thing that I was most concerned about was making sure Public Integrity, who
5 was sort of the experts on this issue, that they were consulted.

6 Q I mean, this isn't -- if you look at the email, it's not that fulsome, right? It's
7 not a complete analysis of the constitutionality, or even the propriety of the call record
8 subpoenas under the Speech or Debate Clause. I mean, isn't that -- is that fair to say?

9 A Yes. Certainly, there could be more analysis. But, again, I don't know if
10 there was an additional conversation that -- it seemed -- I'm drawing an inference. I don't
11 recall that, but this seems to me to indicate there may have been an additional
12 conversation.

13 Q So the email, you know, from our perspective, it seems to be a cursory
14 litigation risk assessment. It's not -- you know, it doesn't raise the issues that we would
15 raise if we were litigating the Speech or Debate matter because, I mean, our position is that
16 the toll record subpoenas do violate Speech or Debate.

17 I mean, if you get a list of all the people calling members of the Judiciary Committee
18 before a floor vote, that is pretty core-protected material. And, you know, this
19 back-and-forth with Public Integrity doesn't address very much. Is that fair?

20 A Well, again, I don't know if there were additional conversation or
21 conversations. I also don't know, frankly, if this is the only email on this issue.

22 So I don't think I would call it cursory. I think an important context here is that the
23 people involved in this, including the people on this email chain as well as my -- one of my
24 senior counselors, Ray Hulser, who was really the Department's expert on these issues, that
25 these are people with expertise in this area discussing it with one another.

1 Q But if you believe what The Washington Post reporters wrote in their book, you
2 know, they say, according to their sources, that you were legendary for being dialed into,
3 you know, every last detail of these cases, that you were -- you know, they stopped short of
4 calling you a micromanager, but they say that, you know, you looked at, you know, witness
5 outlines, you know, 2 days before witness interviews. Is that fair?

6 A I did that with outlines of interviews, yes.

7 Q And you had -- you know, at points, you know, you had daily meetings with the
8 teams and you wanted to know, you know, every last detail of your case. Is that fair?

9 A I tried to be a responsible supervisor, yes.

10 Q But when it comes to taking the Members of Congress', you know, phone
11 records, you weren't as plugged into that. Is that fair?

12 A No, I don't think that's fair. I -- I spoke with my staff about this. I ultimately
13 approved it.

14 Q Right.

15 A I had faith in the expertise of my staff. They discussed it with me. I felt
16 there was a basis for it. I felt it was relevant and material to the investigation. And I also
17 felt comfortable because I knew that my view about that would be tested by an analysis of
18 Public Integrity.

19 Chairman Jordan. Look at the last sentence. Low likelihood that any of the
20 Members listed below would be charged, and the litigation risk would be minimal, not to
21 mention they're not going to know.

22 So the assessment is, as [REDACTED] described it, pretty cursory. We're not going to
23 charge anyone. We're not going to get sued. They're not going to know. Who cares
24 about Speech or Debate? That's what the assessment looks like to me. Can you
25 respond?

1 The Witness. Chairman, I would disagree with that characterization of it.

2 Chairman Jordan. Well, that's what the sentence says. We're not going to charge
3 these people. I doubt if they take us to court. It would be hard for them to take us to
4 court because they're not going to know for years that we did this. Move ahead. And
5 you said fine to that.

6 The Witness. I approved these subpoenas, yes.

7 Chairman Jordan. Okay.

8 BY [REDACTED]

9 Q And, you know, our view is this is inconsistent with the D.C. Circuit case law,
10 which establishes that the Speech or Debate protections include a nondisclosure privilege,
11 period.

12 It's not just a privilege against using that material against the Members. It's also a
13 privilege against taking that -- taking that information and using it against a third party.

14 If you're going to prosecute Jeff Clark with Scott Perry's phone records, you know,
15 we believe that the D.C. Circuit holds you can't do that. And this back-and-forth with
16 Public Integrity doesn't factor that in. That's concerning to us.

17 Did you have any discussions with the Office of Legal Counsel or the Solicitor
18 General's Office? Were there any other components in the Justice Department that
19 analyzed this?

20 A On this discrete issue, I don't have any recollection of those entities being
21 involved in that discussion.

22 Q Okay. And there's a statute regarding Senate phone records. Are you
23 familiar with 2 United States Code 6628?

24 A Yes.

25 Q And did you analyze or factor in that statute before you issued the subpoenas

1 for the Senator toll records?

2 A As I sit here today, I don't recall specifically discussing that statute. I will say
3 that my reading of that statute as it existed at that time is that that was a statute directed at
4 providers.

5 It actually envisions that a provider might actually get an NDO application. And the
6 provider, who has the best information about whose phone line is whose, that they're best
7 situated to make -- to make these judgments.

8 Q Okay. So that was my next question is, like, whose responsibility it is to flag
9 that there's a statute, a law that bars NDOs with regards to certain Senators' phone
10 numbers. Whose responsibility? Is that the special counsel's office? Is that the carrier?
11 Is that the judge? Does the judge have to sort of figure this out, the magistrate judge?
12 Certainly, the magistrate judge doesn't have to figure it out all on his own, does he?

13 A Well, that statute, as I said, my reading of that statute, the language of that
14 statute as it existed at that time is that it's the job of the carrier. And to me, that makes
15 sense, because they're the ones who have the best and most accurate information about
16 whose phone lines are whose. They actually have that information.

17 Q Okay. But the package of materials that you send off to the magistrate judge
18 or the chief judge, whoever's the duty judge, as you mentioned, you don't identify that it's a
19 Senate phone number or a Member of Congress in those applications. So there would be
20 no way for the judge to know that, you know, there's these additional considerations.

21 Is that fair?

22 A I think that it's fair. I think the Department guidance on that issue has
23 changed since these events we're talking about. And so now if one were to do that, you
24 would notify the judge.

25 [REDACTED] Okay. And my time is up so, unfortunately, I have to leave it there.

1 We'll go off the record.

2 [Recess.]

3 [REDACTED] We'll go back on the record at 11:42 a.m. eastern time.

4 BY [REDACTED]

5 Q Mr. Smith, let's just start with the bottom line up front. One of your
6 investigations focused on whether any person violated the law in connection with efforts to
7 interfere in the lawful transfer of power following the 2020 election. Is that correct?

8 A Yes.

9 Q At the conclusion of that investigation related to the interference in the lawful
10 transfer of power following the 2020 election, when your office indicted Mr. Trump for his
11 criminal scheme to overturn the 2020 election, did you believe that you had sufficient
12 evidence to obtain and sustain a conviction against Mr. Donald Trump?

13 A Yes.

14 Q For these charges stemming from Mr. Trump's criminal scheme to overturn the
15 2020 election, did you believe that you had sufficient evidence to prove these charges
16 beyond a reasonable doubt?

17 A Yes.

18 Q And we know it's more than just a reasonable doubt. Did you believe that
19 there were multiple substantial Federal interests in proceeding with prosecuting Mr. Trump
20 after he attempted to criminally overturn the 2020 election?

21 A I did.

22 Q Now, the second investigation that you were appointed to lead focused on the
23 possession of highly classified documents at Mr. Trump's Mar-a-Lago social club following
24 his Presidency.

25 When your office indicted Mr. Trump for willfully keeping highly classified docs after

1 he lost the 2020 election, did you believe that you had sufficient evidence to obtain and
2 sustain a conviction against Mr. Donald Trump?

3 A Yes.

4 Q And for these charges stemming -- for these charges stemming from when Mr.
5 Trump left the office in 2021 with these highly classified documents, did you believe that
6 you had sufficient evidence to prove the charges beyond a reasonable doubt?

7 A Yes.

8 Q And did you believe that there were multiple substantial Federal interests in
9 proceeding with prosecuting Mr. Trump for his unlawful possession of these highly classified
10 documents?

11 A I did.

12 Q How many years of experience do you have as a prosecutor, Mr. Smith?

13 A In total, I've been a prosecutor a little short of 30 years.

14 Q Can you give us a high-level overview of the different offices you might have
15 worked in as a prosecutor?

16 A Sure. I started my career as an assistant district attorney at the Manhattan
17 District Attorney's Office in New York City. I was a -- I prosecuted local crimes there for 5
18 years.

19 Afterwards, I became a Federal prosecutor in the Eastern District of New York, which
20 is in Brooklyn and Long Island, and I was there for about 9 years. I prosecuted larger, more
21 complex cases when I was there. I was eventually the chief of criminal litigation there.

22 I left that office to go overseas and work with the International Criminal Court for a
23 little short of 2 years. I coordinated investigations of the Office of the Prosecutor there.

24 I then returned to the Department of Justice, where I was the chief of the Public
25 Integrity Section of the Department of Justice, and I did that for somewhere between 4-1/2

1 and 5 years.

2 I left Washington, D.C., and moved to Nashville, Tennessee, where I was the first
3 Assistant U.S. Attorney and then later the Acting U.S. Attorney in the Middle District of
4 Tennessee, which is in Nashville.

5 I left government. For the only time in my career, I was in -- worked for a private
6 company for a brief period of time, a period of months.

7 And then I was offered a position by the State Department to serve as a war crimes
8 prosecutor at a European Union War Crimes Tribunal in The Hague, the Netherlands. And
9 I was there for a little over 4 years, before I became special counsel.

10 [REDACTED] I'm sorry to interrupt. Can you just speak up a little bit.

11 The Witness. Oh, I'm sorry.

12 [REDACTED] The people in the back have trouble hearing you.

13 The Witness. Sorry about that.

14 BY [REDACTED]

15 Q And can you describe the types of cases out of all these years of experience.
16 Just give us a broad overview of the seriousness of the cases that you've brought in your
17 career.

18 A I've worked on all sorts of cases. Early in my career, I was a member of the
19 offices in Manhattan, the Domestic Violence Unit. And so, I did a number of cases of
20 people who were abusing domestic violence victims. Those are some of the most
21 memorable cases in my career.

22 I worked on gang cases, RICO gang cases in the Eastern District of New York. I
23 worked on the Abner Louima case, which was an assault of a Haitian immigrant by police
24 officers.

25 I did other international -- an international murder-for-hire case, other sorts of

1 violent crime cases. I was the -- I was one of the -- the night of 9/11, I was part of the
2 command center, and in the weeks afterwards I was involved in responding to what
3 happened on 9/11.

4 After the Eastern District of New York, when I was overseas, I worked on war crimes
5 cases that were in all sorts of different jurisdictions and all sorts of challenging investigative
6 situations, and political corruption cases, obviously, when I was in Public Integrity and also in
7 Nashville.

8 Q So taking all these cases you described, I heard cases about, you know,
9 gang -- about gangs in New York, it sounds like. There were war crimes cases. There
10 were domestic violence cases you just described.

11 Taking all that experience, when you finished your investigation of Special Counsel's
12 Office, you believed that you had sufficient evidence in this case to prove Donald Trump
13 committed those crimes after the 2020 election?

14 A I did.

15 Q And you believed that you had enough evidence to get a conviction with
16 Donald Trump taking or willfully taking the classified documents after he left office in 2020
17 and returned to Florida in 2021?

18 A That is correct.

19 Q So we've heard a word a lot from this administration from the majority,
20 Republicans, and that word is "transparency." And yet, Mr. Smith, we're in a closed-door
21 deposition today, meaning that members of the public and even congressional Members
22 and staff who are not part of the Judiciary Committee are not permitted to attend this
23 proceeding.

24 Did you offer to testify publicly before this committee?

25 A Yes.

1 Q How did you offer? I guess, how did you make the offer to testify publicly to
2 this committee?

3 A I think it was through my counsel.

4 Q Did you send a letter to the committee? Did your counsel send a letter to the
5 committee offering to publicly testify?

6 A I think that's right.

7 [REDACTED] We'll enter that letter into the record just for background, and this
8 will be exhibit 7. It will be an October 23, 2025, letter signed by Mr. Lanny Breuer and
9 Mr. Peter Koski. It's addressed to Chairman Jordan and Chairman Grassley regarding Mr.
10 Smith's public offer to testify publicly.

11 [Smith Exhibit No. 7

12 was marked for identification.]

13 BY [REDACTED]

14 Q Are you familiar with this letter, Mr. Smith?

15 A Yes.

16 Q Can you tell us why you felt it was important to make a request for a public
17 hearing?

18 A I'm proud of the work that we did at the Special Counsel's Office. I'm
19 particularly proud of the people I worked with, the career public servants I worked with who
20 have been vilified by President Trump and people who work for him. And I think someone
21 needs to speak up for them.

22 Q Did you want to testify publicly because you had something to hide about your
23 investigation?

24 A No.

25 Q Did you want to testify publicly to rebut some of these accusations from the

1 President that you just mentioned about your investigation?

2 A Yes, that's what I meant. Accusations not just against me, but against career
3 prosecutors, career FBI agents, FBI agents who have served our country, and who have been
4 vilified wrongly. I think it's really important to correct the record on that.

5 Q And were you granted the request to testify publicly before this committee?
6 The answer is probably obvious as we sit in this room, but were you granted that request?

7 A No.

8 Q Were you given any reasons, or provided any reasons why you were not
9 allowed to testify publicly and directly to the American people?

10 A I don't recall that.

11 Q Are you aware that even President Trump thought that you should testify
12 publicly before our committee?

13 A I heard that.

14 Q Yeah. Just to make it clear for the record, Mr. Trump said, and this is a quote,
15 "I'd rather see him," as in Jack Smith, "testify publicly because there's no way he can answer
16 the questions."

17 So let's turn to a few of those questions. Do you recall the October 14, 2025, letter
18 to you from Chairman Jordan requesting a transcribed interview?

19 A I know he -- he sent a letter asking for me to be interviewed, yes.

20 [REDACTED] We'll enter that into the record and make it exhibit 8.

21 [Smith Exhibit No. 8

22 was marked for identification.]

23 BY [REDACTED]

24 Q And I'll give you a second just to look through it as we pass it out.

25 A [Reviewing.]

1 Q So in this October letter to you requesting a transcribed interview, the
2 chairman characterized your investigation as, quote, "politically motivated prosecutions of
3 Donald J. Trump," end quote, and said you conducted a, quote, "unnecessary and abusive
4 raid of the residence," end quote, of Donald Trump, and that claimed that you, quote,
5 "manipulated key evidence in the investigation," end quote, among other claims.

6 Do you recall these accusations to you in the letter from Chairman Jordan?

7 A Yes.

8 Q The Republicans of our committee have made these letters to you public. You
9 can read it on the committee's website, including these accusations that your office was
10 weaponized. But this proceeding is behind closed doors, and majority counsel just warned
11 you earlier about keeping the contents of this deposition confidential.

12 Do you remember that warning that you received at the beginning of this
13 deposition?

14 A Yes.

15 Q So we will get into this in more detail later but just to quickly touch on this, do
16 you agree with the majority's characterization that your office was weaponized?

17 A No.

18 Q Was your Special Counsel's Office weaponized in any way?

19 A No.

20 Q Did the conduct -- did you conduct a politically motivated prosecution of
21 Donald J. Trump?

22 A I did not.

23 Q Would you like to have explained directly to the American people why these
24 characterizations are not true?

25 A Yes. And, again, particularly as to the career prosecutors and agents who

1 have been vilified.

2 Q Are you concerned that given that this deposition is not open to the public and
3 the public cannot hear your answers or observe your demeanor or hear the way that you're
4 responding to questions from the majority, that some of your responses may be selectively
5 published or released in a way that mischaracterizes your answers?

6 A I would hope that wouldn't happen.

7 Q But are you aware that's a risk from your testimony here today?

8 A I'm sure that's possible.

9 Q Based upon your knowledge, is it generally the practice for the special counsel
10 who investigated Presidential conduct to be given the chance to testify at a public hearing to
11 be able to explain their findings to the American public?

12 A Yes.

13 Q So let's just take a few of those. Are you aware of Special Counsel Robert
14 Mueller testifying publicly before the House Judiciary Committee?

15 A Yes.

16 Q For the record, that occurred in July of 2019.

17 Are you aware of Special Counsel John Durham testifying publicly before the House
18 Judiciary Committee?

19 A Yes.

20 Q For the record, that occurred in June of 2023.

21 Are you aware of Special Counsel Robert Hur, who came up earlier in the majority's
22 hour, testifying before the House Judiciary Committee?

23 A Yes.

24 Q For the record, that occurred in March of 2024.

25 I also want to touch a little bit on, speaking of just transparency and a fulsome

1 investigation, into this committee's request for documents related to your investigation.

2 We're going to enter into the record another letter from Chairman Jordan. This
3 one is addressed to Attorney General Bondi. This letter seeks records related to the Arctic
4 Frost files, and it's dated October 29th of 2025. This will be exhibit 9.

5 [Smith Exhibit No. 9

6 was marked for identification.]

7 BY [REDACTED]

8 Q And you might not be familiar with this document so I'll give you a second to
9 review it. It's not very long, though.

10 A [Reviewing.]

11 Okay. I've reviewed it.

12 Q So after reviewing it, are you now aware that Chairman Jordan has sought the
13 production of files related to your investigation from the Department of Justice?

14 A Yes.

15 Q And just to read that request, it's request number two. It says in quotes, "All
16 DOJ documents and communications referring or relating to Jack Smith's special counsel
17 investigation for the period of November 18, 2022, to January 20th of 2025."

18 I just want to get a better understanding of this broad request of all DOJ documents
19 and communications referring to your investigation.

20 I guess what types or categories of documents are associated or would be associated
21 with your investigative files?

22 A There would be numerous documents. I mean, it was a prosecutor's office, so
23 the sort of documents you would associate with a prosecutor's office.

24 Q Just to make it clear for the record, could you just give a few examples of what
25 those records or memos might look like or what they might be about?

1 A Prosecution memos, email correspondence with my staff, analysis of the case,
2 things of that nature.

3 Q Would these documents include internal decision memos or other records of
4 major decisions made by you and your team during the investigation?

5 A Yes.

6 Q Do these files include communications with the Attorney General or the Deputy
7 Attorney General during the course of your investigation?

8 A I don't -- I don't think I had any files that would fall under that category. I'm
9 not sure if there would be -- my deputy also communicated with the Deputy Attorney
10 General's office, so there may be, but I don't think as to me.

11 Q Do these files include communications just with other DOJ officers? I think
12 earlier you mentioned possible communications with the Solicitor General.

13 Would those files include possible communications with that person?

14 A Yes.

15 Mr. Goldman. Could I just follow up on that for one second?

16 [REDACTED] Sure.

17 Mr. Goldman. You had no communications with the Deputy Attorney General?

18 The Witness. No. I took the question to mean in terms of like email or things of
19 that nature. We met. I met with the Attorney General and the Deputy Attorney General
20 at times at their request.

21 So those -- those things did happen. I'm just saying I don't recall me having any sort
22 of email communications with either of them.

23 BY [REDACTED]

24 Q But in terms of the Special Counsel Offices, just following up Mr. Goldman's
25 question, the office as a whole, if there were email communications between members of

1 your team and the Attorney General or the Deputy Attorney General, would that probably
2 be a part of your special counsel case files?

3 A Yes.

4 Q And as far as you're aware, the current Department of Justice has full access to
5 your documents and memos and files from your investigation. Is that correct?

6 A They should.

7 BY [REDACTED]

8 Q In fact, you reviewed those files in preparation for your appearance today,
9 right?

10 A Yes. We were given access to a computer that had files on it. I can't say that
11 it's all the files, but we were given access to that, and I reviewed that in preparation for
12 today.

13 BY [REDACTED]

14 Q Did you follow DOJ protocol in your decision-making, including consulting with
15 relevant offices, like the Public Integrity Section, the Office of Legal Counsel, and any other
16 entities, as required and encouraged by DOJ policy?

17 A Yes.

18 Q Were there examples where these consultations were memorialized in writing
19 either before or after you met with these offices?

20 A Yes.

21 Q So given the majority's claim that the investigation was biased, do you think the
22 case files would help eliminate some of the majority's questions about the actions you took
23 while special counsel?

24 A I have no objection to people looking at the case file.

25 Q To your knowledge, has DOJ released all the special counsel's files either to

1 Congress or to the public?

2 A I don't -- I don't -- I don't know what they've released to Congress.

3 Q Do you believe it's in the public's best interest to view the full case file rather
4 than just selective samples, as they've come out so far?

5 A The reason I'm pausing is I'm not sure it's proper for me to weigh in on that. I
6 don't know if there are, for example, confidential information regarding witnesses that
7 shouldn't be made public.

8 And so I think that's a matter for others besides me who have the case files in their
9 possession now to review and decide.

10 Q So let's just narrow it a little bit. Do you think it would be beneficial for the
11 committee to review the case files so we can understand why certain investigative steps
12 were taken?

13 A I'm going to leave that to others to decide. I'm here, and I'm happy to answer
14 any questions you or anybody else might have.

15 Mr. Goldman. If the case files were released, would they include any political
16 considerations by you or your team as you investigated and charged these cases?

17 The Witness. We did not consider politics. I did not consider politics, anyone's
18 politics, in charging these cases.

19 Mr. Goldman. And that would be borne out presumably by the case files?

20 The Witness. I'm not aware of anything in the case files that would contradict that.

21 Mr. Goldman. Because it never happened?

22 The Witness. It never happened.

23 BY [REDACTED]

24 Q I also just want to note, the authorization that you got from DOJ -- and I think
25 this is marked as exhibit 2 -- no, sorry, exhibit 3 by the majority. It was quite broad, right?

1 A Which one is this now?

2 Q This is exhibit 3, a letter from the Department of Justice to your counsel.

3 A I apologize. We've got a lot of letters here, so --

4 Q That's okay. Take your time.

5 Mr. Goldman. Just don't have a lot of evidence that's been disclosed.

6 A Okay. I have the letter now.

7 BY [REDACTED]

8 Q Okay. So I am looking at page 3 on the bottom, but this letter essentially
9 walks through a series of topics that you are authorized by the DOJ to discuss.

10 A Correct.

11 Q Okay. So on the bottom of page 3, I'm reading, I'm reading here from the
12 letter: "The extraordinary events underlying this matter constitute exceptional
13 circumstances warranting an extraordinary accommodation to Congress in this particular
14 case. Given these extraordinary circumstances, to the greatest extent allowable by law,
15 the Department authorizes Mr. Smith to provide unrestricted testimony to the committee,
16 irrespective of potential privilege, including the names of line attorneys and agents in the
17 Department as it pertains to the matter identified in this letter and as limited in paragraph 1
18 through 5."

19 And the paragraph 1 through 5 essentially goes through the investigations that you
20 undertook, and I guess a couple of tangential matters related to the Office of Professional
21 Responsibility and the Arctic Frost investigation.

22 Is that correct?

23 A That's what that says, yes.

24 Q Okay. So given that DOJ gave you unrestricted -- or authorization to provide
25 unrestricted testimony, would it make sense that DOJ then should also give this committee

1 unrestricted access to the case files that's currently in its possession?

2 A I'll leave it to others to decide that. I will say that the paragraph you read is
3 different than it's been with past special counsel. Past special counsel usually testify about
4 the contours of their report. They've changed the process here. And I'm still here willing
5 to answer -- answer questions.

6 [REDACTED] Okay. Thank you.

7 BY [REDACTED]

8 Q We're going to -- I believe we're on exhibit 10 now. We're going to move on
9 to exhibit 10, which will be your special counsel report, Volume One, dated January 7th of
10 2025. I know this is a document you are very familiar with, but we'll pass it around.

11 [Smith Exhibit No. 10

12 was marked for identification.]

13 BY [REDACTED]

14 Q So, as the date of your report says, on January 7th of 2025, and as your time as
15 special counsel was coming to an end, you provide a final report to the Attorney General
16 where you explain the prosecution and declination decision that you made as special
17 counsel, as required by 28 C.F.R. 600.8.

18 Is that correct, sir?

19 A That is correct.

20 Q What was your goal in preparing this report?

21 A I wanted to, at first, make sure I fulfilled the obligation under the special
22 counsel regulations to do a report consistent with the regulations.

23 Q And was this final report an accurate account of your investigation and its
24 findings?

25 A It was.

1 Q Based upon your understanding, is it generally the practice for a special
2 counsel's report to be made public to the American people?

3 A I believe so. I know at times they've been -- portions have been redacted in
4 the past, but my general understanding is yes.

5 Q To the best of your knowledge, do you recall Special Counsel Mueller's report
6 being made public?

7 A It was public, yes.

8 Q To the best of your recollection, do you recall Special Counsel Hur's report
9 being made public?

10 A Yes.

11 Q To the best of your knowledge, do you recall Special Counsel Weiss' report
12 being made public?

13 A I don't recall. It may be. I don't know.

14 Q Was your report made public in full?

15 A This report? This report as to the elections case, I believe it was made public.

16 Q Did you have a separate volume or a different -- a Volume Two of your report?

17 A That is correct.

18 Q Was that made public?

19 A No.

20 Q Touching on Volume Two, in your letter to the Attorney General, you also
21 recommended that Volume Two of this report, which discusses the classified documents
22 case, not be publicly released while the cases of Mr. Walt Nauta and Mr. Carlos De Oliveira
23 remained pending.

24 Do you recall saying that in your letter to the Attorney General?

25 A That's what's in the letter, yes.

1 Q Can you just please explain why you included that recommendation?

2 A When -- as special counsel, when you draft a report like this, it's not for me to
3 decide whether it gets made public or not. It's for the Attorney General. And it's for him
4 to also decide what portions, if any, get redacted in that.

5 And so what I stated was my, in essence, recommendation that it should not be
6 public because these cases are pending, and there are facts in here that it might not be fair
7 to have that be public while they have charges pending against them.

8 Q Understood. So other than the fact that the cases of Mr. Nauta and
9 Mr. Oliveira were still pending, as you just discussed, did you have any other reasons to
10 believe, or to recommend that Volume Two of the report should not be publicly released?

11 A Well, again, that wasn't my choice. My choice was to write the report for the
12 Attorney General to make a decision about whether it would be public. I have no
13 objection to it being public, and I didn't then, as long as it complies with the law in terms
14 of 6(e) and other issues like that.

15 Q But just going back to that recommendation, in making the recommendation in
16 the letter that it not be made public -- I understand that it's the AG's decision to release the
17 report.

18 A Yes.

19 Q Did you have any other reasons for making that recommendation other than
20 the ongoing cases of Mr. Nauta and Mr. Oliveira?

21 A I'm sorry. I misunderstood your question. No, no reason other than that.

22 Q Is there any other reason right now -- since Mr. Nauta and Mr. Oliveira's cases
23 have been -- are no longer pending, is there any reason now that you can think of other than
24 Judge Cannon's order why Volume Two of the report should not be released?

25 A Judge Cannon's order is the reason.

1 Mr. Goldman. Excuse me. Can I jump in?

2 Do you know who was -- did you dismiss the Nauta and Oliveira cases?

3 The Witness. No.

4 Mr. Goldman. Do you know who dismissed them?

5 The Witness. I don't recall, but I imagine it's a matter of public record.

6 Mr. Goldman. If I told you that it was after Donald Trump was inaugurated, would
7 you agree with that?

8 The Witness. I don't recall, but if that -- that may well be true.

9 Mr. Goldman. For the purpose of this remaining conversation since that's a publicly
10 identifiable fact, I will represent to you that it was done by the Trump administration. You
11 charged that case, correct?

12 The Witness. Correct.

13 Mr. Goldman. You went through your extensive experience as a prosecutor. Do
14 you believe that Mr. Nauta and Mr. Oliveira were guilty of the crimes that they were
15 charged with?

16 The Witness. Yes. We believed that we had proof beyond a reasonable doubt for
17 all the charges and that we would have gotten convictions at trial, yes.

18 Mr. Goldman. And are you aware of any reason within the rules, protocols, and
19 regulations of the Department of Justice that that case should have been dismissed?

20 The Witness. In my view, no, it shouldn't have been.

21 BY [REDACTED]

22 Q Real quickly and before I turn it over to Ms. Jayapal, are you able to speak
23 about Volume Two today?

24 A I'm not.

25 Q Can you explain what you can and cannot speak about with respect to Volume

1 Two?

2 A Well, there is an order of Judge Cannon, an injunction regarding Volume Two.
3 I want to make very clear that I do not want to do anything to violate that injunction or that
4 order.

5 And so, given that I have not seen -- looked at Volume Two since I submitted it to the
6 Attorney General almost a year ago, I do not have an exact recollection of what is in there
7 and not. And so, unless something is in a public filing or -- and people can point me to a
8 public filing or in -- I think the category that was mentioned in the letter that we got this
9 morning of publicly -- I can't remember the terminology, but properly publicly released
10 information, I do not want to -- I want to be clear I do not want to violate that order, and I
11 don't want to do anything that can even be remotely construed as violating that order.

12 [REDACTED] Wait. So -- I'm sorry. But DOJ did not let you review Volume Two of
13 your report?

14 The Witness. It may well have been there, but I chose not to review it, because I
15 didn't want any implication whatsoever that I was somehow violating the order by looking
16 at it, not being a member of the Department now.

17 Mr. Raskin. Before we go to Ms. Jayapal, I just want to clear up two things: One,
18 so you've been an assistant DA. You've been a Federal prosecutor. You were an
19 international criminal court prosecutor. You were the chief of the Public Integrity Section
20 at DOJ, and you were First Assistant U.S. Attorney in Nashville and the Acting U.S. Attorney.

21 Do you have any idea how many cases you've actually handled and prosecuted in
22 your career?

23 The Witness. That I've handled or supervised others handling?

24 Mr. Raskin. Yes.

25 The Witness. I'm sure it's in the thousands.

1 Mr. Raskin. In the thousands, okay.

2 Have you ever been prosecuted for selective prosecution, vindictive prosecution, or
3 partisan discrimination?

4 The Witness. Never.

5 Mr. Raskin. Have you ever fired a prosecutor because they refused to engage in a
6 prosecution on grounds that there was not sufficient evidence?

7 The Witness. No.

8 Mr. Raskin. Okay. And in all of the cases that you have supervised and
9 prosecuted yourself directly, relating to domestic violence, relating to conspiracy, relating to
10 murder, relating to war crimes, have you encountered the problem of witness intimidation?

11 The Witness. Very much so.

12 Mr. Raskin. Will you speak a bit about the problem of witness intimidation and
13 what that does to the rule of law and justice?

14 The Witness. Witness intimidation is probably the most corrosive thing that can
15 happen to the rule of law. And that is why, as a young prosecutor, you are taught to move
16 your cases expeditiously, because you know that if there is someone trying to obstruct your
17 case, the longer they have to do that, the more they can subvert justice.

18 And I've worked on a number of cases. I've worked on murder cases where
19 witnesses were murdered. I've worked on cases overseas involving very serious witness
20 intimidation and obstruction of justice and, as I mentioned earlier, this case as well.

21 And so that was foremost in my mind as we were conducting these investigations,
22 but it's something I've encountered in different contexts throughout my career.

23 Even back to those domestic violence cases that I started earlier in my career,
24 attempts to threaten or influence the -- those witnesses are -- are a way to subvert justice.

25 Mr. Raskin. So what kinds of actions and precautions can you take as a prosecutor

1 to prevent it and to try to protect witnesses against intimidation and violence?

2 The Witness. So depending on the situation, there would be different sorts of steps
3 that you could take. Obviously, if it's an imminent threat, like someone's coming to kill the
4 witness today, you try to move them and protect them for a period of time.

5 But if it's a more pervasive threat, where a defendant or people on his behalf are
6 issuing statements and issuing threats, trying to get people not to cooperate with your case
7 or trying to make an example of people who have cooperated with your case, the best thing
8 you can do is limit their ability to make those threats and shorten the time they have to
9 make those threats.

10 Mr. Raskin. We can go to Ms. --

11 Mr. Goldman. Can I just one thing on Volume Two before we go?

12 It's obviously a case related to classified documents. Without getting into the
13 detail, how was it construct -- how was it written? Was there an unclassified portion and a
14 classified portion, or is the classified material interwoven in the volume?

15 The Witness. I don't think I should even talk about that. I don't want to have
16 any -- any implication that I gave some sort of insight about how that report is constructed,
17 and so, I don't really think I could speak about that, given her order.

18 Mr. Goldman. Can I ask you this question: Is it possible to release parts of that
19 report while also protecting classified material?

20 The Witness. I very much want to answer your question, but I don't want to say
21 anything that will imply what is in the report. And so, unfortunately, I don't think I can
22 answer that.

23 Mr. Raskin. Okay. Again, I'm going to go to Ms. Jayapal. We'll come back to
24 you.

25 Ms. Jayapal. Thank you.

1 Mr. Smith, I want to get to questions of transparency again, but I want to pull out to
2 a bigger question. Do you think that it's important for our democracy to hold free and fair
3 elections without interference or obstruction?

4 The Witness. Yes.

5 Ms. Jayapal. And theoretically, what happens if there is election interference and
6 the people who are responsible for that are not held accountable?

7 The Witness. It becomes the new norm, and that becomes how we -- how we
8 conduct elections.

9 Ms. Jayapal. And so the toll on our democracy, if you had to describe that, what
10 would that be?

11 The Witness. Catastrophic.

12 Ms. Jayapal. You stated in your testimony in the first hour that you've tried to be as
13 transparent as possible with the American people about your investigation.

14 The chairman of the committee has repeatedly put out that you were subpoenaed
15 for your testimony today and that you are here under a subpoena.

16 But you had requested to appear voluntarily in a public hearing. Is that correct?

17 The Witness. Yes.

18 Ms. Jayapal. And why were you willing to appear voluntarily in a public hearing?

19 The Witness. We conducted our investigation in a way that I'm proud of. I'm
20 particularly proud of the people I conducted the investigation with, and I wanted to speak
21 for them.

22 Ms. Jayapal. And is it generally the practice of special counsels to appear in a public
23 hearing? I know you had a couple questions on this, but I want to reiterate this.

24 The Witness. That is my general understanding, yes.

25 Ms. Jayapal. And can you tell us again why the -- I understand you want to stick up

1 for the prosecutors, the people that were part of the investigation.

2 Can you tell us why it's important for the American people to hear directly from you
3 about your investigation, what you discovered, the process that you went through?

4 The Witness. Well, as I said in the beginning of, I think, my opening remarks, there
5 have been mischaracterizations about my work.

6 The -- we did our work in the best traditions of the Department. And I know I keep
7 coming back to this, but the attacks that -- the mischaracterizations that most offend me are
8 not just prosecutors, but career FBI agents, support staff in the Department.

9 These are people who devoted their lives to public servants -- to be public servants.
10 They have not -- they're not self-promoters. They're not people who like to go in front of
11 the cameras and defend themselves. And I feel that they have been vilified in a way that I
12 think is awful.

1 [12:17 p.m.]

2 Ms. Jayapal. What's the effect of that on our democracy?

3 The Witness. Well, I think it drives people away from public service.

4 Ms. Jayapal. Is it a form of witness intimidation.

5 The Witness. I think it's even deeper than that. I think, you know, when we get to
6 attacking the people who are the good guys, I just don't know where that goes. It's
7 counter to how I was raised.

8 Ms. Jayapal. And let me ask you, even after this deposition today, are you still
9 willing to appear at a public hearing before this committee and speak directly to the
10 American people about your investigation.

11 The Witness. Yes.

12 Ms. Jayapal. Thank you.

13 Ms. Crockett. Can I jump in really quickly just on the witness intimidation issue?
14 As I understand it, you were asked a lot of questions about filings that your office made as it
15 relates to trying to protect witnesses, specifically the gag orders. Do you have any regrets
16 about the steps that you took as it relates to seeking gag orders against this defendant in an
17 effort to protect witnesses.

18 The Witness. Our applications for orders limiting Donald Trump's ability to
19 intimidate witnesses, intimidate court staff, intimidate my staff, I have no regrets about
20 that.

21 Ms. Crockett. Dovetailing on that, have you only been further convicted in the
22 decisions that you decided to make as it relates to that and watching some of the
23 President's actions even in present day.

24 The Witness. I think the record of our case speaks for itself on these issues.

25 Ms. Crockett. Okay.

1 Ms. Lofgren. Can I just follow up? On the gag orders relative to the defendants,
2 in every case, a judge decided that that was warranted, correct.

3 The Witness. In the cases in the District of Columbia, a judge did decide that, and
4 the Court of Appeals agreed. They narrowed the order, as I said earlier.

5 In Florida, we applied for an order because of statements Donald Trump had made
6 that I viewed endangered FBI agents that hadn't been decided when the case was dismissed.

7 Ms. Lofgren. Thank you.

8 Ms. Crockett. And, just to kind of finish up on this point, you, yourself -- I'm not
9 sure if this was discussed by the majority, but have you, yourself, been intimidated as a
10 result of the actions that you took in this case.

11 The Witness. I'm not going to be intimidated.

12 Ms. Crockett. Have you been threatened.

13 The Witness. Yes.

14 Ms. Crockett. Have you learned of other persons, whether they worked under you
15 as attorneys or other support staff, are you aware of any threats that have been made
16 against any of them.

17 The Witness. Yes.

18 Ms. Crockett. And I'll stop there.

19 [REDACTED] Mr. Neguse.

20 Mr. Neguse. Thank you, Mr. Smith. I really only have two questions. The first
21 question, which our counsel ably covered, just so we're clear, you wanted to testify publicly
22 today, correct?

23 The Witness. Yes, I was willing to.

24 Mr. Neguse. And Chairman Jordan declined that opportunity, correct?

25 The Witness. Yes.

1 Mr. Neguse. Any thoughts as to why Chairman Jordan is scared to have you testify
2 in public?

3 The Witness. I'm not going to characterize the chairman's decision. I offered.
4 He decided that we would do it in this setting, and that is what it is.

5 Mr. Neguse. Okay. Well, I think Americans who review this transcript after it's
6 concluded will understand why.

7 That's all the questions I have.

8 Mr. Raskin. [REDACTED] let's come back to you.

9 [REDACTED] Thank you, sir.

10 BY [REDACTED]

11 Q I'm going to switch gears a little bit to your appointment as special counsel.
12 Do you recall when you were appointed as special counsel?

13 A Yes. It was November, I believe, November of 2022.

14 Q Does November 18th of 2022 sound right?

15 A That sounds about right.

16 Q Do you recall the day that Donald Trump announced his candidacy for the 2024
17 election?

18 A I believe it was shortly before that.

19 Q So who offered you the position of special counsel?

20 A The Attorney General.

21 Q And what was your understanding of why the Attorney General felt it was
22 necessary to appoint a special counsel in this circumstance?

23 A I believe the Attorney General made a public statement about why, and that
24 public statement is my understanding.

25 Q We can maybe enter that public statement in a little later, but what did you

1 understand the scope of your investigation to be specifically when you were appointed?

2 A The scope was defined by the appointment order, which encompassed the two
3 investigations that I've referred to today.

4 Q And can you just make the record clear again? Just briefly describe those two
5 investigations in that appointment order.

6 A Sure. And I don't have the order in front of me so just --

7 Q Actually, we'll make that an exhibit.

8 [REDACTED] We'll make it an exhibit. Let's make the appointment order an
9 exhibit, and this will be exhibit 11 I believe.

10 [Smith Exhibit No. 11
11 was marked for identification.]

12 BY [REDACTED]

13 Q Make it easier just to refresh your recollection?

14 A Sure. Thank you.

15 Q So, after you've taken a minute to review it, and please take your time, the
16 question will be, what did you understand the scope of your investigation to be?

17 A Okay. So, consistent with this order, the scope was two investigations, both
18 of them ongoing at the time. The first was an ongoing investigation into whether any
19 person or entity violated the law in connection with efforts to interfere with the lawful
20 transfer of power following the 2020 Presidential election or the certification of electoral
21 college vote held on or about January 6, 2021, as well as any matters that arose or might
22 directly arise from this investigation.

23 Q Do you know why or have you heard why the Attorney General chose you to be
24 a special counsel?

25 A Why he chose me?

1 Q Yes.

2 A No.

3 Q Okay. At the time of your appointment, I understand you were living in the
4 Netherlands. Is that correct?

5 A That's correct.

6 Q Did you lobby for this position?

7 A No.

8 Q Did you petition the Attorney General to be the special counsel?

9 A I did not.

10 Q Did you reach out to any former colleagues of the Department of Justice
11 expressing your interest in being the special counsel?

12 A I had been in contact with a former colleague by the name of Marshall Miller.
13 He had returned to the Department some time that summer, and I had spoken to him and
14 expressed to him an interest in, if there was the right position, returning to the Department.

15 Q Ultimately, why did you accept the special counsel position?

16 A Because I thought I was the right person for the job. I knew that this would
17 be a challenging job. I knew it would be a job where whoever held the job or whatever
18 decision they made, somebody would want to attack them for that decision, and I felt that,
19 given my nearly 30 years as a prosecutor, it made me uniquely qualified to do the work.

20 Q Did you have any reservations about accepting the special counsel position?

21 A No.

22 Q There were a lot of attacks on you shortly after you were named and
23 throughout the time as special counsel. You said earlier -- I think you used the term
24 "intimidated" -- I guess how did you move forward consistently with those attacks while
25 special counsel?

1 A I think attacks and praise are noise, and, as a prosecutor, I wanted to tune
2 those things out. I'm more concerned, again, about the attacks on my staff, but for myself,
3 I understand that that can be part of the work at times.

4 Q Did you accept the role, as some have suggested, because you had animus
5 toward President Trump?

6 A No.

7 Q Did you accept the role, as some have suggested, because you hoped to
8 influence the 2024 Presidential election in favor of the Democratic nominee?

9 A No.

10 Q Did you accept the role because you thought it would help the Democratic
11 nominee by prosecuting Donald Trump before the election took place in 2024?

12 A No.

13 Q Let's consider the same facts related to the attack on the Capitol on
14 January 6th or the mishandling of classified documents. That's the facts we're going to
15 consider here. Take the same facts but insert a President who was a Democrat. Would
16 you have still accepted the role as special counsel?

17 A One hundred percent.

18 Q Considering the same facts, so the same fact pattern, the attack on the Capitol
19 on January 6th, the same facts of unlawfully taking classified documents after leaving the
20 White House, would you still have accepted the role as special counsel to investigate former
21 President Barrack Obama?

22 A Yes.

23 Q Again, considering the same facts, would you have accepted the role as special
24 counsel to investigate former President Joe Biden?

25 A Yes.

1 Q Looking back -- and you've talked about the investigation steps that you've
2 taken here in the deposition here. I think I've heard you talk about, you know, process of
3 an investigation and how that's important. Would your investigative process have differed
4 if the President of the United States would have been a Democrat?

5 A No.

6 [REDACTED] Does anyone have any followup on that?

7 Mr. Raskin. Yes.

8 I served on the January 6th Select Committee, and we spent a lot of time looking
9 through the criminal statutes that may have been implicated in the attack on the peaceful
10 transfer of power, the attempt to overthrow the election, and the violent assault on the
11 Capitol. And we, in our conclusions, cited a number of statutes which ended up, I think,
12 being part of your investigation, including conspiracy to obstruct a Federal proceeding,
13 conspiracy to defraud the United States, false statements, and so on.

14 But you added something which I think was very interesting, which was a conspiracy
15 to violate voting rights, which is something that we hadn't done, and I wonder if you would
16 take a moment to expound on why you thought you had sufficient evidence to prove
17 beyond a reasonable doubt that there was a conspiracy to violate the voting rights of the
18 people.

19 The Witness. Sure. The right to vote in a Presidential election is one of the most
20 sacred rights that America has -- Americans have, and in this particular case, we had strong
21 evidence that the defendants in this case sought to interfere with, obstruct, injure that right.
22 We had evidence, and just a couple of examples, where President Trump was asking local
23 officials to find 11,000 votes.

24 When you find 11,000 votes, you're diluting other people's votes. We had evidence
25 that they were targeting certain States and particularly certain parts of certain States,

1 generally urban parts of States, to have those votes thrown out with no factual basis
2 whatsoever. I believe we cited this in our final report, but there is even statements of the
3 co-conspirators in this case, at least one that's coming to mind now, specifically saying, "We
4 want to get rid of these votes. We want to subtract them."

5 And, diluting the vote count in that way, there is strong precedent for that being a
6 violation of the statute that we charged.

7 Mr. Raskin. There were 60 Federal or State court decisions rejecting claims of
8 electoral fraud, electoral corruption that had been brought by President Trump or his
9 teammates. To what extent did that figure into your analysis of that problem?

10 The Witness. Well, the lawsuits, you know, we made clear in our indictment that
11 there are proper ways to dispute an election, and asking for an audit, which President
12 Trump did I believe in only two of the States that were in question, that's a way you can do
13 that. Filing lawsuits, completely legal and proper way to do that.

14 But, in this case, those lawsuits were part of our proof that put President Trump and
15 his co-conspirators on notice. The suits, their results, and the things the court said in
16 finding those suits without merit put him -- well, one component of evidence that put him
17 on notice that these allegations were false.

18 Also, there were instances where there were pretextual lawsuits. There was one
19 lawsuit, for example, that was filed in New Mexico minutes before the deadline so they
20 could say there was a dispute in New Mexico so they could proceed further with the fake
21 electors ballot.

22 There was another lawsuit in Georgia where one of the co-conspirators explicitly said
23 in an email, "We're on notice that the things in this lawsuit aren't accurate, so we shouldn't
24 have the President sign a certification of this lawsuit." And then they played with the
25 language a little and had him sign a certification nonetheless.

1 And so these lawsuits -- well, filing the lawsuit, absolutely, clearly is something you
2 can do. They were probative evidence of the criminal intent in this case for those limited
3 reasons I just suggested.

4 Mr. Goldman. Can I go back to Volume II just for a second? You said that they,
5 the Department, gave you access to Volume II, and you chose not to use it?

6 The Witness. That's correct. I believe so. I did not, given the injunction, want to
7 look at that, and so I believe it was there, but I was looking at other things. I didn't look at
8 that.

9 Mr. Goldman. Did they give you access to any classified information that was a part
10 of your files?

11 The Witness. No.

12 Mr. Goldman. Did you or your attorneys have any discussions with the Department
13 about that?

14 The Witness. I don't recall.

15 Mr. Goldman. Do you still have your security clearance?

16 The Witness. No.

17 Mr. Goldman. When and how was that taken away?

18 The Witness. I think in the normal course of things when you leave government
19 service, you sign papers basically saying you don't have your security clearance anymore.
20 It's vague but that's my recollection of what happened at the conclusion of my service.

21 Mr. Goldman. Do you know if your attorneys requested for you to have temporary
22 security clearance so you could review your own files?

23 The Witness. I don't believe we did.

24 Mr. Goldman. And because you didn't look at the Volume II that was provided to
25 you, you don't know whether or not classified material was provided to you in that volume?

1 The Witness. Again, I don't want to speak about anything that could infer the
2 content of Volume II.

3 Mr. Goldman. When you provided Volume II to the Attorney General, did you
4 provide proposed redactions?

5 The Witness. I believe we did but -- I believe we did.

6 Mr. Goldman. And the redactions --

7 The Witness. But I just want to be -- I'm sorry to interrupt you, sir. With the
8 understanding that it was ultimately the Attorney General's decision whether to make it
9 public, whether to do redactions, things of that nature.

10 Mr. Goldman. What were the nature of your proposed redactions?

11 The Witness. I don't recall as I sit here now.

12 Mr. Goldman. Was it related to the classified information?

13 The Witness. I don't recall. It could have been. It could have been 6(e).
14 could have been things of that nature.

15 Mr. Goldman. Did you make proposed redactions because of your concern at all
16 about the ongoing case against Nauta and Oliveira?

17 The Witness. I don't recall that, but I can't be conclusive. I really don't have a
18 good memory of the subject.

19 Mr. Goldman. Thank you.

20 Ms. Crockett. I'm curious. Shifting gears just a little bit. When you first sat
21 down, the majority was asking you questions that seemingly were tied into the general
22 duties of a prosecutor, and your resume has been laid out. It is interesting or at least it
23 was interesting to me to hear the majority characterize who should be prosecuted under the
24 current circumstances.

25 I'm not sure if you followed along, but are you aware that, under this DOJ, they have

1 indicted Tish James, as well as they ultimately indicted James Comey. Are you aware of
2 that?

3 The Witness. I am.

4 Ms. Crockett. And are you also aware of the fact that this DOJ has consistently
5 dismissed members of the DOJ for refusing to bring forth indictments that they don't believe
6 have merit.

7 The Witness. Yes.

8 Ms. Crockett. The majority was asking you about why it is that you characterize
9 your belief that there was guilt as it relates to the indictment that you sought. As a trained
10 prosecutor, typically are you supposed to go after people that you don't believe are actually
11 guilty.

12 The Witness. There's a couple of negatives in your question.

13 Ms. Crockett. I know. They were trying to --

14 The Witness. You're not supposed to go after people who you believe are not
15 guilty.

16 Ms. Crockett. Okay. Thank you.

17 In your experience of three decades, have you ever needed to seek the same
18 indictment three times while being rejected?

19 The Witness. Never.

20 Ms. Crockett. I think that's all I've got.

21 Mr. Goldman. Did you ever prosecute someone that you did not believe was guilty
22 beyond a reasonable doubt?

23 The Witness. Never.

24 BY [REDACTED]

25 Q I know we're getting close to the end of our time. I want to hit on a few

1 questions, and I apologize if they come off as very obvious to you with your experience and
2 the way that you conducted yourself at the Department of Justice, but did Attorney General
3 Garland or other DOJ officials direct investigative steps within your Office of the Special
4 Counsel?

5 A No.

6 Q Did Attorney General Garland or other DOJ officials direct litigation decisions
7 within your office?

8 A No.

9 Q Did you experience Attorney General Garland or other DOJ officials interfering
10 with your ability to conduct this investigation?

11 A No.

12 Mr. Goldman. Did President Biden ever give you any instructions about what you
13 should or should not do related to these investigations?

14 The Witness. No.

15 Mr. Goldman. Did you ever speak to President Biden about these investigations?

16 The Witness. No.

17 Mr. Raskin. I think Mr. Moskowitz has a question.

18 Mr. Moskowitz. Thank you, Ranking Member.

19 Do you know what the definition of "retribution" is, Webster's definition? It's a
20 noun.

21 The Witness. Off the top of my head, I do not.

22 Mr. Moskowitz. If my proffer is that it was exacting a punishment against
23 someone, would that sound about right?

24 The Witness. Yes.

25 Mr. Moskowitz. Your lawyers lost their security clearance. Is that correct?

1 The Witness. Yes.

2 Mr. Moskowitz. The people who worked under you were fired. Is that correct?

3 The Witness. That's correct.

4 Mr. Moskowitz. You're here today on a deposition the chairman has brought you
5 into and wouldn't give you a public hearing. Is that correct?

6 The Witness. Yes.

7 Mr. Moskowitz. Did you see the comments by the President's chief of staff talking
8 about retribution?

9 The Witness. I did.

10 Mr. Moskowitz. So everyone was fired. You're here on a deposition. Your
11 lawyers lost their security clearance. It seems like it meets not only the definition in
12 Webster's; it seems like this is exactly what Trump's chief of staff was talking about, no?

13 The Witness. I have no doubt that the President wants to seek retribution against
14 me. I have no doubt that that's the intent --

15 Mr. Moskowitz. I don't mean to cut you off. In fact, the exact quote was, "He
16 doesn't wake up thinking about it, but when there's an opportunity, he goes for it." I
17 mean, this seems like an opportunity.

18 Do you think the White House gave instructions to Chairman Jordan to set this
19 deposition?

20 The Witness. So I am eyes wide open that this President will seek retribution
21 against me if he can. I know that. I don't frankly connect that with this hearing. I don't
22 have any connection. I came here. I was asked to come here.

23 Mr. Moskowitz. So you think there were zero conversations between the White
24 House and Chairman Jordan?

25 The Witness. I don't know, but I'm here in good faith, and I was asked to come

1 testify.

2 Mr. Moskowitz. What's the likelihood that there were less than zero conversations
3 between the White House and Chairman Jordan?

4 The Witness. I'm not going to speculate on that. I will say I agree that this
5 Department wants to seek retribution against anybody who worked on cases against
6 President Trump. I just don't have any evidence that --

7 Mr. Moskowitz. Why do you think Chairman Jordan wouldn't give you a public
8 hearing?

9 The Witness. That's not for me to say.

10 Mr. Raskin. I want to go back to your testifying that, in every case you've ever
11 brought, you've believed that there is proof beyond a reasonable doubt to demonstrate that
12 the defendant is guilty. I'm not sure it would be even ethical to bring a case if you didn't
13 have that belief, but is there anything inconsistent about having that belief that you can
14 sustain the prosecutor's burden of showing beyond a reasonable doubt all of the elements
15 of the crime are satisfied and also wanting to see that constitutional due process is observed
16 in the trial? Is there any conflict between those two.

17 The Witness. I don't see one.

18 Mr. Raskin. In other words, as a prosecutor, you go in with the belief that you can
19 make your case, but you also want to make that case within the rule of law and within due
20 process. And you've never experienced that as a problem, right? You've never wanted to
21 trample the rules of due process in order to convict someone?

22 The Witness. That's correct.

23 Mr. Raskin. Okay.

24 [REDACTED] back to you. Oh, [REDACTED] go ahead.

25 BY [REDACTED]

1 Q I just wanted to piggyback on something that Ms. Crockett brought up earlier,
2 but are you familiar with Justice Manual 9-27.220?

3 A You're going to have to give me more than the number I think.

4 Q All right. So that provision basically is -- states the condition with which a
5 prosecutor can commence or recommend Federal prosecution, and I can quote from that
6 section for you. It says, "A prosecutor may commence or recommend Federal prosecution
7 only if he or she believes that the person will more likely than not be found guilty beyond a
8 reasonable doubt by an unbiased trier of fact and that the conviction will be upheld on
9 appeal."

10 So does that sound familiar to you?

11 A Yes.

12 Q Okay.

13 Did you follow this provision when you indicted President Trump in the election
14 interference case?

15 A Yes.

16 Q And did you follow that provision when you indicted President Trump and his
17 co-conspirator -- sorry, just President Trump in the classified documents case?

18 A Yes.

19 Q And his co-conspirators? Did you follow that?

20 A In that case, yes.

21 Q Okay.

22 And the majority in their hour questioned you about why you included conduct that
23 has not been found -- that has not been brought forth before a trier of fact, right, that has
24 not been proven in a court of law. But aren't you just essentially restating the standard
25 that was stated in Justice Manual 9-27.220?

1 A Yes. With our report, I wanted to explain my prosecutorial decisions, why we
2 made them, the basis for them, and that's why we wrote the report the way we did.

3 Q Okay. Thank you.

4 BY [REDACTED]

5 Q In my last few minutes of our hour, please bear with me as I go through these
6 next questions. There's a lot of inferences and accusations being made about your bias as
7 a Special Counsel's Office, and I want to make sure that we rebut these in the first hour. I
8 think it's important to.

9 So did the Attorney General or any other DOJ official ever pressure you to be more
10 aggressive in your investigation of President Donald J. Trump?

11 A No.

12 Q Did the Attorney General or any other DOJ official ever suggest that you were
13 expected to bring charges against President Trump?

14 A No.

15 Q Did anyone from the White House, including President Biden, ever tell you they
16 expected you to bring charges against Donald Trump?

17 A No.

18 Q When you eventually did bring charges against Donald Trump, how did you
19 make that decision? Walk us through it at a high level if you don't mind.

20 A Sure. It was based on the facts and based on the law. I ultimately made
21 that decision, but I consulted with my team of prosecutors on that case, who were
22 outstanding public servants, people with great experience in complex investigations. I
23 took their advice and counsel in making that decision, and I tried to consider all factors,
24 including both the strength of the case that we believed we had, possible defenses, all
25 things of that nature.

1 Q So, based on what you just said, it sounds like you made this
2 prostitution -- prosecution, not prostitution. I apologize -- prosecution decision based on
3 the evidence and the law. Is that correct?

4 A That's correct.

5 Q What would you have done if you felt any improper pressure from a DOJ
6 official or the White House?

7 A I think people who know me and have known my reputation would know that
8 that would not end well if someone tried to pressure me to move a case in one direction or
9 the other that wasn't supported by the law. I wouldn't stand for it, and I would also say
10 the people who worked in my office wouldn't stand for that either.

11 [REDACTED] We're at our hour, so we'll end there. Thank you.

12 [Recess.]

13 Chairman Jordan. Mr. Smith, who is Marshall Miller.

14 The Witness. Marshall Miller was a prosecutor I've worked with.

15 Chairman Jordan. And let me go back to the last hour. You said -- the Democrats I
16 believe asked you whether you lobbied for the position, and you said you didn't, but then
17 you followed up, and you said you made a call to the Justice Department, someone you
18 knew there. And I think I got the quote right. You said, "If there was the right position, I
19 would be interested." What was the right position you were talking about?

20 The Witness. If I could take you back, Marshall Miller is the person I was talking
21 about.

22 Chairman Jordan. That was my next question.

23 The Witness. Yeah. I learned that he was returning to the Department of Justice.
24 I was still overseas at this point in my State Department position. I reached out to
25 congratulate him about coming back to the Department.

1 Chairman Jordan. What position did he have at the Department?

2 The Witness. He was in a senior position in the Deputy Attorney General's Office. I'm
3 not sure I'm going to get the exact title right, but it was a senior position in the Deputy
4 Attorney General's Office.

5 Chairman Jordan. My understanding is he was principal Deputy Attorney General,
6 the number three position.

7 The Witness. That could well be.

8 Chairman Jordan. Okay. You called him, and you told him what?

9 The Witness. Well, I initially called him to congratulate him on coming back to the
10 Department.

11 Chairman Jordan. Okay.

12 The Witness. And, at some point, I told him that if the right position came up, I
13 would be interested in returning to the Department.

14 Chairman Jordan. And what was the right position?

15 The Witness. I didn't -- I wasn't specific about it. I just told him, if the right thing
16 came up, to sort of keep me in mind.

17 Chairman Jordan. What did you have in mind? Did you want to go back to the
18 Public Integrity Section? Did you want to be a line lawyer? What did you want to do?

19 The Witness. What I recall is, right around then, there was a domestic terrorism
20 unit being set up, and I don't know if I shared that with Marshall, but that idea, that that was
21 being set up, I was interested in things like that, but I didn't have a specific --

22 Chairman Jordan. When did the call take place?

23 The Witness. Well, it wasn't -- I'm not going to remember specific conversations.
24 I know, shortly after he returned, I reached out to congratulate him on returning to the
25 Department. At some point, I don't know if it was then or in a call after that, I said, "If the

1 right position came up, I would be interested."

2 Chairman Jordan. So you're saying today you were in no way referencing what
3 many assumed might happen, which would be there would be a special counsel looking into
4 President Trump? That wasn't on your mind? You weren't anticipating that?

5 The Witness. When I told him I'd be interested, no.

6 Chairman Jordan. Okay. Let's go back to the -- where we left off on our first hour
7 with the toll records. So you seemed to indicate that you felt the burden was on the
8 carrier to comply. You felt that was consistent with the statute that applies to you United
9 States Senate. Did you feel like you had a burden at all to tell -- to let the carriers know
10 that we, in fact, are looking for toll records for numerous United States Senators?

11 The Witness. I'm sorry, sir. Which statute are you talking about.

12 Chairman Jordan. The statute that applies to the Senate, where you referenced
13 that you think the burden is placed on the carriers to deal with this issue with Senators. It
14 doesn't apply to the House but the Senators. In our first hour, you said the burden is on
15 them. If they're going to let the Senate know that their toll records are going to the
16 government, the burden is on them.

17 And I was just asking, do you feel like there was any burden on the prosecutor, on
18 you, to tell -- to make that public?

19 The Witness. To make that public.

20 Chairman Jordan. Not to make it public, to let the carriers know, "We are, in
21 fact" -- make it public to the carriers -- "we are, in fact, asking for toll records for the United
22 States Senators."

23 The Witness. Sir, I don't recall discussing that particular statute. I may have.
24 What I meant to communicate was that, reading that statute as it existed at the time,
25 reading it now, it's clear to me that the process that was envisioned --

1 Chairman Jordan. So you didn't know about the statute back when you requested
2 the tolls?

3 The Witness. I do not recall discussing the statute. I can't recall if I knew about it
4 then or not.

5 Chairman Jordan. Okay. There's definitely a burden based on what the Justice
6 Department is now going to do moving forward. There's definitely a burden now, but you
7 didn't think there was any type of burden for you to let the carriers know, "These numbers
8 we are giving you are numbers for United States Senators"?

9 The Witness. As you referenced, the statute has now been changed, and before
10 that change, my understanding is that the statute directed carriers to do this analysis and, in
11 fact, envisioned that carriers might get --

12 Chairman Jordan. So there's no burden on you, no burden on the prosecutors?

13 The Witness. My reading of that statute as it was drafted at that time is there was
14 not.

15 Chairman Jordan. Okay. And you ran the Public Integrity Section back in your
16 days at the Justice Department. Is that right?

17 The Witness. Correct.

18 Chairman Jordan. Did you ever get requests for toll records for this internal
19 analysis that we think, as [REDACTED] said, did you ever get requests for Members of Congress or
20 United States Senators, their toll records?

21 The Witness. It was some time ago. I'm sure we may have. As I sit here now, I
22 can't remember a specific instance, but I'm not saying --

23 Chairman Jordan. How long were you head of the Public Integrity Section?

24 The Witness. I was the head from May of 2010 until it was either January or
25 February of I believe 2015.

1 Chairman Jordan. Okay, 5 years. And, in that timeframe, you don't know if you
2 got -- you can't recall, you may have I think is -- I want to be fair to you -- that you -- you
3 don't recall any requests for the toll records of Members of Congress or United States
4 Senators?

5 The Witness. Well, I'm saying we may well have, and that may well have happened.
6 I just, as I sit here right now, don't recall a specific instance of that. I'm not denying that
7 that happened.

8 Chairman Jordan. Okay.

9 BY [REDACTED]

10 Q Once the Department gets the records, what does it do with it? I know the
11 FBI has something they call the Cellular Analysis Survey Team, CAST, but do you know what
12 happens with the records once they get them?

13 A The analysis? Like how they do the analysis?

14 Q Yeah, like what do you do with the records?

15 A That would not be in my area of expertise how the analysis is actually
16 conducted.

17 Q And how does that get rolled back into the team?

18 A What do you mean?

19 Q The team's work, the prosecutor's work. So you subpoenaed Speaker
20 McCarthy's toll records after he became Speaker, and you sought records from
21 November 2020 through January 8th, 2021. What were you looking for with his records?
22 Like what did you do with the information you obtained?

23 A Okay. So the relevance of those records, there would be several examples,
24 but his contacts with either co-conspirators, the President, or conduits of information to the
25 President was relevant to our investigation. An example I could give you is, on January 6th,

1 we had information from Mark Meadows, who was present for a call where Congressman
2 McCarthy was asking for help. He was asking the President to come to his aid while the
3 Capitol was being seized.

4 Getting the exact toll records for when that happened was relevant for our
5 investigation both to question other witnesses about it so we had an accurate timeline and
6 also to corroborate that the call happened at approximately the time witnesses said it
7 happened.

8 Q But it's pretty significant to subpoena the Speaker of the House's toll records,
9 right?

10 A We followed Department policy, and we followed all legal requirements in
11 getting those records.

12 Q I mean, you know, to get the information you're looking for, nobody disputed
13 the Speaker and the President were having communications on January 6th. So one way
14 you could have gotten that information is you could have asked the Speaker's lawyer to look
15 at his phone records and to give you the information you needed, right?

16 A Well, you say now that nobody is disputing, but my experience in criminal
17 investigations is that people often at trial dispute things that you never thought were going
18 to be in dispute during the investigation, and so, when I conduct a criminal investigation, I
19 don't assume there will be no disputes.

20 Having a record that is a hard record about a time, and the timeline of that
21 afternoon was particularly important because the violence had started. The President
22 refused to stop it. He endangered the life of his Vice President, and then he's getting calls,
23 and not just -- not calls from Democrats, not calls from people he doesn't know -- calls from
24 people he trusts, calls from people he relies on -- and still refuses to come to the aid of the
25 people at the Capitol. That's very important evidence for criminal intent in our case.

1 Q Right, but you could have asked Elliot Berke for that information, the Speaker's
2 lawyer. You could have asked Elliot Berke to say, "Can you get us the Speaker's, you know,
3 phone records for this time," and he probably would have said, "Of course," avoiding a toll
4 record subpoena?

5 A And your question?

6 Q Why didn't you do that?

7 A We got these records in a manner that was consistent with the law and
8 consistent with Department policy. There was nothing improper about how we got these
9 records.

10 Q The same with Representative Perry's phone. I mean, you could have asked
11 Representative Perry's lawyer. I mean, there's no evidence that Representative Perry or
12 Speaker McCarthy was interested in obstructing your work, was there?

13 A I don't have any evidence that Speaker McCarthy was -- I don't recall any
14 evidence, I should say, that Speaker McCarthy was interested in obstructing our work.

15 Q Okay. So, with Representative Perry, you could
16 have contacted his lawyer, and you could have said, "This is what we're looking for; can you
17 help us achieve this," without seizing his phone.

18 A Well, with Congressman Perry, I should point out that the seizure of his phone
19 happened several months before I was ever special counsel. I wasn't involved in that
20 process.

21 Q Fair enough. Okay. But, in hindsight, would you have counseled, taken a
22 different avenue to acquiring a Member's phone?

23 A I'm not going to speculate on investigative steps that occurred before I became
24 special counsel.

25 Q Okay. When obtaining the toll records of Members of Congress or anyone,

1 what is the standard? Must there be some evidence that, you know, relates to a criminal
2 prosecution or criminal investigation?

3 A So there has to be a reasonable basis to believe that there will be
4 relevant -- materially relevant evidence.

5 Q Okay.

6 Now, with the chairman of the Judiciary Committee, the subpoena -- with Speaker
7 McCarthy, the subpoena, the timeframe was November 2020, through January 8, 2021.
8 With the now chairman of the Judiciary Committee, the timeframe went back to January
9 2020. So it was for a full year where, you know, between January 2020 and December of
10 2020, nobody, you know, had any type of phone calls about these matters.

11 I'm just curious why you went back to January 2020, the office did?

12 Mr. Koski. Sorry. I just want to clarify. When you say "you went back," can we
13 just get the date of when --

14 BY [REDACTED]

15 Q It was May 1st, 2022, and it was before you were appointed. When I say
16 "you," I apologize. I mean the office, the effort. I mean, this was before you became
17 special counsel. The D.C. matters were headed up by Thomas Windom, as I understand it?

18 A I believe that's right.

19 Q And the Florida matters were headed up by Jay Bratt?

20 A That's correct.

21 Q And so the question is, why would DOJ, why would the team seek records from
22 January 2020, you know, through November of that year before any of these issues, you
23 know, before anyone knew about any of these issues?

24 A Yeah, I played no role in that subpoena. I was still in Europe at the time, and
25 because I wasn't present or involved, I'm not going to speculate on the basis for the range of

1 time that the prosecutors in that case sought it.

2 Q After you became the special counsel, that information obtained from the
3 subpoena, you know, was available to the special counsel team. What did the team do
4 with it after you became -- you know, after you were sworn in?

5 A You mean -- when you say "that information," you're talking about the toll --

6 Q The toll record subpoena for the chairman of the committee.

7 A Well, I can tell you that, for example, there were -- there was contact on, for
8 example, January 6. But, again, another example for you is Mark Meadows, when he
9 interviewed, when we interviewed him, he referenced the fact that that afternoon
10 Chairman Jordan had been in contact with the White House. And, like Congressman
11 McCarthy's contact with the White House, it was relevant because, again, Meadows stated
12 this, that these were supporters. These were credible people that the President relied on.

13 And what I recall was Meadows stating that "I've never seen Jim Jordan scared of
14 anything," and the fact that we were in this different situation now where people were
15 scared really made it clear that what was going on at the Capitol could not be mistaken for
16 anything other than what it was.

17 And it goes back to that sort of information from someone who is a credible source
18 to the President, proving that that actually happened and that there's actually a record of
19 that call and exactly when it happened and what actions happened after that or didn't
20 happen after that, extremely probative to our case.

21 Q Right. But DOJ took Mr. Jordan's phone records from January 2020 through
22 November, through January of the subsequent. I mean, what on Earth could the Justice
23 Department want with his phone records before times relevant?

24 A Sure. And the breadth of that subpoena was before I was special counsel, and
25 I wasn't involved in the deliberations about seeking that subpoena or the breadth of it. So

1 I can't speak to that.

2 Q Okay.

3 Can you see from our point of view that there's a perception that there's some
4 overreach going on there?

5 A I understand your question. I don't have any -- and I do understand it. I
6 don't have any reason to believe that that subpoena was secured for any improper purpose
7 or that it was secured in contravention of Department regulations or the law.

8 Q Okay.

9 And, in terms of who was involved with the authorizations for that type of subpoena,
10 it's your team. It's Public Integrity. Any other Justice Department component?

11 A I cannot speak to that before I was special counsel. I can say that when I was
12 special counsel, I was the person who approved subpoenas of that nature.

13 Q Okay.

14 A And with, of course, the fact that I wanted consultation with Public Integrity.

15 Q Okay. So that was the universe of DOJ authorization? It was you and public
16 integrity? You didn't have to go to the DAG. You didn't have to go to OLC, correct?

17 A That's correct.

18 Q Okay.

19 When the subpoena was served for certain members of the Judiciary Committee, it
20 was served by an official at the Department of Justice's Inspector General, which, from our
21 point of view, raises a conflict of interest. I mean, the inspector general is supposed to be
22 conducting oversight, if necessary, of Department components. Certainly, if Department
23 components are being real aggressive with Members of Congress, we might want the IG to
24 conduct a probe of that, right? But, if the IG is on your team and they're doing this with
25 you, that presents a problem for us.

1 And so the question is, why was the IG's Office serving these subpoenas? Why
2 were they -- you know, they went -- I know it was before you were special counsel, but they
3 went on the Perry search. They took his phone, and then they imaged his phone. I mean,
4 the IG here is just like a regular part of the team. Can you explain why that happened?

5 A Yes, with the understanding that I, obviously, wasn't in that decision chain
6 because I wasn't involved in the case. But my understanding is that the Jeffrey Clark
7 component of this investigation, he was a Department of Justice employee during the
8 period of time that we were, and my predecessors, were investigating this, and it's my
9 understanding that that was why they were involved in the investigation.

10 Q But -- understood. But why, when it comes to Members of Congress,
11 didn't -- I don't understand. Like I understand they have the Jeffrey Clark investigation
12 going on, but when it comes to Members of Congress, and the IG has a special, you know,
13 relationship with Congress, why are they allowed to be involved?

14 A Again, all I can tell you is what I just told you. This is before my time, but my
15 understanding about why it occurred is because they were involved in that aspect of the
16 investigation.

17 Q And were they involved after you became the special counsel? Were they
18 involved in serving toll records subpoenas related to Members of Congress to your
19 knowledge?

20 A My recollection is that they may still have been involved. My primary
21 dealings were with the FBI, but they may well have stayed as part of the investigation. I
22 just -- I didn't have a lot of interaction with them.

23 Q Okay.

24 And, when some of these toll record subpoenas were served by the IG's Office, do
25 you know whether they knew they were serving toll record subpoenas relating to a Member

1 of Congress?

2 A Are you talking about in the period of time when I was special counsel or
3 before?

4 Q When you were the special counsel.

5 A As I sit here, just to be clear, I'm not aware. I don't recollect that people in
6 the DOJ Inspector General's Office were serving subpoenas during my time.

7 Q Okay.

8 A Could well be. I just don't have recollection of that.

9 Q Okay. I can represent to you that they did serve subpoenas before your time.
10 I mean, they served one in May of 2022 relating to the chairman of the committee.

11 A Yeah, and as I said, before my time. I can't speak to that because, again, I was
12 in Europe. I wasn't in the investigation.

13 Q Okay. But, after you became -- after you were appointed, that wasn't
14 occurring to the best of your knowledge?

15 A I just don't have a recollection of that.

16 Q Okay.

17 A But, actually, to be clear, I'm not sure in my role I would know which individual
18 agent was serving a subpoena. So that's not something I would have necessarily known in
19 the first place. I just wanted to make that clear.

1 [1:15 p.m.]

2 BY [REDACTED]

3 Q Fair enough, but if it was from the IG's Office, wouldn't that raise like an issue?

4 A I'm just saying to you my -- in my role, I was not like directing which agent
5 would serve which subpoena.

6 Q Okay.

7 Did you have interactions with the IG's Office on the Jeff Clark matter?

8 A I can't think of any now, but I don't want to say that -- that may have been
9 possible that I did, but as I sit here now, I can't think of any.

10 Q Were they a part of the team after you were appointed?

11 A That's what I said earlier. My recollection is that they were.

12 Q Okay.

13 With the toll records subpoenas for the Senators, one of the lines requested was a
14 Senate landline. Did you know about that?

15 A I don't recall knowing about any particular lines. My role, as I saw it, was to
16 understand who my prosecutors thought we should be getting toll records for, to make sure
17 we had a basis for that under the statute, a reasonable basis. I don't recall discussions
18 about how they figured out what lines we would be going for.

19 Q Okay. Because, at least in the House, if you place a call from a landline in the
20 House, it goes out scrambled. So, to the extent DOJ thinks they have the right number,
21 you know, it would be scrambled, and so it just raises questions as to why the office would
22 subpoena toll records for a Senate landline. And you don't have any additional
23 information or recollections on that?

24 A I really don't.

25 Q Okay.

1 There was some litigation with AT&T over the subpoenas for the Senate lines. Do
2 you have any recollection of that?

3 A Was it litigation or was -- I know I saw or I was shown that there was a letter
4 from AT&T to Senator Grassley. I don't recall any litigation.

5 Q Okay. Maybe "litigation" was the wrong word, but AT&T I guess pushed back
6 on the toll records subpoena, and, according to them, after they pushed back and said they
7 weren't comfortable producing the records, the Special Counsel's Office stood down. Do
8 you have any recollections from that?

9 A I don't have any recollection of that.

10 Q Okay.

11 You know, essentially, AT&T represented, at least to Senator Grassley's Office, that,
12 you know, after they said, "No, we're not going to give you those records," your office didn't
13 press the matter further, which raises the question, why? But your testimony is that you
14 don't have any recollection of that?

15 A I don't have any recollection of it. I also don't know from the letter what the
16 reason they gave for not giving it, but I don't have a memory of any of this.

17 Q Okay.

18 To the extent Members of Congress and Senators are up in arms that this happened
19 to them and they're seeking accountability, you know, who should be held accountable for
20 answering these questions?

21 A Well, I think who should be accountable for this is Donald Trump. These
22 records are people, in the case of the Senators, Donald Trump directed his co-conspirators
23 to call these people to further delay the proceedings. He chose to do that. If Donald
24 Trump had chosen to call a number of Democratic Senators, we would have gotten toll
25 records for Democratic Senators. So responsibility for why these records, why we

1 collected them, that's -- that lies with Donald Trump.

2 Q I understand that's your perspective, but in terms of there are calls from United
3 States Senators to impeach Judge Boasberg because he signed this NDO order. We've
4 asked you questions, you know, for a good bit now about whether your office should have
5 taken additional steps. So it's either your office, you know, the judge, the carrier. In your
6 view, who needs to be held to account on these toll records subpoenas?

7 A Well, certainly my office did everything consistent with the law and
8 Department regulations at the time. As I think we referenced earlier this morning, the
9 Department regulations on this since we issued these toll records has changed. I believe
10 now, and I believe this is in 2024, if we were to make an NDO application to a judge, we
11 would need to identify if they were Members of Congress.

12 And so, to the extent that you think something needs to be changed, that change
13 happened, but that was not required at the time that we issued these subpoenas.

14 Q Okay.

15 Chairman Jordan. It sort of begs the point, though, doesn't it? Don't you think?
16 It sort of begs the point. It makes the point like maybe that should have been the
17 standard. It should have been the burden on the prosecution actually to get that
18 information to the carriers. Would you agree.

19 The Witness. No. As I said earlier, I think we followed the regulations as they
20 existed at the time. If the regulations that are now in effect were in effect then, we would
21 have followed those regulations.

22 Chairman Jordan. I just want to circle back for a second. Who first contacted you
23 about taking the position of special counsel.

24 The Witness. Marshall Miller.

25 Chairman Jordan. Same guy you reached out to early on.

1 The Witness. Correct.

2 Chairman Jordan. And said you'd be interested in the right position. So when did
3 he call you?

4 The Witness. It was some point -- I told you earlier there was this initial
5 conversation where I said --

6 Chairman Jordan. [Inaudible.]

7 The Witness. Right.

8 Some point after that, he contacted me about ultimately the position that I ended up
9 having.

10 Chairman Jordan. Okay, and I'm trying to find out when that was because you
11 called him when he took the job in the summer of '22, which is before President Trump
12 announced that he's running for President, before you get appointed by the Attorney
13 General. I want to know when you talked to Mr. Miller the second time or the third time,
14 or how many times did you talk to him.

15 The Witness. Between the time that I originally reached out to Marshall Miller and
16 the time that I was appointed as special counsel, I spoke to Marshall Miller several times.

17 Chairman Jordan. Several times, okay. And then he's the one that first asked you
18 would you be interested in being a special counsel. Is that right.

19 The Witness. I don't remember how he phrased it, but my recollection, to the
20 extent I have one, is it was not phrased in terms of being the special counsel. I think it was
21 in terms of being involved in these investigations.

22 Chairman Jordan. Okay. And, again, when was that.

23 The Witness. I'm having trouble recollecting. It definitely was after he first
24 reached out to me.

25 Chairman Jordan. Wait, wait, wait. I thought you called him first.

1 The Witness. I'm sorry. You're right. You're right. After I first reached out to
2 him. We had multiple conversations between then and when I was appointed.

3 Chairman Jordan. It was summer of '22 when he takes the position as the number
4 three guy in the Justice Department and between November 18, 2022, when you get
5 named, you had multiple discussions, multiple conversations.

6 The Witness. Yes. And, to also be clear, not all of those conversations were about
7 this position.

8 Chairman Jordan. I'm not saying they were. Just multiple conversations.

9 The Witness. Okay.

10 Chairman Jordan. Did he ask you to -- did he talk about the special counsel
11 position, the one you took, prior to the Attorney General asking you to take the job? I
12 thought you said yes to that earlier.

13 The Witness. Yeah. What I'm trying to remember is -- my recollection, and it is a
14 little vague, is that the idea of working on these cases would be in the format of being a
15 special counsel. My recollection isn't perfect, but that was very near, very shortly before I
16 was appointed.

17 Chairman Jordan. So what did he say? Did he talk about Arctic Frost? Did he
18 talk about Plasmic Echo? Did he talk about these investigations, the Florida case, D.C.
19 case? What did he talk about.

20 The Witness. I don't recall him ever talking about Arctic Frost or Plasma. I don't
21 remember.

22 Chairman Jordan. Those are just names. Did he talk about the two cases.

23 The Witness. Yes. At some point, it was -- it was not clear to me whether when
24 he first -- my recollection -- again, and it's not perfect -- is it wasn't clear to me if it would be
25 working on one case or the other or both. I'm not clear of how that first came up.

1 Chairman Jordan. Okay. And these conversations were before President Trump
2 announced that he was running for President.

3 The Witness. Yes.

4 Chairman Jordan. Okay. And was it before the midterm elections in '22.

5 The Witness. When were the midterm elections?

6 Chairman Jordan. November -- the first Tuesday after the first Monday in
7 November.

8 The Witness. I think I spoke to him both before that and after that.

9 Chairman Jordan. Okay. And then how did it go down then at the end? Did you
10 tell Mr. Miller, "You know what? President Trump has announced. It may be considered.
11 How did it go?" Did you tell Mr. Miller, "I'd be interested if there is an official special
12 counsel"? How did it go after President Trump announces? How did that conversation
13 go.

14 The Witness. My recollection of this is that I was asked if I would accept the
15 position if it were offered to me, and that was before President Trump announced his
16 candidacy.

17 Chairman Jordan. Okay.

18 BY [REDACTED]

19 Q You were sworn in as special counsel when you were in Amsterdam. Is that
20 correct?

21 A Yes.

22 Q Who swore you in?

23 A I don't recall.

24 Q Was it over Zoom or something?

25 A I don't recall.

1 Q Or was someone present? Was, you know, Mr. Cooney -- Cooney
2 and -- Bratt, several folks came to visit you in Amsterdam. Is that right?

3 A Not in Amsterdam. I was in The Hague in the Netherlands. They probably
4 flew into Amsterdam.

5 Q Okay.

6 A And, yes, they came to see me shortly after I was appointed.

7 Q But you don't remember who administered the oath? Who can administer
8 the oath? Like who is authorized at DOJ to administer the oath?

9 A I don't know.

10 Q But you did take an oath? Do you remember that?

11 A I do recall that, yeah.

12 Q But you don't remember whether it was on -- was it in the Netherlands?

13 A I was still in the Netherlands is my recollection.

14 Q Okay. So it would have had to be either a DOJ official came to see you, or it
15 had to be over Zoom, right? Those were the options?

16 A Or over the phone. I really -- I don't have a recollection that I can help you
17 here.

18 Q Okay.

19 And do you know the total cost of your probe?

20 A I do not.

21 Q Can you give a rough estimate?

22 A Well, the special counsel, our office, consistent with past special counsels, gives
23 a public report of expenditures, and the last -- I'm not sure if the last one that covered the
24 last however many period of time was ever actually published, and so you would have to
25 add that into the total.

1 Q Okay.

2 A So that's why I say I don't know.

3 Q At the time of the last published report, I think it was at 20 million.

4 A Okay. I don't recall that. Whatever is in the public reporting on this would
5 be accurate.

6 Q Okay.

7 The genesis of the alternate electors case started with the National Archives IG. Is
8 that your understanding? They first raised flags that they were receiving alternate electors
9 to the Justice Department?

10 A That I believe would have been well before I was special counsel.

11 Q Okay. And when you became special counsel, was that part of your -- like
12 where did the alternate electors case stand, you know, when you became the special
13 counsel in November of 2022?

14 A So the fake elector scheme was part of what I was investigating, and it
15 ultimately became part of the charges in the case.

16 Q Okay. But where did it stand as of November 2022?

17 A Where did it stand? I think the people assigned to that investigation were
18 investigating it. Exactly how many interviews they conducted and things of that nature, I
19 can't recall as I sit here right now.

1 [1:28 p.m.]

2 BY [REDACTED]

3 Q Before you became a special counsel, there was an effort to get DOJ moving on
4 this, and an individual named Amanda Vaughn, a prosecutor on J.P. Cooney's team,
5 indicated that DOJ would not be pursuing the case.

6 Were you aware of that?

7 A Was this when I was special counsel?

8 Q This is before you became special counsel.

9 A I don't recall that.

10 Q And so the question ultimately is, it seems like the alternate-electors matter, it
11 seems like it was subject to a lot of starts and stops. And I wanted to know whether, after
12 you became the special counsel in November of 2022, were there any starts and stops, or
13 was that full speed ahead on that probe?

14 A That was a part of the case that we investigated from the time I started until
15 the indictment. It ended up being one of the most powerful parts of the case.

16 We had electors who were going to be witnesses. I had referenced earlier a
17 Congressman from Pennsylvania who had said this was an attempt to overthrow the
18 government. We had other electors who said, "I was told that this would only be used if
19 we won in litigation." And, obviously, the record in our case showed that the
20 co-conspirators were trying to use their elector votes despite that fact.

21 And, again, this goes to the point I made earlier. These are people who wanted to
22 be electors for Donald Trump. They are not people who were opposed to him. They
23 were not people who were from a different political party or enemies.

24 And so the fact that we had elector witnesses like that who felt either they'd been
25 misled or they felt that this whole effort was an attempt to overthrow the government, I

1 thought that was pretty powerful evidence. And so we moved that part of the
2 investigation forward with the rest of the case.

3 Q Did your office coordinate with State officials?

4 A You mean interview State officials?

5 Q No, coordinate. You know, several other, you know, State probes cropped up,
6 you know, in Arizona, in Fulton County, Georgia. And I'm wondering how you coordinated
7 those efforts.

8 A I know that we got inquiries from State authorities. I'm aware of that. My
9 recollection is that we did not share any evidence with them. And I don't think -- my
10 recollection is we did not get any evidence from them. We got it from -- that is my
11 recollection, that it was all or largely from public sources.

12 Q Okay.

13 Was there somebody on your team who had responsibility for liaising with the
14 attorney general for the State of Arizona, Kris Mayes?

15 A I don't believe so. But, also, the liaising -- I don't think that -- my
16 recollection is that there was not, like, an ongoing discussion.

17 What I was thinking of -- I know we got a letter, for example, from the attorney
18 general in New Mexico asking for information from us. I don't have a specific recollection
19 as well as to other States. It may will be --

20 Q Okay.

21 A -- that we got other inquiries.

22 Q So there was no proactive coordination?

23 A No.

24 Q Okay. There was no proactive coordination, regular communications, with
25 Kris Mayes's office in Arizona?

1 A I don't recall any regular communications, but I'm hesitating just because I
2 don't really recall, as I sit here, how many times they might've reached out to us or that sort
3 of thing.

4 Q Right.

5 How about with the Fulton County D.A.'s Office with Fani Willis and Mr. Wade?

6 A Yeah. I've never had contact with either of those people.

7 Q Okay. Do you know if anyone on the special counsel team, on your team, had
8 contact with them after you were appointed in November of '22?

9 A I don't believe so.

10 I will just say, though, that one of the things we were investigating was things that
11 happened in Fulton County, particularly -- there was an election worker by the name of
12 Ruby Freeman. Her mother and -- she was the mother of a woman named Shaye Moss.
13 They were people that Rudy Giuliani and Donald Trump targeted with absolutely false claims
14 of election fraud, claims that Rudy Giuliani later admitted he didn't have evidence for, claims
15 that he was held liable on defamation for, caused them to endure all these sort of vile
16 threats.

17 And that whole episode, as well as, sort of, the claims, the false claims, about the
18 vote count in Fulton County, we did look into that and collect evidence. I don't have a
19 recollection, as I sit here, that we interacted with the Fulton County D.A.'s Office for that,
20 but if we did, it would be only for that.

21 Q Okay. Did you try to deconflict their prosecution from what you were working
22 on?

23 A Well, we didn't -- I was not interesting in sharing information with them. So I
24 did not -- I did not give them information. I'm not even sure -- you're testing my
25 recollection now, but I don't even think we got a request for information from them.

1 Q Did you have coordination as far as scheduling was concerned?

2 A I don't recall anything like that.

3 Q Okay. Because their proceedings were going on concurrently with your D.C.
4 case, with the Florida case. So you don't remember you or anyone on your team having
5 communications with Fulton County to coordinate scheduling?

6 A No. I was aware, obviously, that their case was pending, but I did not
7 coordinate any scheduling with them.

8 Q Okay.

9 How about with the attorney general for the State of Michigan?

10 A Again, it may be that they requested information from us. As I sit here right
11 now -- I should say, I don't have a really good recollection of this subject matter you're
12 talking about.

13 Q Okay.

14 A But I don't -- I don't recall any -- us giving them information, and I don't recall
15 getting information from them.

16 Q Uh-huh. Who on your team would have that information?

17 A Well, Thomas Windom and Molly Gaston led that case.

18 Q Okay.

19 A And, along with J.P. Cooney, they would probably be people who might recall
20 these things --

21 Q Okay.

22 A -- with more specificity than I am.

23 Q Okay. So, if somebody had the information, one of those three people should
24 be able to help us?

25 A There may be other people in the office as well. I'm just saying -- I'm saying

1 them because they were the direct supervisors of the prosecutors on that case --

2 Q Okay.

3 A -- and they may have a better recollection.

4 Q Okay.

5 Same question with the District Attorney of New York's Office. Did your office have
6 any communications with that office? Coordination?

7 A No recollection of that.

8 Q Did you have any communications regarding scheduling?

9 A Again, I have no recollection of that.

10 Q Okay.

11 A I was aware of their case pending, but I don't recall any coordination with
12 them.

13 Q Did your office or anyone at DOJ, to your knowledge, try to dissuade the district
14 attorney of New York from bringing that case?

15 A I do not recall that at all. On that, I'll just say, I have a better memory. I do
16 not remember anything like that.

17 Q Uh-huh. Were you enthusiastic that the district attorney of New York was
18 bringing that case?

19 A No. I didn't take any position about it.

20 Q Okay. Because, you know, it was going on at the same time that you were
21 trying to move forward your two cases, correct?

22 A Correct.

23 Q And you didn't have a view that the case out of the District Attorney of New
24 York's Office was going to be a distraction?

25 You know, litigating whether there's payments to some performer and how that

1 relates to, you know, The Trump Organization's accounting protocols, I mean, that is very
2 different from the two cases you were pursuing.

3 A Yeah, the two cases were completely different.

4 Q And so the question was, do you think that the district attorney of New York's
5 case presented a distraction for what you were trying to accomplish?

6 A A distraction? I don't know that I thought about it that way. I can't recall
7 any discussions along those lines.

8 Q I mean, there were a number of times when you wanted to be in court in D.C.
9 and you had to work around the President's schedule because he was in court in Manhattan,
10 correct?

11 A I'm not sure that's right. Maybe that's right. I don't know if there's a record
12 about that.

13 Q Yeah.

14 A I don't -- is there -- was there -- if -- I shouldn't be asking you questions, but --

15 Q Yeah.

16 A -- is there -- I don't recall --

17 Q Yeah, there is.

18 A Okay. So I'm not disputing you then.

19 Q I mean, one of the issues is, you know, the President was represented by -- you
20 know, he had his team of lawyers. It was pretty -- a pretty small group. They weren't
21 backed by Big Law, right? So they didn't have -- they didn't enjoy a robust, you know,
22 hundreds of, you know, lawyers back at the office to be able to digest some of these things.
23 And so, you know, President Trump's lawyers, you know, were required to be in New York
24 part of the week, and then they had to come to D.C., and then they had to go to Florida.

25 And so the question is, did you ever coordinate with the district attorney of New

1 York to, you know, maybe not be at trial one day so you could have the President and his
2 lawyers here in D.C.?

3 A I don't recall that.

4 Q Okay. And was any of that a distraction?

5 A It wasn't a distraction from us, because, as you said, that case had nothing to
6 do with our case.

7 Q Okay.

8 There were a number of times that I believe Jay Bratt took the position that the
9 President ought to go get some more lawyers. Like, if he -- you know, if Todd Blanche and
10 John Lauro, if they can't -- if they can't handle all these cases, they should just go find
11 different attorneys for President Trump.

12 Were you aware of that statement by Mr. Bratt?

13 A What context was that?

14 Q In -- before the -- before the court in D.C. and Florida. Actually, Mr. Bratt was
15 in Florida.

16 A Yeah, I don't think Mr. Bratt appeared in court in D.C.

17 Q In Florida. I'm sorry.

18 A If you could direct me to specifically what he said. As I sit here now, I --

19 Q Okay.

20 A -- I don't recall that, but I'm not --

21 Q We can --

22 A -- I'm not denying that happened.

23 Q Maybe we'll revisit that. But we can point you to --

24 A Sure.

25 Q But you would certainly agree that the President gets to pick who his lawyers

1 are, and if he wants to have Todd Blanche and John Lauro and not others, that that's
2 something that the government ought to be able to work with, correct?

3 A Sure. Although, you know, I -- not this case, but other cases, I've seen judges
4 say that if you're going to pick lawyers because they're unavailable, that you can't do that.

5 Q But that wasn't the case here.

6 A Well, if you're picking lawyers because they -- that will allow you to sort of
7 delay the case --

8 Q Right.

9 A -- that's not something that judges usually put up with.

10 Q But, you know, I mean, President Trump, I mean, nobody from Big Law would
11 represent him. I mean, isn't that -- isn't that a pretty well-established case?

12 A I don't know that.

13 Q And, like, Mr. Blanche had to, like, leave his firm to take on the representation?

14 A I know he chose to leave his firm. I don't know the circumstances behind
15 that.

16 Q Okay.

17 I mean, it might -- maybe it comes as a surprise to you, but there are, you know,
18 really, two different Washingtons when it comes to lawyers. And, you know, Big Law
19 downtown just does not, you know, have a great appetite for hiring former, you know,
20 Trump alumni, you know, lawyers that worked in the Trump administration, with, you know,
21 Republicans generally.

22 I mean, are you aware of that?

23 A I have not worked in Big Law. I've been a public servant my whole career.

24 Q Right.

25 A That's the world I know.

1 Q Okay.

2 By contrast, you know, the lawyers on the January 6th Committee, I mean, they
3 leave the Hill one day and, you know, they're immediately gobbled up by Big Law very
4 quickly. That just doesn't happen with Republicans.

5 Would you agree?

6 A That Republicans don't get jobs as lawyers? I mean, I'm sorry --

7 Q At Big Law firms.

8 A I don't actually know that that's true.

9 Q Okay.

10 A I mean, again, this isn't a world I have worked in --

11 Q Uh-huh.

12 A -- but I think there are Republicans at Big Law firms.

13 Q Okay. Republicans that represented Donald Trump zealously?

14 A I haven't kept track of that, but you'd said Republicans at law firms, so --

15 Q Okay.

16 When your office filed its proposed D.C. schedule in August of 2023, were you aware
17 that your office also had a concurrent schedule, you know, operating in the Southern District
18 of Florida? I mean, you essentially had two cases going at once.

19 A Correct.

20 Q And so how did you deconflict those scheduling appearances?

21 A Well, there were two separate groups of lawyers working on those cases -- one
22 on the classified documents case, one on the investigations case.

23 Q Was that the case for President Trump?

24 A I'm sorry?

25 Q Was that the case for President Trump as well?

1 A I'm trying to recall.

2 I know John Lauro, who I think was the lead counsel in Washington, in the
3 Washington, D.C., case, I don't think he had any involvement in the Florida case.

4 And I know Christopher Kise, I think was his name, was on the Florida case and didn't
5 have any involvement here.

6 I don't know --

7 Q Okay.

8 A Also, I should say, I don't know how many lawyers supporting the lawyers in
9 court President Trump had that were supporting one case or the other case.

10 Q Uh-huh. Okay.

11 In February of 2024, your office proposed an April hearing in the Southern District of
12 Florida. At the time, you were aware that President Trump was scheduled for full-day jury
13 trial proceedings in New York on April 1st, 2nd, and 4th. So your proposal required the
14 President to attend trial in New York on April 1st and 2nd, travel to Florida for a hearing on
15 April 3rd, and return to New York for trial on April 4th.

16 Do you recall that type of extraordinary logistics the President was put through?

17 A Can you say that back to me? I just didn't -- you said some dates in the
18 beginning. If I could just hear it again.

19 Q On February 29th, 2024, your office proposed an April 3rd hearing in the
20 Florida case.

21 A Okay.

22 Q At the time, President Trump was scheduled for, you know, full-day jury trial in
23 New York on April 1st, 2nd, and 4th. So you picked the 3rd, the one day that he had off
24 from trial.

25 Does that ring any bells, as we refresh you about that?

1 A It doesn't ring bells, but I want to be clear, I'm not -- I'm not denying that those
2 dates are accurate.

3 Q Right. I mean, do you think that's reasonable, in hindsight?

4 A I think our requests to the court were reasonable, yes.

5 Q And you think it's reasonable that President Trump had to be in New York on
6 the 1st, 2nd, and 4th and then travel to Florida on the 3rd?

7 A I think our requests were reasonable, yes.

8 Q Okay.

9 Mr. Koski. Just to clarify, what kind of hearing was it? You said a hearing in the
10 Southern District of Florida on April 3rd.

11 [REDACTED] Uh-huh.

12 Mr. Koski. Is there any more information about what kind of hearing it was? I
13 mean, was it just a status conference or something different?

14 [REDACTED] As we understand it, President Trump had to be there. I think, you
15 know, if it's a status conference, I'm sure the judge would -- we only have about 9 minutes,
16 so --

17 Mr. Koski. You can move on. I didn't mean to delay things. No, you can keep
18 going.

19 Mr. Knott. Excuse me.

20 [REDACTED] Oh, go ahead.

21 Mr. Knott. Mr. Smith, can I just ask a few questions?

22 When you were hired in November of '22, how did the Department educate you
23 about the predications for the investigation, what evidence had been collected?

24 The Witness. I got educated on the cases by debriefing with the people who were
25 leading the investigations.

1 Mr. Knott. And in terms of when that full autonomy was handed over, how quickly
2 did that happen?

3 The Witness. So I was appointed on November 18th, that Friday. And time
4 difference, right, because I'm in The Hague.

5 Mr. Knott. Yep.

6 The Witness. I requested that evening that someone get on a plane to come over
7 and debrief me immediately.

8 Mr. Knott. Do you remember who that was?

9 The Witness. It was J.P. Cooney, was the first person who came over.

10 Mr. Knott. He came alone?

11 The Witness. I believe he did, in my recollection right now. And I think he got
12 there -- maybe it was not 'til Sun- -- I can't remember if it was Saturday or Sunday, but
13 he got there Sunday and began giving me a summary of the work.

14 Mr. Knott. And was that just digital case files? Was it hard copies?

15 The Witness. It was oral.

16 Mr. Knott. All oral?

17 The Witness. He came over to debrief me orally, yes.

18 Mr. Knott. When was the first time you started to look at some of the materials?

19 The only reason I'm asking --

20 The Witness. Yeah.

21 Mr. Knott. DOJ alum. When you get -- when I got an investigative memo, I'll start
22 going through it and looking through the materials myself.

23 The Witness. I did that.

24 Mr. Knott. Yep.

25 The Witness. I'm having difficulty remembering exactly when that happened, but I

1 certainly did that.

2 Mr. Knott. And --

3 The Witness. It was early on.

4 Mr. Knott. -- in terms of way you approached this, did you go through and kind of
5 review the predication for all of the investigative steps that had been taken to that point?

6 The Witness. "Review the predication for all the investigative" --

7 Mr. Knott. So, whether it was, you know, the pen register, search warrants, did you
8 review all of that, or were you just looking at, kind of, the summaries of the information and
9 the evidence that had been collected?

10 The Witness. I think I was looking at, kind of, the overall way the investigation was
11 at this point in time.

12 Mr. Knott. Okay.

13 In terms of the staff decisions that you made, how soon did you start staffing up your
14 office?

15 The Witness. Well, the office was primarily staffed with people who had already
16 been on the investigations. The majority, I think, were people who had already been on
17 the investigations. And so there was a period of time shortly after I got appointed where
18 we had to determine and they had to determine if they were going to stay on the
19 investigation.

20 Mr. Knott. And did you ultimately make that decision?

21 The Witness. Yes.

22 Mr. Knott. Okay. Did you go and meet with every one of those individuals?

23 The Witness. I was still in The Hague at that point in time, and so J.P. Cooney had
24 those meetings.

25 Mr. Knott. In regards to the law enforcement officers, did you have any say in

1 which agents worked with this investigation?

2 The Witness. The squads that worked on these investigations were the same
3 squads that were already working on the investigations when I took them over.

4 Mr. Knott. Did you amend those, that personnel, at all?

5 The Witness. The FBI?

6 Mr. Knott. Yeah.

7 The Witness. I don't recall doing that.

8 Mr. Knott. Okay.

9 And then just to follow up on what he said, was there ever any contact between you
10 or any of your team with some of those other prosecutorial offices, whether it was D.A.,
11 AGs, for the purposes of evidence-sharing, information-sharing?

12 The Witness. Yeah, as I said earlier, I don't have a recollection of that.

13 Mr. Knott. But was there a policy? As the boss of the office, did you -- did you
14 have a policy with that? Did you -- if someone had done that, would they have had to
15 report up the chain to you?

16 The Witness. Yeah. If someone had said, "I want to call Fani Willis and have a
17 conversation and get evidence from them," I would expect no one would do that unless I
18 said it was all right.

19 Mr. Knott. And, in your recollection, that never happened?

20 The Witness. I don't have a recollection of that. As I said -- I just want to be as
21 clear as I can -- I don't have a great recollection of specifics with different attorney generals'
22 offices, but my recollection is we did get reached out to by offices. I'm thinking of one
23 letter I do recall. May have been -- yeah.

24 Mr. Knott. Other offices reached out to you?

25 The Witness. Yes.

1 Mr. Knott. Okay.

2 The Witness. That's what I recall.

3 Mr. Knott. Yeah.

4 The Witness. And so there may have been interactions as a result. As I sit here, I
5 don't recall asking --

6 Mr. Knott. You initiating.

7 The Witness. Or asking them for evidence. But, again, I think, as I directed, I think
8 the people who were the team leaders on those cases and J.P. Cooney might have a
9 more -- a closer recollection of that.

10 Mr. Knott. Okay. But your memory is, there was no outreach that you had to
11 approve or sign off on?

12 The Witness. "Outreach that I had to sign off on." I don't recall anything like that.

13 Mr. Knott. Okay.

14 The Chairman. Where did the letter come from, again? Just refresh my memory.
15 You said you got one letter --

16 The Witness. The one -- the one -- the only one I remember is, I remember we got
17 a letter from the attorney general in -- I believe it was New Mexico. That's my recollection.

18 The Chairman. Okay.

19 Anyone else in the Justice Department -- just, again, to circle back, you talked about
20 the series of conversations you had with Mr. Miller, the PADAG. Anyone else in the Justice
21 Department that you talked with prior to Mr. Garland offering you the position of special
22 counsel?

23 Did you talk to the DAG? Did you talk to Lisa Monaco?

24 The Witness. Well -- yes. So I flew to the United States from The Hague at some
25 point in late October, and I met the Attorney General and I met Lisa Monaco. That was in

1 late October of '22.

2 The Chairman. Okay. And anyone else in that meeting?

3 The Witness. It --

4 The Chairman. Was Mr. Miller in that meeting?

5 The Witness. So it wasn't a meeting. It was separate. I was at the DOJ. I met
6 with Lisa Monaco, and then separate from that I met with the Attorney General. I do
7 recall, the meeting with the Attorney General wasn't that long. Klapper, Matt Klapper, was
8 present for that meeting --

9 The Chairman. Uh-huh.

10 The Witness. -- and I believe Marshall Miller was present for that meeting.

11 With regards to Lisa Monaco, I cannot recall if Mr. Miller was there or not. He may
12 have or he may not have been.

13 The Chairman. And the subject matter of both meetings, the one with Ms. Monaco
14 and the other one with Mr. Klapper and Mr. Garland, was what?

15 The Witness. They -- they asked me about my work in The Hague.

16 The Chairman. Okay.

17 The Witness. That was what both conversations were about.

18 And I'd just also add, that same trip, I also went and spoke to the Human Rights
19 Section at DOJ about the work I was doing in The Hague for the State Department.

20 The Chairman. Uh-huh. And that was all? That's all you talked about, was your
21 work in The Hague?

22 The Witness. My work in The Hague and, sort of, like, my experience as a
23 prosecutor and my, sort of -- how I viewed the job. We didn't -- we didn't talk about these
24 investigations, to my recollection.

25 The Chairman. In hindsight, was it -- was it an interview?

1 The Witness. In hindsight, yes.

2 The Chairman. Okay.

3 The Witness. But I --

4 The Chairman. And -- okay. Go ahead.

5 The Witness. In hindsight, yes. But it wasn't in the sense of, I wasn't asked
6 about -- I don't recall being asked about these investigations.

7 The Chairman. Fair enough. Fair enough.

8 In your conversation with Mr. Miller, had he already communicated to the Attorney
9 General and Lisa Monaco that you were interested in the special counsel position if, in fact,
10 that was going to be done?

11 The Witness. I wouldn't know.

12 The Chairman. Okay.

13 Mr. Koski. Sorry. I just want to clarify the timing on that. This was end of
14 October of 2022.

15 And, Chairman Jordan, your question assumed that there was discussion about the
16 special counsel position. Did Marshall Miller convey that to Lisa Monaco or Merrick
17 Garland, that Mr. Smith was interested in that position.

18 I just want to clarify, because I thought I heard you say earlier that the discussion
19 was not necessarily in the context of a special counsel appointment. Or is that not right?

20 The Witness. Well, they asked me about my work in The Hague and my work as a
21 prosecutor. I don't know what conversations Mr. Miller had with them --

22 The Chairman. Fair enough.

23 The Witness. -- when I wasn't there.

24 The Chairman. But you said earlier you had conversations with Mr. Miller about
25 the two -- two investigations, not special counsel specifically, but about the D.C.

1 investigation, the Florida investigation.

2 And then you've also said that in the meeting with the Attorney General and
3 Mr. Klapper and the other meeting with Lisa Monaco you didn't have discussions about
4 those two investigations.

5 Is that accurate?

6 The Witness. That's right, with the addition that I can't place when the
7 conversations about generally working on the investigations was. But I think, my
8 recollection, to the extent I can remember this, is that it was some time before I took this
9 trip to Washington, D.C.

10 The Chairman. So those conversations with Mr. Miller about the investigations
11 took place prior to you sitting down with the Attorney General and the Deputy Attorney
12 General.

13 The Witness. I believe that's right, but I want to emphasize that my recollection
14 here is not as sharp as it has been on other subjects that we've talked about today.

15 The Chairman. Fair enough.

16 [REDACTED] Our hour's up.

17 The April 3rd hearing was a pretrial motion.

18 Mr. Koski. Okay. Thank you.

19 [REDACTED] We'll now go off the record.

20 [Recess.]

1 [2:30 p.m.]

2 [REDACTED] We will go back on the record at 2:30 p.m. eastern time.

3 Welcome back, Mr. Smith.

4 BY [REDACTED]

5 Q I want to start by addressing -- or start on the issue about the collection of call
6 records related to certain Members of Congress. Do you recall the majority asking you
7 about this at length in their first two rounds so far today?

8 A Yes.

9 Q Did Donald Trump and his co-conspirators try to reach out to Members of
10 Congress before January 6 and on January 6 of 2021?

11 A Yes.

12 Q Can you tell us little bit about what your investigation uncovered regarding
13 communications with Members of Congress that's related to the attack on the Capitol on
14 January 6?

15 A There was pretty extensive contact with Members of Congress. There were
16 instances of Members of Congress, again, specifically on January 6th but also before that,
17 where either they were reaching out to the White House or the White House was reaching
18 out to them or -- and through, you know, conduits to the President, including, as I said, Mark
19 Meadows.

20 Q Okay. And what were the -- what was the nature -- let's start with before
21 January 6. What was the nature of some of these communications with the White House
22 or with co-conspirators of Donald Trump leading up to January 6 with Members of
23 Congress?

24 A Well, it varied.

25 Q Okay.

1 A Sometimes the communications were relevant to us to show that people were
2 telling Donald Trump that the things he was saying were not true.

3 Other times, they were evidence of the false nature of the things they were saying.
4 So an example would be, there are two voicemails that Rudy Giuliani left for Senators, and
5 those voicemails show him saying things that were not true, using knowingly false claims to
6 try to get those Senators to further delay the certification of the vote.

7 Q Got it.

8 You just mentioned that there were instances before January 6 of Members calling
9 the White House -- and I'm summarizing -- to basically express that some of the claims the
10 President and his co-conspirators were making were not true. Did you -- is that what you
11 just said?

12 A Well, I should be specific. There were a variety of reasons that -- and we're
13 not -- and I am not trying to say that anytime someone contacted the White House they
14 were involved in a --

15 Q Right.

16 A -- crime themselves or doing anything improper.

17 Q Sure.

18 A But how this conspiracy that was trying to stop the lawful transfer of power,
19 how that worked was important for us to understand. We had evidence from Department
20 of Justice officials that Donald Trump said to them, "Just say the election is corrupt, and
21 leave the rest to me and the Republican Congressmen."

22 I think, given that was the perspective that Donald Trump had, our view is that the
23 case we would've presented at trial would've been Donald Trump preying on the party
24 allegiance of people in his party.

25 And people like the Vice President didn't agree to that. People like the elector from

1 Pennsylvania I mentioned didn't agree to that. People like the speaker of the House in
2 Arizona didn't agree to that.

3 But the extent to which those contacts were happening was relevant to our
4 investigation.

5 Q Okay.

6 So let's dig down a little bit on that. Let's start on January 6. So I believe in the
7 evening -- did your investigation uncover or learn that Mr. Trump personally called
8 Members of Congress on the evening of January 6?

9 A Yes.

10 Q Do you remember who those Members were?

11 A I would have to look at the records to be sure, but, the best of my recollection,
12 he was trying to get in touch directly himself with Senator Hawley and Senator Hagerty, and
13 then there were several Senators who he directed Rudy Giuliani to get in touch with.

14 Q And who were those Senators that Mr. Trump directed Mr. Giuliani to get in
15 contact with, to the best of your recollection?

16 A To the best of my recollection -- and this comes from an email, or I think it was
17 a text maybe, that Boris Epshteyn sent to Mark Meadows, and it basically said something to
18 the effect of, "The President told the mayor to call these Senators," and they needed
19 numbers.

20 And what our investigation ultimately showed was, they sent that text after they'd
21 already started trying to call Members and didn't think they had -- and ended up
22 understanding that they didn't have the right phone numbers.

23 In fact, the message that they left for Senator Lee, which he voluntarily provided to
24 our office, that was meant for Senator Tuberville, I believe. And the message that he left
25 for Senator Sullivan, I believe it was, was for Senator -- the name's escaping me now, but it

1 was another Senator that he meant to call.

2 Q Uh-huh.

3 A We had also interviewed Boris Epshteyn before these subpoenas were issued.
4 He corroborated that they were, in fact, trying to call Senators. He dissembled and tried to
5 imply that the President hadn't directed him to do it, even though there was a text
6 message saying specifically that he had.

7 But he agreed that they'd tried to call these Senators and that they had certain
8 Senators' numbers themselves and so they didn't need those numbers. And that would
9 be -- I believe it was Senator Cruz and possibly -- I think he said they possibly tried to call
10 Senator Graham as well.

11 Q Taking a step back, this might be obvious for a lot of folks, but just to make sure
12 it's clear for the record, who is Mr. Epshteyn?

13 A Boris Epshteyn was one of the co-conspirators in this case.

14 Q And what role did Mr. Epshteyn play in the larger conspiracy, if you can
15 summarize it?

16 A Well, he played several roles. He was involved in the fake-electors scheme
17 and also in sort of pushing out some of these false fraud claims.

18 The other thing -- I'm sorry --

19 Q No.

20 A -- just to go back to mention is, we also in the course of the investigation
21 interviewed Rudy Giuliani. And one of the things that we asked him, if you recall, in the
22 message -- and I can't remember which Senator it was for, but in the message that he left,
23 he referenced the fact that he was calling on fellow Republicans.

24 And in the interview we asked him, you know, "Why did you say you were calling on
25 your fellow Republicans?" And he said, "Well, I wasn't going to be calling Democrats about

1 this. Even some Republicans wouldn't go along with this. So of course I would call only
2 Republicans."

3 And, in fact, that was consistent with our investigation throughout, that the people
4 that President Trump and his co-conspirators reached out to were people who they thought
5 would go along or help them because of party allegiance. And Giuliani, in particular, would
6 reference that he expected their cooperation because they were Republicans.

7 There was one particular meeting that he attended where he got a hostile reception
8 because he had no evidence to back up the fraud claims, and he said something to the effect
9 of, "I thought we were all Republicans here."

10 And so that was a theme throughout the case. And it went to the strength of the
11 case that we had, because the witnesses we were going to call were the people that the
12 President reached out to to sort of further these -- these -- this criminal scheme.

13 Q I want to touch on a point, because it seems like the evidence you uncovered
14 showed certain Members of Congress, including Republicans, pushing back on this assertion
15 about the big lie.

16 And I'm characterizing some of these claims about the election as the "big lie." Is
17 that okay, if I use that term?

18 A You can use whatever term you like.

19 Q Okay. I'm going to use the "big lie."

20 So do you recall any evidence, when you were talking to Mr. Giuliani, that he truly
21 believed all the voter-fraud claims that he was putting out around the country?

22 A Our evidence was, he did not. And, in fact, when we interviewed him, he
23 disavowed a number of the claims. He claimed they were mistakes or hyperbole, even the
24 claim about Ruby Freeman, where he, you know, basically destroyed this poor woman's life
25 by claiming she was a vote scammer. President Trump did the same thing in a recorded

1 call with the Secretary of State; he disavowed things he'd said in that interview.

2 Q Thank you.

3 Ms. Lofgren. Can I ask a question?

4 [REDACTED] Yes.

5 Ms. Lofgren. Were you able to interview some of the individuals that our January
6 6th Committee was unable to interview? For example, did you interview Mark Meadows?

7 The Witness. We did.

8 Ms. Lofgren. We were unable to talk to Mr. Meadows. Were you able to find out
9 what the communication was between Mr. Meadows and Mr. Bannon and potentially
10 Mr. Stone on the evening of January 5th at the so-called "war room" at the hotel?

11 The Witness. I don't recall that, as I sit here right now. I know Mr. Meadows
12 spoke to a number of people who were either involved in or adjacent to this conspiracy.
13 As I sit here right now, I don't recall that specific evidence. I think he -- I think he was in
14 touch with Bannon, but I don't recall specifically the answer to that question.

15 Ms. Lofgren. Mr. Bannon made an extraordinary video basically predicting the
16 events of January 6th on the day before.

17 Were you able to discover, either by interviewing Mr. Bannon or those who had
18 knowledge of what he was doing, how he was aware of the riot before it happened?

19 The Witness. We did not interview Mr. Bannon. We -- I believe -- I believe that
20 that particular statement you're talking about would've been part of our proof, and my
21 recollection is that we had evidence that would indicate, from some point not immediately
22 after the election but shortly thereafter, sometime -- it might've been closer to December
23 period --

24 Ms. Lofgren. Uh-huh.

25 The Witness. -- that Bannon, who had been out of touch with President Trump for

1 some period of time, got back in more regular touch with him sometime.

2 And, in fact, this is reminding me, my recollection is that we had a text thread
3 between Bannon and Epshteyn that went through a lot of this period. On that text thread,
4 I believe it was the evening of January 6th, right around the time the Senators calls were
5 occurring at the direction of the President, there was an exchange between those two
6 wherein -- I believe it was Epshteyn asked Bannon, "Are you in touch with him?" And the
7 answer was affirmative, and it was something to the effect of, "He's still on fire."

8 Ms. Lofgren. Hmm.

9 The Witness. And that's right at the same time that these calls are happening, after
10 he had refused to do what he could do stop the attack on the Capitol, after the tweet about
11 Mike Pence.

12 Ms. Lofgren. In December, there were several meetings in the White House where
13 efforts to overthrow the election were discussed, in terms of the fake-electors scheme; the
14 President issued his tweet calling the mob to Washington, that it would be "wild."

15 Did you identify Members of Congress who participated in any of those meetings?

16 The Witness. Participated in meetings at the White House?

17 Ms. Lofgren. In December.

18 The Witness. I'm thinking now. I can't -- I can't -- I can't say that we didn't, but as
19 I sit here right now, I can't think of a Member of Congress in particular that attended the
20 meetings I'm thinking of right now.

21 Ms. Lofgren. Who --

22 The Witness. Not saying it didn't happen. I just don't have a recollection.

23 BY [REDACTED]

24 Q Let me follow up on that.

25 There was a December 18th meeting. Do you remember a December 18th meeting

1 at the White House, right before President Trump then issued the "will be wild" tweet in the
2 early morning of December 19th? Do you remember -- I believe Ms. Powell was there and
3 others were at the White House discussing with Mr. Trump?

4 A I remember there was a meeting with Sidney Powell where there was a
5 discussion about whether she would be appointing a sort of special counsel for -- to sort of
6 have this role that would assist Trump in pushing these election -- these claims of election
7 fraud that were false.

8 My recollection of that is, the meeting ended, I believe, with President Trump saying,
9 "I want her in that position," but then it didn't happen because she -- she didn't fill out the
10 paperwork, clearance paperwork, necessary for that.

11 That's my -- if that -- I don't know if that's the 18th, but it's around that time.

12 Q And do you recall any Members -- just following up on Ms. Lofgren's point, do
13 you recall any Members of Congress being present or participating in that meeting?

14 A There's a record of this in our files.

15 Q Okay.

16 A I remember certain individuals -- I think Mark Meadows was there. An
17 individual by the name of Eric Herschmann was there. I think Rudy Giuliani was there.
18 There was a number of people there.

19 I'm not remembering whether -- if there's anybody in particular, you can ask me and
20 I could see if I could remember, but that's what I remember now.

21 Ms. Lofgren. Who introduced the idea of Mr. Clark becoming Attorney General?

22 The Witness. Our investigation determined that Congressman Perry had a role in
23 getting Jeff Clark on the radar of President Trump as someone who could help him and
24 getting meetings with Jeff Clark and the President.

25 Ms. Lofgren. Thank you.

1 BY [REDACTED]

2 Q And we might touch on Mr. Perry's involvement later on. I just want to flag
3 that for you.

4 So it sounds like -- and I want to hear it from you -- did your request for the toll
5 records of certain congressional Members, did that relate to phone calls made to these
6 Members of Congress on or around January 6 of 2021?

7 A Including that, yes.

8 Q And how big was the window of records that you requested for these Members
9 of Congress?

10 A Well, the records regarding those calls on January 6th, the period of time was
11 from, I believe it was, January 4th to 7th. But there was earlier subpoenas, including the
12 one referenced earlier today regarding Congressman McCarthy, that was a broader period
13 of time from, I want to say it's about November 3rd through, again, it was either January 6th
14 or 7th.

15 Q Okay.

16 And I've heard you mention evidence such as text messages with Mr. Epshteyn,
17 Mr. Giuliani. Did you also Mr. Giuliani's records as part of your investigation -- did you
18 collect those phone records, I mean?

19 A We did.

20 Q Okay. So, in your prosecutorial experience, do you generally seek to obtain
21 call records from both individuals involved in a telephonic call or message?

22 A We do. And, in this case, with the records for that evening, it was particularly
23 important, because when we interviewed Boris Epshteyn, one of the things that came out
24 was that Rudy Giuliani had two phones and that Boris Epshteyn had another phone, and we
25 needed to make sure that we weren't missing any calls, in terms of where the calls came

1 from.

2 Q Uh-huh.

3 A So it would corroborate the records that we had but also make sure that
4 there's calls that we missed.

5 Q Did you ever learn why Mr. Giuliani and Mr. Epshteyn had multiple phones?

6 A No.

7 Q Okay. Did the toll records that you requested from the Senators, did they
8 include the content of the phone calls?

9 A No.

10 Q Did the records that you requested, the toll records from the Member of
11 Congress, include the content of text messages?

12 A No.

13 Q Can you explain for us on the record what information generally is included in a
14 toll-records request?

15 A Sure. Again, my understanding from a prosecutor's perspective is, it is
16 non-content information. It's generally about when the call started, when the call
17 stopped -- that would include, obviously, the duration of the call -- and who the call is to and
18 who the call is from. That's the basic information that you want to get from a toll-records
19 subpoenas.

20 Q And let's fast-forward to say this would've gone to a trial. How would you, in
21 your experience, have used this type of evidence in a trial?

22 A Oh, it would've been relevant in a number of ways.

23 So it would've been relevant -- you could put it together in a summary chart to show
24 the series of contacts. And it could be relevant to show the campaign that evening to
25 reach out to Senators to delay the proceedings.

1 It could also be relevant to show, for example, on the afternoon of January 6th, of
2 notice -- that there was notice that violence was going on; Congressmen, both Republican
3 and Democrat, and the Vice President were in danger. That -- text records would make
4 that incontrovertible that those calls actually happened.

5 It'd also be relevant for examining witnesses, whether it would be a prosecution
6 witness who might not remember exactly when a call happened or a defense witness. For
7 example, if any of the co-conspirators were to testify, which, as I mentioned before, was
8 something we would've welcomed, we would've had toll records to question them about
9 the calls that they made, the calls that they received, things of that nature, which, in my
10 experience, is very -- can be very effective.

11 Ms. Lofgren. Can I ask -- we attempted in the January 6th Committee to question
12 Peter Navarro as well as Steve Bannon, and they were both prosecuted and spent time in
13 jail. Roger Stone appeared but took the Fifth.

14 Were you able to provide -- to get information from any of those three individuals
15 and in the case of Mr. Stone provide use immunity so that he would have to testify?

16 The Witness. We did not.

17 Ms. Lofgren. Why not?

18 The Witness. We pursued the investigative routes that we thought were the most
19 fruitful. We pursued those that we thought were necessary to get a complete
20 understanding of the scope of the conspiracy. And given the highly uncooperative nature
21 of the individuals you talked about, I didn't think it would be fruitful to try to question them.
22 And the sort of information that they could provide us, in my view, wasn't worth immunizing
23 them for their possible conduct.

24 Ms. Lofgren. Okay. Thank you.

25 BY [REDACTED]

1 Q Going back to the toll records, I just want to make sure we make a few things
2 clear.

3 When you were requesting toll records, did it mean that DOJ or FBI was conducting
4 surveillance on Members of Congress?

5 A No.

6 Q When you were collecting toll records, did it mean that DOJ or FBI would be
7 able to wiretap phone calls made by Members of Congress?

8 A No.

9 [REDACTED] Did you have some questions?

10 Ms. Crockett. Yeah.

11 I want to actually go back to some of the lines of questioning that you endured by
12 the majority.

13 There seemed to be this insinuation that there was a lack of respect for the
14 defendant's schedule. Do you recall, kind of, some of that line of questioning?

15 The Witness. I recall questions about his schedule, yes.

16 Ms. Crockett. Okay.

17 I just want to level-set, because this is going to be a record and it may be public
18 one day.

19 Considering all the years of experience that you have prosecuting, is it more often or
20 less often that you've had a defendant that has been charged in four different jurisdictions
21 with crimes?

22 The Witness. I have -- I don't know if I've had that before, but it certainly hasn't
23 been often.

24 Ms. Crockett. Okay.

25 And as it relates to these four jurisdictions, we know that he was charged not only on

1 the Federal level but he was also charged on the State level, correct?

2 The Witness. That's correct.

3 Ms. Crockett. And, in your experience, typically has it been that if you have a
4 defendant that is charged in multiple Federal cases, that the Federal magistrate or the
5 sitting judges typically confer and figure out scheduling conflicts?

6 The Witness. That can happen, yes.

7 Ms. Crockett. Okay.

8 The issue in this case, or a number of issues in this case, was not so much your
9 prosecution, but was the fact that there was alleged criminal conduct all over the place,
10 correct?

11 The Witness. Well, I was focused on my case and my prosecutions.

12 Ms. Crockett. Okay.

13 So I guess what I'm -- let me try to figure out how I want to do this, because they
14 were doing this a different way.

15 Essentially, did it seem as if President Trump was actually enjoying privileges that the
16 average defendant did not?

17 The Witness. I certainly wouldn't want that to be the case. I think the law should
18 be the same for everybody. I don't think anybody should be above the law.

19 I think, in a case like this, that could be challenging. But it was my goal to make
20 sure he was treated as anybody else -- as any of us would be treated.

21 Ms. Crockett. So let me ask you this. Because, in my experience, I've never had a
22 defendant have so many charges and not spend 1 day in jail. In your experience, have you
23 ever had a defendant charged with so many cases and not spend 1 day in jail?

24 And when I'm talking about a day in jail, I'm talking about pre-incarceration.

25 What I was observing is that the President was experiencing walkthroughs for

1 seemingly every case that he got, instead of going through the typical process that a
2 defendant would normally go through.

3 The Witness. Well, I have to say, in our cases, in terms of -- you know, we did not
4 try our cases, we did not prove our cases in a court beyond a reasonable doubt. And so
5 any sort of sentence, whether it would be incarceratory or otherwise, we never reached that
6 point in the proceedings.

7 And, in our case, whether someone would be detained before trial, there's factors
8 you look to for that. We did not ask for President Trump to be detained before trial.

9 And so, as I think I've made clear, I wish we had been able to try these cases, because
10 I am confident we had the proof to sustain convictions, but -- and I did try at every place to
11 make sure he was not being treated better or worse than anybody else. But, with respect
12 to those things, that was the state of the record in our case.

13 Ms. Crockett. You've tried cases on the State level, correct?

14 The Witness. I have.

15 Ms. Crockett. Okay. So he was charged in Georgia as well as New York. Are you
16 aware of that?

17 The Witness. Yes.

18 Ms. Crockett. And, in your experience in handling trial cases on a State
19 level -- typically -- and correct me if I'm wrong -- typically, a defendant is incarcerated and
20 then given a bail, or not, to get out. Has that been your experience as it relates to trial
21 level on the State level?

22 The Witness. Depending on the charge, yes. And, obviously, the charge depends
23 on what the bail level is.

24 Ms. Crockett. Correct. Right.

25 Okay.

1 BY [REDACTED]

2 Q I just had one more question about the toll records.

3 So, this past October, in a Senate Judiciary Committee hearing with Attorney General
4 Bondi, Senator Josh Hawley claimed that the subpoena of his phone records was, quote,
5 "tapping his phone."

6 As part of your investigation, did you or anyone from your office tap the phone of
7 Senator Hawley?

8 A No.

9 Q So is his suggestion that his phone had been tapped just simply false?

10 A It's inaccurate.

11 Q Okay. Thank you.

12 BY [REDACTED]

13 Q I believe earlier -- and we're turning back to January 6, the conspiracy leading
14 up, the events on January 6.

15 And I believe earlier you said that the reason why -- and I'm paraphrasing here -- that
16 you charged the President was that he was the most culpable person related to the crime of
17 attempting to criminally overturn the 2020 election.

18 Do you recall saying words to that effect earlier today?

19 A Yes, and because we had proof beyond a reasonable doubt and met the
20 requirements in the Federal principles of prosecution.

21 Q And I believe you said some of the false claims he was putting out created a
22 certain level of distrust about the validity of the election of 2020.

23 Do you recall saying something like that as well?

24 A Correct. That's alleged in the indictment.

25 Q Okay. So I want to start with how that level of distrust was created.

1 In your report, you say -- and this is a quote -- "The through line of all of Mr. Trump's
2 criminal efforts was deceit -- knowingly false claims of fraud."

3 Can you generally describe some of these knowingly false claims of fraud that were
4 spread after the 2020 election?

5 A Sure. There is a number of them. And, you know, part of the explanation
6 is -- is why they're false.

7 Q Uh-huh.

8 A And so, you know, just off the top of my head, an example is, there was -- he
9 was on notice in this election that, in Pennsylvania, for example, that he would be ahead in
10 the vote count for a period of time, and then when the mail-in ballots were counted, his
11 lead would dissipate.

12 He chose to represent that phenomenon that he'd been briefed on, that was normal
13 course of an election, that all sides knew that that's how it was going to be, he chose to
14 present that as evidence of fraud. And to people who are not maybe as informed as him
15 or informed as his campaign managers who told him these things, that's the sort of thing
16 that creates distrust.

17 There were fraud claims in, you know, Michigan, Georgia, where he was specifically
18 disabused by people he trusted, by political allies, by the people, when he chose to call
19 them, who were best situated to know. In Georgia, I'm thinking of the secretary of state.
20 He reflexively rejected those things and continued to state false things after he'd been told
21 repeatedly that they weren't true.

1 [3:00 p.m.]

2 BY [REDACTED]

3 Q And why was it important? It probably goes to the mindset, but why was it
4 important, all of these repeat statements from individuals that his -- that Donald Trump's
5 claims were untrue? How did that play into your overall investigative findings?

6 A Well, I think that the pattern and the depth of the pattern and the length of the
7 pattern was pretty damning evidence that he knew these things were false. He only
8 brought fraud claims that involved States that he lost. He only approached people
9 generally who had party allegiance to him. When he was told that a fraud claim wasn't
10 true, he didn't stop making it.

11 Another example I can give is that Sidney Powell, who's alleged as one of the
12 co-conspirators, was part of his team at the beginning of this conspiracy. Shortly after, she
13 began making statements that really nobody could credit, that were facially false.

14 And at some point, Giuliani made a statement that she wasn't on the legal team
15 anymore. And Trump at one point was on a call, President Trump, where he, if I recollect it
16 right, he muted the call and said she was crazy.

17 But then, after that point, he continued to promote her fraud claims and lawsuits.
18 He considered putting her as a special counsel, even though he'd admitted -- you know, he
19 used the word "crazy," and the statements she was making couldn't by any reasonable
20 person be viewed as true.

21 And so I think that sort of, like, claims that were so outlandish and so just fantastical,
22 continuing to push those sort of claims after they'd been disabused, was strong evidence of
23 our case.

24 Q It seems like the evidence that your case uncovered was, I think you said, Mr.
25 Trump contacting mostly or all Republican officials about his voter claims from the election

1 of 2020. Is that correct?

2 A That's my recollection. As I sit here now, I can't think of anyone who wasn't
3 someone who was loyal to him politically. And, again, many, many people who would
4 have been our witnesses rejected his entreaties to do that.

5 And, again, I think it was in Michigan and in Arizona. And also, the attorney general
6 in Georgia had stated, "I voted for him twice. I wanted" -- and others stated -- "I wanted
7 him to win. I campaigned for him."

8 So it's not as if it was effective in every place, but that was who he focused this at.
9 And that's why I said earlier today that the witnesses in this case, the subjects of the toll
10 records in this case, those were chosen by President Trump.

11 Q So if President Trump would have pressured, for example, a Democratic State
12 leader about these false claims of the election, would you have looked into that Democratic
13 State member as well?

14 A Absolutely.

15 Q You've mentioned earlier talking about, you know, individuals pushing back on
16 these false claims. When you were talking about the fake electors, you mentioned a
17 Congressman from Pennsylvania who I guess might have -- would have been a witness who
18 might have pushed back on the fake elector scheme being legal.

19 Do you recall saying that earlier?

20 A I do.

21 Q Who was that member?

22 A To my recollection I think his name was Thomas Marino. He is a former U.S.
23 Attorney and he is a former -- he's a Republican -- a former Congressman. And he had
24 agreed to be an -- this is before the election -- agreed to be an elector for Donald Trump.

25 And when he was presented with this idea of the fake elector scheme, my

1 recollection of his reaction was that this was an attempt to overthrow the government and
2 it was illegal.

3 Q You also mentioned a few of the States that Mr. Trump and his co-conspirators,
4 such as Mr. Giuliani and Ms. Powell, targeted about these false claims about the election.

5 Do you recall which States were the main targets of this group?

6 A Yes. I believe it was seven States. Let me count them. Georgia,
7 Pennsylvania, Wisconsin, Michigan, Arizona. I'm missing one because New Mexico -- and
8 New Mexico was memorable because he'd lost that by 10 percent. There's one more I'm
9 forgetting.

10 Q Nevada?

11 A Nevada. Thank you.

12 Q And I just want to confirm Nevada was the last State. Is that correct, sir?

13 A That's correct.

14 Q Okay. Did your investigation undercover why Mr. Trump and individuals like
15 Mr. Giuliani, Ms. Powell, might have selected these seven States?

16 A Well, the States were all States that he lost by a pretty small margin except for,
17 again, New Mexico is 10 percent. I mean, it depends on what you define as small. But
18 the others were all much closer than that.

19 Q And these States had all voted in support of Mr. Biden being President? Is
20 that correct?

21 A Yes.

22 Q So just to be clear, Donald Trump had lost all seven of these States but it
23 appears narrowly, depending on how you define narrowly?

24 A That's correct.

25 Q One of the bigger parts of your report and which you've talked about here

1 today comes down to the knowledge, Mr. Trump's knowledge, that he had lost the election.

2 I know you've talked about it at various stages of today, but I would just like a pretty
3 clear answer, if you don't mind, about what evidence did you collect about Mr. Trump's
4 knowledge that he had, indeed, lost the election of 2020?

5 A Okay. Well, there are two types of knowledge: one, that he lost the
6 election; and another, that the things he was saying, the false -- the fraud claims were, in
7 fact, false.

8 Q And I want to start with the first one --

9 A Yeah.

10 Q -- that you said that he had lost the election.

11 A Yeah. I think, again, it's the same sort of bucket of evidence that he was
12 repeatedly told by people that the very fraud claims that would change the outcome were
13 not true.

14 As you may remember, when he was told by his campaign team, in essence, that if
15 you can't win Arizona you can't win the election, and then he lost Arizona, he changed out
16 that team and went with Giuliani and his group.

17 We also had statements from other individuals. I believe it was General Mark
18 Milley who said he was going to leave this for the next guy.

19 There was another staffer who overheard him saying something to the effect
20 of -- and I want to make sure I'm not inaccurate here. It's in our final report. But,
21 basically, like, you keep fighting regardless of whether you won or lost, things of that nature,
22 which were corroborative of the other -- the very strong evidence of -- that the things he
23 was saying about these -- about the election claims were not true.

24 Q And then you said earlier when I asked the original question -- thank you for
25 parsing out the various knowledge, right?

1 The second part was that Mr. Trump knew that his claims were false. And in the
2 report, you say that Mr. Trump -- and this is a quote -- "knowingly made false claims." So
3 I'm assuming that talked about the false claims he made after he knew that he had lost the
4 election.

5 Can you describe or summarize some of these false claims he made to the American
6 public after he knew that he had lost the election?

7 A Sure. These would be false claims about dead voters. It would be false
8 claims about underage voters. It would be false claims about illegal alien voters.

9 The false claims were generally, as a general matter, about urban centers where he
10 had lost the vote in a particular State that was otherwise close by a lot. And -- yes. And,
11 again, these were claims that were rebutted by people around him who knew that they
12 were false and in many cases told him they were false.

13 Ms. Lofgren. Can I go to January 6th itself?

14 The President gave a speech on the rally, and we received information, testimony,
15 that -- a couple of things. That his supporters were leaving their weapons outside the
16 magnetometers because they wouldn't -- they couldn't go through; and also that at some
17 point Mr. Trump said, "Let them come through anyhow, because they're not going to hurt
18 me."

19 It was subsequent to that knowledge that some of these supporters were armed that
20 he called on them to go to the Capitol.

21 Was that set of facts subject to your investigation and review?

22 The Witness. I recall what you're talking about. I remember we interviewed
23 different people who were near -- we interviewed people who were near or around
24 President Trump in that period of time before the Ellipse speech.

25 And on that point, there were different recollections and different points of view.

1 Some people said what you said. Other people had more innocuous explanations about
2 why people stayed outside the magnetometers.

3 Clearly, people did stay outside the magnetometers. You could see that in the
4 video of the crowd. So I do recall that. And, as I said, I remember different people
5 hearing different parts of that and having different perspectives on it.

6 Ms. Lofgren. The Metropolitan Police, as well as Secret Service, identified a
7 number of people who were armed along the route, some of them in trees.

8 Did you get information about that?

9 The Witness. I don't recall.

10 I do recall there were people who certainly had weapons at the Capitol. That I
11 recall with certainty. And there's people who used weapons, whether they be poles or
12 sticks or other weapons, against police officers. I know there was one officer who they
13 took his gun.

14 And so the use of weapons against members of law enforcement, it was outrageous,
15 but it figured heavily in what happened at the Capitol that day.

16 Ms. Lofgren. Thank you.

17 BY [REDACTED]

18 Q Actually, if you don't mind, I believe in exhibit 10, it's your -- Volume One of
19 your report. I think we entered it as an exhibit earlier. And I'm going to direct you to
20 page 39 of your report. And I'm going to focus on the middle paragraph. There's three
21 different paragraphs on this page. I'm going to focus on the middle one that starts with,
22 "Mr. Trump's intent in spreading knowing falsehoods."

23 Do you see that paragraph, Mr. Smith?

24 A Yes. This was what I -- this paragraph was what I was referring to when I
25 spoke earlier.

1 Q That's what I thought.

2 Did President Trump ever acknowledge -- and I believe you talk about in this
3 paragraph -- did President Trump ever acknowledge that he knew that he had actually lost
4 the election to President Biden?

5 A Yes. So this paragraph references different statements that he made in the
6 presence of other people. One is that, "It doesn't matter if you won or lost the election.
7 You still fight like hell." And then the other was, "Can you believe I lost to this f'ing guy?"
8 referring to Joe Biden.

9 Q So if this would have gone to a trial, and using your years of experience being a
10 prosecutor and trial attorney, how would you have argued this admission of Mr. Trump, or
11 how could you? What's a way you could have argued this admission from Mr. Trump to a
12 jury?

13 A Well, I think -- I saw these admissions as corroborative of the larger case.

14 We would have presented what I viewed as very strong witnesses from each State to
15 explain how the elections occurred in that State and why the events, the outcomes were
16 trustworthy, and debunking various fraud claims that President Trump made.

17 We would present -- we would have presented the false claims that he made
18 repeatedly, interspersed with debunkings to him, or other evidence that showed they
19 weren't true and that that evidence got to him. This sort of evidence would corroborate
20 that, but it would sort of be the cherry on top, if you will.

21 The evidence that I felt was most powerful was the evidence that came from people
22 in his own party who, as I said earlier, put country before party and were willing to tell the
23 truth to him, even though it could mean trouble for them.

24 I think witnesses like that, in my experience, would be very powerful witnesses in
25 front of a jury. And this sort of evidence that you're pointing to here would be extra, but I

1 think those other evidence -- those other witnesses would be very strong proof.

2 Q And I want to -- I want you to elaborate a little bit on that.

3 In your experience with these types of witnesses, I'm assuming individuals from the
4 same party as Mr. Trump pushing back on his assertions of voter fraud and various other
5 claims, why would that, in your opinion, have been powerful to present to a jury?

6 A Well, I think someone who puts country before party, I think my understanding
7 of people, of jurors, that people appreciate that. I know I certainly do.

8 The other part about that is the reality of, like, when people speak out against their
9 political party, there can be costs. And when people are willing to pay those costs because
10 they believe in something, because they're going to tell the truth, I think people get that.

11 And I think the witnesses I'm talking about, if I had to cross-examine them and make
12 them not look credible, that would be very hard. I think that would be a very hard
13 assignment.

14 [REDACTED] You mentioned just now part of your trial strategy would have been,
15 you know, having individuals from each State come up and talk about their experiences
16 pushing back on Mr. Trump's false claims about the election.

17 And one of those States you mentioned earlier was Pennsylvania. And so I do want
18 to give Ms. Scanlon from Pennsylvania a chance to ask a few questions.

19 Ms. Scanlon. Thank you.

20 I appreciate your being here. And certainly we were paying very close attention to
21 this whole process in Pennsylvania, since Pennsylvania was one of the main targets for the
22 President's attempts to overturn the 2020 election.

23 Can you just outline for us what actions President Trump, if any, took in
24 Pennsylvania, a State that Joe Biden clearly won, in the 2020 Presidential election to
25 overturn its results and gain the electoral votes for himself?

1 The Witness. Sure.

2 Like the other six States involved, there were knowing false statements about fraud
3 claims. You're testing my memory here, but one was I remember he -- there was a
4 persistent claim that more people had voted than had been given ballots. And it was a
5 very clear thing that we were talking about two different elections.

6 And there's traffic, email traffic among his staff and people who worked for him,
7 about how obvious this wasn't true, and persistently kept making that statement over and
8 over again.

9 I also remember in Pennsylvania, the chair of the Republican Party in Pennsylvania, a
10 guy by the name of -- I think his name was Tabas -- very shortly after the election -- this is in,
11 I want to say, mid- to early November -- disabused President Trump of the idea that the
12 reason his vote total, his lead was going down, was because of fraud.

13 And he explained again that's how -- we all knew that that's how this was going to
14 work with absentee ballots in the State of Pennsylvania, which we had very strong evidence
15 that Trump, in fact, had been briefed upon by his campaign staff.

16 So those aren't the only examples, but they're the ones that come to mind as I sit
17 here now.

18 Ms. Scanlon. You have a really good memory, but that first one you mentioned, the
19 claim that there were more ballots being cast than had been issued, is one that some of our
20 colleagues here have repeated, despite the fact that the entire State election apparatus has
21 contested it for 5 years now.

22 I think your report mentions the conversation that the President had with Larry
23 Tabas, the chair of the Republican Party, in which he explained to him just a couple days
24 after the election concluded why Pennsylvania's system had all these absentee ballots which
25 Democrats had embraced because the President had told Republicans not to use them.

1 Did the fact that the chair of the Pennsylvania Republican Party told the President
2 that there was nothing fraudulent about the fact that the Democrats' vote total was
3 continuing to grow, did that stop the President from continuing his efforts to promote
4 claims of voter fraud in Pennsylvania or elsewhere?

5 The Witness. It did not. But, again, that witness, Mr. Tabas, was of a similar
6 group of witnesses who these are not enemies of the President. These are people in his
7 party who supported him. And I think the fact that they were telling him these things
8 would have had, in my view, would have had great weight and great credibility with a jury.

9 Ms. Scanlon. It's kind of the principle that we use in the law as an "admission
10 against interest." You know, when your party loyalty would lead you to support the
11 President but instead you're saying, "No, he's wrong."

12 Do you think that might give them credibility?

13 The Witness. Yeah, I think witnesses of that nature would have had very strong
14 credibility.

15 Ms. Scanlon. I agree. I know some of these folks.

16 Did President Trump try to carry out his fraudulent elector plan in Pennsylvania as
17 well?

18 The Witness. Yes.

19 Ms. Scanlon. And how did he do this?

20 The Witness. Well, what happened with the elector plan was when they came up
21 with the idea of having these fake electors, there were certain electors who would just not
22 put up with it. Thomas Marino -- I think he is from Pennsylvania -- is an example of that.

23 And so as a result -- and he wasn't the only one in the scheme generally. As a
24 result, they had to replace electors. And, again, just to keep in mind, all the electors we're
25 talking about here are people who supported Donald Trump. These are people who signed

1 up and said, "I want to be an elector for Donald Trump."

2 And these people, when they stepped out, they had to replace them. And part of
3 what's required under the Electoral Count Act is that there are procedures for doing that.
4 And they couldn't follow those procedures because they were replacing people without the
5 consent of the governor and things of that nature.

6 Also in Pennsylvania -- I believe it was Pennsylvania -- there was a call where -- and
7 there is a text of this -- where electors were pushing back on this and also wanting to be
8 covered if there was liability and, you know, to be indemnified and things of that nature.

9 And they wanted, like, statements in their certificates basically saying, "You're only
10 going to use this if, you know, you win these lawsuits."

11 And there was a text chain with some of the people who were carrying out this
12 scheme for President Trump basically ended with, "These people should be shot,"
13 because -- "and that we can't let this snowball like this; otherwise, we're going to have to do
14 this in all the other States."

15 Ms. Scanlon. Again, your recollection --

16 The Witness. I'm sorry, I want to -- I don't think he said, "These people should be
17 shot." I think he said, "Whoever put this slate together should be shot." I think that's
18 what it said.

19 Ms. Scanlon. Well, I think it is one of the reasons that Pennsylvania's fake electors
20 didn't get prosecuted, was because they pushed back and said, "We're not going to sign this
21 unless you include language saying that this will only be used if there are court cases saying
22 that we are the real electors."

23 In your investigation, did you find that the people who were conspiring with the
24 President to push this plan were telling electors one thing and then using their certificates in
25 another way?

1 The Witness. Yes. The electors were told that they would only be used in these
2 circumstances. And as, you know, other ways of overturning the election fell away and as
3 President Trump and his co-conspirators became more desperate, they came up with even
4 more obviously illegal ways to try to stay in power.

5 And it eventually devolved to let's just say that these are the electors, regardless of
6 whether any court has said so, the governor has said so, the people of the State and most
7 have said so.

8 And they didn't go back to electors and say, "Hey, we're going to use your -- I know
9 we told you we were only going to use this if you -- if we won a lawsuit." They just went
10 ahead and used it.

11 And I think, again, even among the fake electors, there would have been
12 witnesses -- I'm thinking of one witness in particular in Georgia who I thought would have
13 been very powerful of, "I would never have done this if I thought they were going to use my
14 name to overturn the will of the people just because one person said so."

15 Ms. Scanlon. I know you have -- okay.

16 I mean, there were other efforts in Pennsylvania. We had the very famous Four
17 Seasons Landscaping press conference, which is famous to this day.

18 But there was also a meeting that Pennsylvania State Senator Doug Mastriano
19 hosted in a hotel in Gettysburg, Pennsylvania, around Thanksgiving weekend, between the
20 certification in Pennsylvania and the presentation of the electors in D.C.

21 So even though it was framed as a hearing, Giuliani attended that event and ended
22 up speaking to promote some of these falsehoods about election fraud or missing votes or
23 whatever and made it sort of a rally. Donald Trump even called into this event and claimed
24 that he had won Pennsylvania by a lot.

25 Are you familiar with that event?

1 The Witness. I do recall that. I think that's in our final report?

2 Ms. Scanlon. I believe so, yes.

3 Did you uncover anything in connection with that event with respect to what they
4 were trying to do with Pennsylvania votes?

5 The Witness. Well, I think they were calling them hotel hearings, and it's because
6 they couldn't have hearings actually in the legislature. And so I don't think Pennsylvania
7 was the only State where that happened.

8 There's obviously nothing illegal about having a political rally or having a meeting of
9 people of one political party. Our case was about knowing the false fraud claims.

10 Ms. Scanlon. Right. Yeah. It did appear to be more of just some of the kind of
11 performative stuff that we see here where they try to make something out of nothing.

12 Well, I just -- I want to thank you for your testimony, for your work, for your integrity
13 and that of your entire staff, who I know worked extremely hard and with great integrity,
14 and wholly support your request to testify before the American people. I would really like
15 to see that.

16 Americans' tax dollars, including my constituents, have funded your investigation,
17 and I think that they should hear from you directly about what you found and not have your
18 testimony hidden from them.

19 So thank you.

20 Ms. Lofgren. On another State, on November 20th, Mr. Trump calls Republican
21 legislators from Michigan to the White House and urged them to remove the Biden electors
22 and replace them with electors that would elect Trump.

23 They subsequent to that made a statement that there was no evidence for that and
24 went back, and the electors were certified as the votes had indicated they should be.

25 Subsequent to that, in December, there was an effort to create fake electors, and, in

1 fact, on December 14th, when the electoral colleges meet in all the State legislatures, there
2 were 16 fake electors in the basement in Michigan and four of them tried to get into the
3 Capitol to overturn the election.

4 Did you look at that whole phenomena?

5 The Witness. We did.

6 Ms. Lofgren. And what was your conclusion? What was the -- how would that
7 have played, if at all, in your prosecution?

8 The Witness. Well, I think that event you're referring to -- and I think we
9 interviewed some of the law enforcement officers who were there that day when they were
10 trying to get in.

11 What they were doing and what the email traffic among co-conspirators showed is
12 they were trying to mimic the procedures of -- that are required by the Electoral Count Act,
13 but they couldn't mimic them.

14 And if I recall, the email traffic on this started with, "We have to follow these
15 procedures." And then when it became clear they couldn't follow all the procedures, it
16 was like, "Well, do the best you can to follow as many as you can."

17 And so I think, if I do recall, certain States -- it may have been Michigan -- that the
18 electors had to convene in a certain government location. And so as a result, I believe
19 there may have been a State official involved in trying to get them into -- if I'm thinking of
20 the right situation -- get them in there so, again, they could mimic the procedures, even
21 though they were not the electors that represented the will of the people of how the vote
22 was actually counted.

23 Ms. Lofgren. Thank you.

24 BY [REDACTED]

25 Q I know we're getting close to our hour. We have about 5 minutes left. I

1 want to end on asking about -- and can you just summarize for us the actions that Mr.
2 Trump took with Vice President Pence?

3 What did Donald Trump want Vice President Pence to do to overturn the election
4 results?

5 A Well, ultimately, he wanted him to just hand him the election, to say he won.
6 There were different proposals that President Trump and his co-conspirators put to Mike
7 Pence, but, in essence, he wanted Mike Pence to impose his own choice about who should
8 be President over the will of the American people who voted in the election.

9 Q Was one of those ways that Donald Trump tried to pressure Mr. Pence was to
10 reject the lawful elector certificates of their votes during the electoral counting process?
11 Was that one of the ways that you recall?

12 A That's correct.

13 Q How did Mr. Pence respond back to Mr. Trump's pressure about rejecting the
14 lawful elector certificates?

15 A I think Mike Pence, Vice President Mike Pence, falls into the category that I
16 described before. He did something that was very hard to do. He went against his party.
17 He paid a price for it.

18 But I think, again, someone like that, putting country over party, I think he would
19 have been an effective witness. He did not agree to go along with that.

20 Q Did you have the opportunity to interview Mr. Pence as part of your
21 investigation?

22 The Witness. So can we stop for one second?

23 [REDACTED] We'll go off the record.

24 [Discussion off the record.]

25 [REDACTED] We'll go back on the record at 3:27.

1 BY [REDACTED]

2 Q I'll repeat my question. Did you have the opportunity to interview Mr. Pence
3 as part of your investigation?

4 A I think the answer to that question might involve 6(e), and so I'm not going to
5 answer that.

6 Q Going back to the response that you just talked about with Mr. Pence's
7 response to President Trump's pressure, is this yet another example of evidence that
8 showed Mr. Trump knew or should have known that what he was saying to the American
9 public was false regarding the election of 2020?

10 A Yes. The Vice President was one -- and this is alleged in our indictment, in our
11 filings -- he was one of several people saying he was not seeing the outcome-determinative
12 fraud that Donald Trump was claiming.

13 Q And what would have happened if Vice President Pence would have gone along
14 and refused to count the lawful elector certificates?

15 A Well, thankfully, we don't know. But I would say that he -- he and the other
16 people who stood up and said, "I'm not going to do that," may have changed the course of
17 history in terms of our country of having an election where someone took power in our
18 country who didn't actually win the election.

19 So, as I said, I think it took a lot of courage on his part. He's also someone who, as
20 you all know, when the attack on the Capitol happened, he wouldn't leave. People wanted
21 him to leave. And I think, again, that reflects very well on him.

22 Q My last question: I know earlier, when you were talking to the majority, there
23 was this discussion of First Amendment issues with Mr. Trump talking about these false
24 claims of the election.

25 Do you remember that discussion?

1 A Yes.

2 Q And during our hour, we talked a lot about the knowledge that Mr. Trump had,
3 one, that he had lost the 2020 election; two, that what he was saying to the American public
4 was false about the 2020 election.

5 Can you help now bring us full circle on how you analyzed the First Amendment
6 claims with the knowledge of the fraud that Mr. Trump was putting out to the American
7 public in 2020 and 2021?

8 A Sure.

9 From a legal perspective, this is really quite clear. I think all of us want to make
10 sure people's First Amendment rights are not abridged in a way that they shouldn't be. I
11 think I certainly feel that way. I'm sure everybody in this room feels that way.

12 But there is a very clear carve-out for fraud in our case law. The Supreme Court -- I
13 think there's -- one case is the Stevens case, talks about that, and there are others.

14 And so when you're committing a fraud, meaning you're not just saying something
15 that's untrue, you're saying it knowing it's untrue or with reckless disregard for the truth,
16 that's not protected by the First Amendment.

17 People commit crimes all the time using words. And when someone commits a
18 fraud, an investment fraud, or someone commits an affinity fraud, where you try to gain
19 someone's trust, get them to trust you as a general matter, and then you rip them off, you
20 defraud them, that's all words, but it's not protected by the First Amendment.

21 And in a lot of ways this case was an affinity fraud. The President had people who
22 he had built up -- who had built up trust in him, including people in his own party, and he
23 preyed on that.

24 Some people wouldn't do it. Others would. We're lucky that enough wouldn't
25 that the election was upheld.

1 [REDACTED] Thank you.

2 With that, we'll go off the record at 3:30 p.m. eastern time.

3 [Recess.]

4 [REDACTED] We'll go back on the record.

5 I understand, Mr. Smith, you wanted to make some additional comments about the
6 exchange you had regarding your communications with the PADAG, Marshall Miller?

7 The Witness. Yes. Thank you. Chairman Jordan didn't ask me this directly, but I
8 just wanted to make sure it was clear on the record.

9 In the series of conversations that I had with Marshall Miller before I accepted the
10 position of special counsel, previous to discussing the idea of working on any of these
11 investigations, he did bring up the idea of me working on another case before that.

12 So that happened. And I ultimately declined to work on that case, and then the
13 other conversations happened after that. So I just wanted to put that on the record.

14 [REDACTED] Okay.

15 Chairman Jordan. A case not related to?

16 The Witness. Not related, correct.

17 BY [REDACTED]

18 Q At that point, were you ready to seek a new opportunity? You had been in
19 The Hague for some time. Were you looking for an opportunity to come back to the
20 United States?

21 A I really loved my work in The Hague. But for family reasons, if the right
22 opportunity happened -- I wasn't desperate to come back, but if the right opportunity
23 happened, I was willing to do that. That's one of the reasons I spoke to Mr. Miller.

24 Q Okay. At the end of the last round I asked you whether you had any
25 communications with the Michigan attorney general, Dana Nessel, and you said you did not.

1 A Yeah. I don't recall any.

2 Q And, to the best of your knowledge, you don't believe anyone on your staff was
3 having communications with the Michigan attorney general's office?

4 A Well, what I thought I said was I don't recall that. It may be that we've
5 gotten -- that we got inquiries from them. That may be possible. And it may be we
6 responded to those inquiries. I don't recall sharing information with them or getting
7 information from them.

8 Q Okay. But to the extent there's an allegation made that your office was
9 coordinating with State attorney general's offices to have prosecutions go on in -- different
10 prosecutions happen in the States, would you say that that did not happen and that would
11 be false if somebody made that allegation?

12 A We were not trying to coordinate prosecutions with other offices, no.

13 Q Okay. And you were not trying to encourage prosecutions at the State level?

14 A No. I don't recall anything like that.

15 Q Okay. And so the same can be said with the attorney general for the State of
16 Wisconsin, Josh Kaul. Did you have any communications with him?

17 A I've never spoken to Josh Kaul.

18 Q Okay.

19 A Again, we may have got inquiries from their office, and it could be by phone or
20 by a letter. I can't say that didn't happen.

21 Q Okay. And, to the best of your knowledge, your staff did not have a regular
22 set of communications with the Wisconsin attorney general's office?

23 A I don't know about regular. If there were requests or if there were people
24 who reached out to us, we may have spoken to them back. I don't recall with much
25 specificity anything about that. We definitely were not trying to coordinate a case with

1 them.

2 Q Okay. And the same -- can the same be said for the attorney general for
3 Nevada, Aaron Ford?

4 A I don't even know that name, Aaron Ford.

5 Again, I just want to be clear. This subject you're asking me about, about
6 interactions with State attorney general's office, this was not a focus of mine.

7 As the special counsel, I was focused on our cases, our investigations and our case,
8 and what we were doing in court in our investigations. This is the sort of thing that other
9 people in my office would have dealt with.

10 And so I'm probably not your best witness --

11 Q Okay.

12 A -- in terms of the level of interaction or witnesses. But I don't recall sharing
13 evidence with those offices.

14 Q Okay. But if your office did have meaningful coordination with a State
15 attorney general, you probably would know about it. Is that fair?

16 A Meaningful coordination. I don't know what that term means. But, like I
17 said, I'm trying to be as specific as I can, limited by my memory.

18 I don't recall us sharing information or sharing our files with attorney general's
19 offices. I don't remember -- recall them giving us their files, things of that nature.

20 Beyond that, the number of times an office may have reached out to us and how we
21 replied to that, I really don't have a recollection of those sort of subjects. I'm trying to be
22 as clear as I can.

23 Q Fair enough.

24 How about with outside Democrat -- Democratic lawyers, such as Norm Eisen? Did
25 you have any communications with Norm Eisen --

1 A No.

2 Q -- during the pendency of your investigation?

3 Do you know if anyone on your staff did?

4 A I don't know of anybody having such a communication, no.

5 Q Okay. And how about with Marc Elias? He is an election law attorney for
6 Democrats.

7 A No, I've never met him.

8 Q Okay. And, to the best of your knowledge, your staff wasn't communicating
9 with Mr. Elias?

10 A To the best of my knowledge, yes.

11 Q Same question, a gentlelady by the name of Mary McCord?

12 A Mary McCord I do know. I didn't know her well but I knew her from when -- I
13 had brief interactions with her. She was I think at the U.S. Attorney's Office in Washington,
14 D.C., while I was the chief of Public Integrity.

15 I don't recall having any interactions with her during the pendency of the
16 investigations. At the conclusion of the investigations one of my lawyers went to work at
17 her project at Georgetown, and I did speak to her about that.

18 Q Okay. And what is her project at Georgetown?

19 A It's some sort of clinic at Georgetown University. As I sit here right now, I
20 don't know the specifics.

21 Q But you didn't have any discussions with her about the facts of the case?

22 A No. My recollection, that may have been the first time her and I have ever
23 actually had a conversation, her and I talking to each other.

24 Q Okay.

25 A But we definitely didn't talk about the case while it was being prosecuted and

1 investigated.

2 Q Okay. We've discussed -- both sides, I think, have raised the fact that
3 President Trump was -- he was being prosecuted by a lot of different tribunals at the same
4 time. He had the district attorney of New York. He had a civil case with the attorney
5 general for the State of New York. He had two Federal cases.

6 And, you know, I had asked you about how you managed the calendar and the
7 calendar with President Trump. I mean, there were times when he was required to be in
8 New York three or four days of the week, and then he had to be in Florida for -- I think we
9 discussed at the end of our last round -- for a pretrial motion hearing.

10 And it just seems that at every instance when President Trump and his lawyers
11 requested a little bit of a delay because of the cases they were defending, your office was
12 not willing to indulge that request.

13 A It is correct that we were not willing to indulge delays that we thought were
14 inappropriate.

15 I will add -- and this is in the litigation -- there were numerous instances where
16 judges chided counsel for President Trump for trying to delay things.

17 I'm thinking, as I'm stating it now, I'm thinking specifically of the executive privilege
18 litigation that we had -- and this is referenced in our final report -- of him attempting to
19 delay things.

20 And so we agreed to dates that we thought were appropriate. All of that, as far as
21 I'm concerned, was very public and transparent, what the dates were, and the arguments to
22 the judges about those dates were clear, and I thought they were fair and reasonable.

23 Q Even against the backdrop that he was being tried by the district attorney of
24 New York, and even against the backdrop that he was involved in a high-stakes proceeding
25 with the New York attorney general?

1 A Yes.

2 Q For example, at the time you proposed the D.C. schedule, you were also aware
3 that Georgia prosecutors had proposed motions hearings, you know, essentially during the
4 same time period.

5 If President Trump's lawyers had requested a delay for that, would you have
6 indulged that, or did you indulge that if they did ask for it?

7 A I don't recall if they asked for a delay. And to consider whether I would
8 indulge that, I would have to be back in that moment and look at the facts as they existed at
9 that time. I don't recall that as I sit here now.

10 Q President Trump complained that he was treated unfairly with respect to
11 access to the classified information that was at the heart of the Florida case, that he wasn't
12 able to review the materials at the heart of the trial because of restrictions imposed by the
13 government that required him to only review the materials, you know, on your turf.

14 Is that something that your office did intentionally?

15 A I think this may be one of those subjects that may be in the final report in
16 Florida. So I don't think I can get into that.

17 Q Okay.

18 A I'm not sure it is but it may be, and I just want to exercise caution.

19 Q Okay. So I have some questions along this line. If that's going to be your
20 answer, I understand that. So I'll just --

21 A If you can point to a public filing where this has been discussed, I'm happy to
22 comment on the subject in a public filing, because I think my understanding is it's pretty
23 clear that I am allowed to discuss public filings. And so if there is a public filing you're
24 aware of, I'm happy to --

25 Q Yeah.

1 A -- to address that to the extent I can recall it.

2 Q Okay.

3 A I want to answer your questions as much as I can. I just don't want to run
4 afoul of this injunction.

5 Q The heart of the question is, you know, he had a SCIF at Mar-a-Lago that was
6 decommissioned when he was no longer President, but during the pendency of the case it
7 would have been relatively easy for him to get that SCIF at Mar-a-Lago back up and running.

8 And, you know, he indicates that your office blocked that and required him to only
9 look at the classified documents, only talk with his attorneys about the content of the
10 classified documents in a DOJ SCIF. And that puts, you know, a remarkable burden on him,
11 especially given all the other cases that he was defending.

12 A So if there is a public filing about this, I am happy to discuss this with you. I
13 just want to make sure that there's a public filing so I'm not running afoul of anything in the
14 injunction.

15 Q Okay. Let's see if we can get it quickly. If not, we can move on.

16 A Of course.

17 Q Maybe we'll move on --

18 A Yeah, and then we can come back.

19 Q -- and we'll come back to it.

20 After the immunity determination at the Supreme Court was decided in July of 2024,
21 you filed a remarkably long brief in September of 2024, I think it was, like, 165 pages, and,
22 you know, the brief was very, very unusual in terms of length and content.

23 What can you tell us about your decision to proceed with that type of meaty brief?
24 It's almost as if you were writing your, you know, special counsel report in that brief.

25 A Sure. So as an initial matter, I think the vast amount of the factual material in

1 that brief was not new. It was just put in there to address the issues at hand.

2 The context of this is we received this immunity decision. The immunity decision
3 affected not only the indictment, it affected the evidence we could use at trial.

4 And so for there to be a litigation of this, the defense would have to know the
5 evidence at trial. We would have to say this is the indictment and here's the other
6 evidence that we're going to use at trial, in summary at least.

7 We all understood, at least certainly I did, that this case was going to go up to the
8 Supreme Court at least one more time for an interpretation of a lot of the questions that the
9 Supreme Court left open, which we address in the final report.

10 Our goal was to have that be one time and to have the evidence and the indictment,
11 get rulings from the court. If the defense didn't like them, they would get to appeal them.
12 That would go up to the Supreme Court. We'd get a final understanding. And then we'd
13 be back before the court to try the case.

14 And so to do that in one trip as opposed to multiple trips -- and multiple trips could
15 mean years in terms of how long it would take to try a case -- that required us to go first, to,
16 in essence, put this there.

17 And I said this earlier in the day to you. One of the challenges in this case is we
18 had, in my view, a very strong case with a lot of evidence, and trying to condense that into a
19 brief at that stage where we were not going to be precluded from offering things that we
20 thought were important, that could possibly be relevant to any of the immunity issues, but
21 also have a fulsome brief, that's what we filed. It was my judgment that that was what was
22 necessary.

23 And I think, again, if you look at that brief, the vast majority of factual information in
24 that brief had been in the public or something close to it in the past.

25 Chairman Jordan. Required you to go first or you chose to go first? Because the

1 normal case is you file a -- my understanding, you file a superseding indictment. The
2 defense is going to make some motion. They're going to have some reaction to that.
3 And then you would do a brief. But you flipped it.

4 The Witness. Well, because in this particular case we had a -- the opinion that
5 caused us to supersede the indictment, the court said not only what's in the indictment but
6 the evidence too.

7 And there had never been a point at that point where we had put on the table:
8 Here's all the evidence that might be related to immunity. And so we needed to do that.
9 Otherwise, the defense couldn't respond to it.

10 What would have happened would be we file a brief of our trial evidence -- of our
11 indictment -- they say no or not. Then that goes all the way up to the Supreme Court.
12 Then we come back from the Supreme Court. Now we're going to do a second year --

13 Chairman Jordan. Just to change the question, Mr. Smith.

14 The Witness. I'm sorry.

15 Chairman Jordan. Was it required or did you choose it?

16 The Witness. I believe that was the most appropriate way to go forward, yes.

17 Chairman Jordan. That's not my question. Was it required or did you choose to
18 go that route?

19 The Witness. Oh, I chose it.

20 Chairman Jordan. Okay.

21 The Witness. But I'm sorry that -- I wanted to explain the reasons why I chose it.

22 BY [REDACTED]

23 Q And did you have to file a motion with the judge for leave to offer that type of
24 filing?

25 A We had a status conference with the judge shortly after the return of the

1 superseding indictment, and we proposed -- my choice -- that sequence. But we left it to
2 the judge to decide the timing of that sequence, of when our brief would be due.

3 Q And what was the timing of that sequence, to the extent you can recall?

4 A I'm happy to venture a guess, but there's a public record of this. I want to say
5 it was two to three weeks we were given to write our brief, but trust the record instead of
6 my memory on that.

7 Q And so the brief was filed right at the beginning of October, I think, or the end
8 of September?

9 A Whatever the record shows.

10 Q And the election was just weeks away, correct?

11 A The election was November 3rd?

12 Q Yes.

13 A Yes.

14 Q Did you have any communications amongst your staff that this presented
15 potentially a problem with the Justice Department's election year sensitivities guidelines?

16 A So when we got the immunity decision we had a series of decisions to make.
17 The first was to look at our evidence and see: Do we still have a case here? Do we still
18 have admissible evidence that would allow us to proceed at trial? So that's what we did
19 first.

20 Once we determined that we did have that evidence, the next thing we determined
21 is, do we need to supersede the indictment. And because there was evidence before the
22 grand jury that the Supreme Court had clearly said was immune, we determined that we
23 needed to supersede the indictment.

24 Once -- and, I'm sorry, I'm being long, but I think the context will help.

25 Q That's okay.

1 A Once we determined that, we had to make sure that our conduct in going
2 forward with an indictment and everything after complied with the election year
3 sensitivities policy.

4 And to do that, we consulted with Public Integrity on drafts of the indictment, on our
5 plan forward. And as we set forth in the final report, PIN concurred that we had complied
6 with that policy.

7 And I would just add that policy is -- does not stop prosecutors from trying their
8 cases in court.

9 Q Okay. Did you or anyone in your office discuss the potential political or
10 electoral impact of publicly filing that amount of information, you know, just with the
11 election a month out?

12 A My focus was on making sure we complied with the election year sensitivities
13 policy, which is the way the Department addresses those issues.

14 Q Okay. And so -- I mean, the whole purpose behind the policy is not to
15 interfere with elections, right?

16 A Correct.

17 Q And so the way the policy is written, I guess, is that as long as you have filed
18 your case and as long as you're already in court, then there's no limitations on the types of
19 court filings you can make. Is that right?

20 A Well, I will say -- and, as you know, I was the chief of Public
21 Integrity -- historically, I can't think -- I don't recall any cases where it ever applied to
22 anything. It was really about investigative steps, you know, doing a search warrant or
23 taking investigative steps before an election.

24 But this is one of those issues where this is why you consult with Public Integrity,
25 because they're now the keepers of that policy. And so we consulted with them about the

1 path we took, and they agreed that what we ended up doing did comply with the rules.

2 Q I mean, after you left Public Integrity, you know, there was a February 2020
3 memo from Attorney General Barr, and Attorney General Garland, in effect, re-upped Barr's
4 memo with his own election sensitivities memo. I think he incorporated it by reference, in
5 fact.

6 A Yeah.

7 Q And this is against the backdrop that a lot of what happened during the 2016
8 election caused a lot of concern that what happened at FBI, what happened with, you know,
9 both the Crossfire Hurricane investigation and the Midyear Exam investigation may have
10 affected the outcome of the 2016 election, correct?

11 A I'm not saying that's wrong. I'm not sure I followed that closely.

12 Q Okay. I mean, you're aware of the concerns of the Justice Department, you
13 know, in the fallout of the Crossfire Hurricane investigation?

14 A I don't think the election year sensitivities policy was born out of that. I think
15 it's existed for a long time and in kind of the same format for a long time. And I know the
16 last person to sort of restate it was Attorney General Garland, who I think did it shortly
17 before I was appointed, if my recollection is correct.

18 Q But he incorporated by reference, you know, Attorney General Barr's memo
19 from 2020. And Attorney General Barr, you know, his memo was in the fallout -- you
20 know, was in the wake of everything that happened with the Steele dossier, what happened
21 with Crossfire Hurricane, and so forth.

22 And so the question is, your 165-page brief a month out from the election, you
23 know, it seems from an outsider's perspective that that runs, you know, runs the risk of, you
24 know, impacting the outcome of the election.

25 A Yeah. We certainly were not in any way intending to affect the outcome of

1 the election. And to make sure we complied with the policy, we met with Public Integrity
2 to make sure we were doing that.

3 They agreed. And they're the ones who enforce that policy. And so I felt
4 comfortable taking the course that we did going forward.

5 Q Did your office ever consider some of the things that happened to President
6 Trump, you know, in the 2016 election, with the Steele dossier, with, you know, using the
7 Steele dossier to get, you know, FISA warrants?

8 Did you ever discuss any of that as, you know, background, that we need to be
9 careful here with President Trump that we don't, you know, repeat some of the things the
10 Justice Department went afoul of in 2016?

11 A I don't recall ever discussing the Steele dossier or anything like that with my
12 staff. I don't recall that.

13 Q And, you know, I know Justice Department officials often like to say that, "Hey,
14 everyone at the Justice Department is nonpartisan, apolitical. They check their politics at
15 the door." And I think you would say that that is the case with everybody on your team,
16 correct?

17 A I would say that that has been my experience in the Justice Department
18 through both Democratic and Republican administrations. I've worked in the Department
19 through both, and that has been my experience.

20 Q And, you know, we learned in the fallout of the 2016 -- in the events of the
21 2016 timeframe that, you know, there's Peter Strzok and Lisa Page. And, you know, I think
22 we can all agree they were not apolitical and nonpartisan. They were, you know, very
23 clearly, as their text message traffic, you know, bears out, they were, you know, very
24 interested in preventing President Trump from becoming President.

25 Is that something that you were aware of?

1 A I was aware factually of that, yes.

2 Q Right. And can you agree that, you know, as the text message traffic bears
3 out, those two officials were not nonpartisan and apolitical?

4 A Well, I certainly agreed with Director Mueller's choice to move them off the
5 team once he discovered those, absolutely.

6 Q And did you ever have any discussions with your senior management to make
7 sure that your team wasn't infected by any of those types of issues?

8 A Yes, I did.

9 Q Okay. And can you tell us about that?

10 A So I made it clear from the day that I began at the Special Counsel's Office this
11 was going to be a nonpartisan investigation, this was not -- that politics would play no role in
12 it. I think everybody in my office agreed to that.

13 I can tell you of one incident where we were reviewing the email chains of agents
14 who might be witnesses in the case, so a Giglio review, and we needed them to give us all
15 their emails.

16 An FBI agent who was working on the case took that direction and actually provided
17 us with his private emails with his family. We didn't ask for that. But he gave us his
18 private emails.

19 In one of those emails -- and I can't remember if I saw this or my deputy saw
20 this -- he was having a dispute with family members where it was about January 6th.

21 Once I saw that or heard about that, I decided he could no longer work on this
22 investigation. And I think that was consistent with how I ran the office.

23 And I'll just -- I want to also be clear. I never saw that agent do anything that I
24 considered partisan. But just to make 100 percent clear to my staff -- and I don't -- this is
25 an agent who volunteered this beyond what was required -- I wanted to make it very clear

1 that anything like that was not going to be part of our investigation.

2 Q The 165-page brief that you filed at the beginning of October, did you
3 ever -- was there any consideration of maybe filing it under seal, at least until the election
4 was over?

5 A Well --

6 Q Obviously, you have to go to the court and all parties would have to agree, but
7 certainly if all parties agreed, the judge would be amenable.

8 A I feel like this came up in the status conference that we had. I can't recall.

9 What I can recall, though, now that you're reminding me, is there was an issue -- and
10 this is referenced in our final report -- where we filed our brief. They were given time to
11 file their brief. They wanted more time, which would put their brief after the election.

12 We had our exhibits, which were really the evidence, you know, that we were citing.
13 That evidence, they made a motion that that evidence, the key facts, should be filed under
14 seal.

15 And they, before filing their motion -- usually the practice is to ask opposing counsel,
16 "What's your position about this?" -- but they filed their motion before they could get our
17 position.

18 And so we contacted the court and we said that we had no objection to that
19 evidence being filed under seal if the court agreed.

20 Now, the court ultimately did not agree. And so -- and this is referenced in the
21 footnote in our report -- I think that that is pretty direct evidence that we were not seeking
22 to put the maximum amount of facts in the public record, that we were happy to have that
23 be under seal and even after the election if that's what the court agreed.

24 Q Okay. But you could have sought permission to file that big brief under seal,
25 right?

1 A I suppose we could have. And, again, this is where my memory is escaping
2 me. I feel like this issue was possibly discussed with the court. And I think the record of
3 any briefing on this and what the court said will be better than my memory about this.

4 Q Okay. Did you think it was important that that evidence be in the public
5 realm before the election so, you know, people could make up their mind about who they
6 were going to vote for?

7 A No, I did not see it as our role to provide evidence for people to make their
8 voting decisions on.

9 If I could just to -- the final report, on page 107, footnote 258, on the 17th of
10 October, Mr. Trump filed a motion to delay public disclosure of our appendix to the brief,
11 meaning the actual evidence.

12 Q I'm sorry, say that page again.

13 A Yeah, sure. It's 107. I'll let you get to it, 107, footnote 258.

14 Q Got it.

15 A They filed a motion to delay the appendix, meaning the evidence, until after he
16 filed his own appendix, which would have been November 14th, well after the election.

17 Q Yeah.

18 A So that both appendices will be released simultaneously after the election.

19 He filed that motion before obtaining our position. So we emailed the court's
20 chambers, copying defense, informing the court that we did not object to that procedure.

1 [4:04 p.m.]

2 BY [REDACTED]

3 Q Okay.

4 A We did not object to our evidence being, in essence, embargoed from the
5 public until after the election. So again --

6 Q Okay.

7 A -- I think there's pretty strong evidence that we were not trying to --
8 Chairman Jordan. Notwithstanding the fact that it was a 165-page brief that you
9 sent.

10 The Witness. It was.

11 Chairman Jordan. And that's, in my understanding, that's -- first of all, you choose
12 to do it, 165 pages, and I think that's four times the size of normal briefs that are supposed
13 to happen with these type of motions, and I believe the judge said this was not typical. Is
14 that right?

15 The Witness. Yes, but --

16 Chairman Jordan. Judge Chutkan said it was not typical?

17 The Witness. She used a word like that, but I would just say when you say these
18 type of motions, I think filing a brief after an immunity decision is not a common issue and
19 having to have a new evidentiary issue added to the mix in addition to an immunity issue.

20 Chairman Jordan. Is there any new evidence in the 165-page brief?

21 The Witness. I'm sure there was, but, as I said, my recollection is the majority of
22 the evidence was already public. The brief emphasized how we could prove our case using
23 evidence of his role as a candidate as opposed to evidence that might otherwise be
24 precluded by the official acts.

25 So, for example, a thing in the brief would be that at least two of the White House

1 staff members who would have been witnesses, that they also were also working on the
2 campaign. And so not a particularly important fact in the world, but important for our
3 particular brief. So there were facts like that and others that were new that were in the
4 brief.

5 Chairman Jordan. I just want to summarize. You choose to do this. It's not
6 required. You go out of the normal order. So that's different. It's four times the size of
7 the brief that the court wants you to file, 45 pages, and you do 165 pages. The judge
8 herself said it was atypical. You introduced new evidence that is public, and you do this
9 32 days before the election and public integrity said that was just fine.

10 The Witness. They agreed that our course was consistent and in compliance with
11 the election --

12 Chairman Jordan. The same public integrity that said that all the toll analysis was
13 just fine. Okay. Thanks.

14 BY [REDACTED]

15 Q Were you, during the pendency of the investigation, were you aware that at
16 the Capitol on January 6, FBI had confidential human sources?

17 A I'm sure I probably was. I think there was public reporting on that.

18 Q But did you know that also as a part of your -- as part of your work?

19 A I'm sure, yeah.

20 Q Okay. And do you know how many there were?

21 A As I sit here now, I can't recall. I know there was an Office of Inspector
22 General report about this, that there were no undercover officers there, as had been
23 reported, but there were informants there, some who had gone on their own.

24 Q And did your office oppose President Trump's discovery request for
25 information related to the confidential human sources?

1 A I would have to look at our filings on that.

2 Q Okay.

3 As we understand it, your office did oppose that and said any such information is not
4 relevant to the charged conduct, or as a valid defense in the case, and so, consequently, you
5 were not in favor of that. Does that ring any -- refresh your recollection at all?

6 A I'm not disputing what you're saying. I haven't read the filing. What I recall
7 is there was also a database of evidence from January 6 that D.C. U.S. Attorney's Office
8 would give access to, to defend those who were involved in those cases, and we gave
9 President Trump and his attorneys access to that. I'm not sure they ever accessed it, but I
10 do recall that, and there may have been a filing like you talked about.

11 Q Okay.

12 The next exhibit will be number 12.

13 [Smith Exhibit No. 12

14 was marked for identification.]

15 BY [REDACTED]

16 Q And this is a letter from Stanley Woodward, Stan Brand, about interactions
17 they had with Jay Bratt on August 24, 2022, before you were appointed special counsel.
18 Are you familiar with the allegations that Mr. Woodward raised about Mr. Bratt?

19 A Yes.

20 Q I'm going to refer you to the two paragraphs in this letter. The first paragraph
21 is the last one on page 1, and the second paragraph on page 2. And, please, you know,
22 familiarize yourself with this, but I just wanted to flag it in advance that I'm going to zero
23 your attention in on those two paragraphs.

24 A Yes.

25 Q Okay.

1 This letter to Judge Boasberg from Brand and Woodward states that the -- again, this
2 is the last paragraph on page 1: "Despite the purported purpose of the meeting, it began
3 with Department attorney Jay Bratt referencing a folder of materials in highlighting
4 Mr. Woodward's professional background. Specifically, Mr. Bratt remarked that he was
5 aware of the fact that Mr. Woodward had been recommended for a Presidential nomination
6 to the Superior Court of the District of Columbia.

7 "Mr. Bratt also advised that the government's case against Mr. Nauta was strong,
8 referencing his belief that one way or the other, Mr. Nauta would be giving up a lifestyle of
9 private planes and private golf courses, and that it would behoove him, Mr. Nauta, to
10 cooperate in the government's investigation.

11 "It was inappropriate for Mr. Bratt to mention the fact that Mr. Woodward had been
12 recommended for a Presidential nomination to the Superior Court of the District of
13 Columbia. The only rational inference to be drawn from this reference, combined with the
14 assertion that the government's case against Mr. Nauta was strong and that Mr. Woodward
15 was not a so-called Trump attorney who would do the right thing, is that somehow
16 Mr. Woodward's potential nomination to the Superior Court would be implicated by
17 Mr. Nauta's decision not to cooperate in the government's investigation.

18 "Indeed, to the best of Mr. Woodward's recollection, Mr. Bratt concluded his
19 observations with words to the effect of, I wouldn't want you to do anything to mess that
20 up, referring to the potential nomination. It is, of course, noteworthy that the statements
21 giving rise to this inference were coming from a senior official with the Justice Department."

22 I asked you whether you had a recollection of these events, and you said you did.

23 A I do.

24 Q Do you think it was inappropriate for Mr. Bratt to make a suggestion to
25 Mr. Woodward that, you know, he ought to cooperate, and if he does cooperate, if

1 Mr. Nauta chooses to cooperate, that the implication was that his application to be, you
2 know, a judge, would be looked on more favorably by the Democrats at the Justice
3 Department?

4 A I don't think that happened, but I'm happy to share with you my perspective on
5 this.

6 Q Okay.

7 A So --

8 Q And let me just say one thing if I may.

9 A Sure.

10 Q You know, these judges for the District of Columbia, I mean, the Justice
11 Department weighs in on it. Is that not the case? I mean, the White House counsel's
12 office, you know, works to come up with the names they're going to submit for nomination,
13 but the way the procedure works is the Justice Department, you know, does the vetting.

14 A I don't think I knew that until this issue came up --

15 Q Okay.

16 A -- which I'm, again, happy to explain. So -- with the District of Columbia
17 particularly.

18 Q Right. Okay.

19 A So a very short time before this, a matter of days, this is right around the time
20 we had given notice that we intended to move forward with an indictment in the classified
21 documents case of both Mr. Trump, President Trump, and Mr. Nauta. As is my practice in
22 cases like this, we gave Mr. Trump's attorneys an opportunity to come in and give me
23 arguments as to why not to indict the case. In the course of my life, I've heard those
24 arguments and sometimes not moved forward on cases.

25 In this particular situation, because my decision would ultimately be reviewed by the

1 Attorney General who could countermand it, that meeting was with me and Bradley
2 Weinsheimer, who was in the Justice Department. Mr. Trump's attorneys were there. It
3 was Jim Trusty, Lindsey Halligan, and there was a third attorney who I can't remember, but
4 I'm sure there's a record of who that was.

5 They gave reasons why they thought the case shouldn't be indicted, and for the first
6 time, this is my recollection, they raised this issue that somehow Jay Bratt had threatened
7 Stanley Woodward. Now, I was surprised by this because we had interacted -- I hadn't, but
8 my counsel had interacted with Mr. Woodward numerous times over my time as special
9 counsel. He not only represented Walt Nauta, he represented other witnesses on the
10 classified documents case. He represented, I believe, multiple people in the elections case.
11 And so all this time passing, this has never been raised before?

12 I went back to my office. That meeting was at the Main Justice building. I went
13 back to my office, and very shortly afterward I informed my deputy, J.P. Cooney about this
14 and Ray Hulser about this. They contacted Mr. Woodward to ask him about this. I
15 believe there are notes about that, notes of either J.P. Cooney or Ray Hulser. I'm not sure.

16 My recollection of that, and, again, they would remember this better, is that
17 Mr. Woodward expressed surprise that anybody had raised this, and he said something to
18 the effect of, "Well, I know how to make a complaint if I want to. Take that for what you
19 will." That was the initial response.

20 Q What day was this or timeframe, generally?

21 A Like early June.

22 Q Okay.

23 A So like before the meeting on -- with the attorneys was in the days before we
24 ultimately went forward with the case. I'm not sure how late this letter was after this
25 when I came back to the office. I tasked Mr. Cooney and Mr. Hulser to speak to the people

1 who were present for this meeting. None of them believed that Jay Bratt would threaten
2 Mr. Woodward. It didn't make a lot of sense that a career prosecutor would in a first
3 meeting with a counsel they never met threaten them.

4 One of the things they asked about was this issue about the judicial nominating
5 thing, and Mr. Bratt explained that he had not met Mr. Woodward before, not had a case
6 with him. So he had looked him up, and when you pull up information about
7 Mr. Woodward at the time, there's a page that comes up, and we attached this in one of our
8 motions, that says Stanley Woodward, judicial nominating commission. That page makes it
9 looks like he is on, at least if you look at it quickly, on the judicial nominating commission,
10 not that he has a candidacy.

11 Mr. Bratt explained to us that he was under the impression that Mr. Woodward was
12 on the commission and raised it as a sort of like an icebreaker, like I understand you're on
13 this commission.

14 Now, whether Mr. Woodward misunderstood that or some other reason, here he
15 says he drew an inference that he was making some sort of threat. That didn't make a lot
16 of sense to me given all the interactions he had with our office. I think Mr. Woodward
17 later started talking about a campaign against him, but he had meetings with people in my
18 office repeatedly in positive ways.

19 And finally, I also thought it was noteworthy that Mr. Woodward didn't bring up this
20 issue for many months, and then the first time that he brings it up in this letter, he's doing it
21 to seek strategic advantage, because he didn't report it to OPR, didn't want it reported to
22 OPR, never asked that, and now he wants it not only reported to OPR, but he actually wants
23 to delay the indictment of the case until that's concluded.

24 I will say that when we confronted -- I say "we." My deputies spoke to Mr. Bratt
25 about this. He self-reported it to the OPR, which is pretty standard in these sort of

1 situations, and so -- and I would also just say this was some time ago. We did a filing on
2 this that I believe is public, and that filing will reflect my best recollection of these things.

3 And so I did not credit these allegations, but we made sure they were referred to
4 OPR.

5 Q But, you know, a counterpoint to that is, if Woodward has a bunch of cases
6 before your office and he's representing a bunch of people, I mean, he may have felt
7 threaten, but he also may have felt that it was in his strategic advantage to just try to forget
8 about it because he doesn't want to make an enemy of Jay Bratt. I mean, isn't that a fair
9 counterpoint?

10 A I don't think so, based on the number of interactions we had with him, and also
11 the fact that he didn't even bring it up. Someone else brought it up, and when he
12 was -- again, I was told when he was confronted with it, he was surprised someone brought
13 it up and made a reference that I know how to make a complaint if I need to. That was my
14 recollection.

15 And then when he did make the complaint, he didn't just say I think this should be
16 referred to OPR, he said -- and it may be in this letter that, yes, I think that this -- let me
17 make sure I get the language correct. Yes. We respectfully suggest that this matter be
18 referred to the Department's Office of Professional Responsibility for a thorough
19 investigation and that any indictment arising from this investigation not lie until such an
20 assessment is reached. Knowing, as we do, that an OPR investigation can take many, many
21 months.

22 So that's my take on what happened, and I think our office responded appropriately
23 to this. I don't credit it, but at the same time, we referred it to OPR so they could look into
24 it.

25 Q So if it did happen the way Mr. Woodward on Mr. Brand say it did, you would

1 have an issue with that then. Is that fair?

2 A I have no evidence that any of my prosecutors threatened defense attorneys.
3 If prosecutors under my supervision threatened defense attorneys, they wouldn't be
4 working with me any longer.

5 Q Okay.

6 You know, Woodward here is talking about, essentially, a veil threat that, you know,
7 he believes, you know, Bratt was mentioning this off the cuff to try to get him to play ball
8 with Nauta's cooperation. So if that had happened, you certainly wouldn't condone that,
9 would you?

10 A I would not condone anyone threatening a defense attorney, but I also say that
11 if you've practiced law and practiced criminal law, I mean, that's just not something that
12 would work. I mean, that's not something that I've seen an experienced a prosecutor do.
13 And to do it in front of several other prosecutors, in addition to for all the reasons I said I
14 didn't credit it, I also think it just didn't make a lot of sense.

15 But to your point, if, unlike this situation, unlike this situation, a lawyer who worked
16 under me threatened a defense attorney, yes, that would be inappropriate.

17 Q During the last hour, turning the page here to a different topic, you said that
18 you had not yet considered a sentencing recommendation had President Trump been found
19 guilty in either one of the cases. I mean, do you think that you would have recommended
20 a jail sentence, prison sentence if he was convicted?

21 A I'm not going to speculate on that because that would require a very detailed
22 analysis of the sentencing guidelines factors, of what he was convicted of, of any mitigating
23 factors. That's not something you do off the cuff whether someone should be incarcerated
24 or not or how long. That's not something I would do without significant analysis.

25 Q And had your office undertaken any type of analysis on that front?

1 A You mean in terms of a thorough analysis? I don't recall anything like that.
2 I'm sure that we knew how much the sentence could be in each individual thing, but I
3 certainly had not turned to thinking about what sentences should be. As a rule, I don't do
4 that until there is a conviction in the case.

5 Q Okay. But what would the sentence have been for the charges that you
6 indicted for?

7 A I'm not going to speculate. I mean, if we sat down and went over the
8 sentencing guidelines, we could talk about what that would be, but I have not done that
9 analysis, and I haven't thought or looked at or thought about that issue.

10 Q Would that analysis have yielded some jail time or a recommendation for some
11 jail time?

12 A Again, I'm not going to speculate on that because, as I mentioned earlier, you
13 only get to that if you try your case and you prove it beyond a reasonable doubt. We did
14 not do that in this case. There was no trial, and we didn't do that.

15 Q Do we have any members here? We only have a couple minutes left in our
16 round, so I was just making sure we didn't. If we had some members here that needed to
17 ask you some questions, I wanted to make sure we factored that in.

18 The individual who worked for Mark Meadows by the name of Cassidy Hutchinson
19 was a -- you know, she was a star witness for the January 6 Committee proceedings, and she
20 made some real outlandish claims that -- you know, for example, one of them was that
21 President Trump tried to take control of the wheel of the Suburban that he was being driven
22 in. Is that an allegation that you're familiar with?

23 A The circumstances regarding President Trump getting in the Secret Service
24 vehicle after the ellipse speech, yes, I am.

25 Q Okay. And what did your office's -- you know, did you evaluate that claim?

1 A We did.

2 Q Okay. And what was your determination?

3 A Ms. Hutchinson, regarding that particular claim, was a second or even
4 third-hand witness. She had heard other people talk about that.

5 Q Okay.

6 A And so we went to -- we interviewed, I think, the people she talked to, and we
7 also interviewed, if my recollection is correct, officers who were there, including the officer
8 who was in the car.

9 Q Right.

10 A And that officer, if my recollection is correct, and I want to make sure I'm right
11 about this, said that President Trump was very angry and wanted to go to the Capitol, but
12 the version of events that he explained was not the same as what Cassidy Hutchinson said
13 she heard from somebody secondhand. That's correct.

14 Q Okay.

15 On the morning of January 6, White House officials told President Trump that people
16 at the rally had weapons -- this is President Trump's speech on the Ellipse -- and that they
17 did not want to go through magnetometers because they didn't want their weapons
18 confiscated.

19 Cassidy Hutchinson initially testified that no one informed President Trump before or
20 during the rally that people did not want to pass through the magnetometers because they
21 didn't want their weapons confiscated.

22 During a subsequent interview, she sort of changed her tune a little bit and claimed
23 that deputy chief of staff for operations, Tony Ornato and other officials, did inform
24 President Trump that people standing outside the rally area did not want to go through the
25 magnetometers because they did not want their weapons confiscated.

1 Other witnesses contradicted this claim pretty thoroughly. Did your office evaluate
2 that claim?

3 A Yes. And I think I discussed this earlier. We interviewed a number of
4 people, and I think on this particular claim there were a number of different perspectives
5 about that. I believe it was Ms. Hutchinson, Mr. Ornato. I believe Mr. Meadows we
6 spoke to about this. As I sit here right now, I cannot recall what each of them said. I
7 know each of them were seeing it from a different perspective, and they were with
8 Mr. Trump at slightly different times.

9 So as I sit here now, I can't recall, but I do recall that there were different
10 perspectives on that question, yes.

11 Q Okay. Did your office consider whether you would call Cassidy Hutchinson as
12 a witness at trial?

13 A We did not make -- we didn't make a final determination about any witnesses,
14 but my recollection as I sit here now is that one of the issues -- there were two issues, really.
15 One, there were so many witnesses that we could have called, and there was a need, if we
16 wanted to present a case in a digestible format where there wasn't just weeks and weeks
17 and weeks of testimony, we had to slim it down.

18 And my recollection with Ms. Hutchinson, at least one of the issues was a number of
19 the things that she gave evidence on were secondhand hearsay, were things that she had
20 heard from other people and, as a result, that testimony may or may not be admissible, and
21 it certainly wouldn't be as powerful as firsthand testimony.

22 So I don't recall if we made a final determination about that, but I remember in my
23 mind that being the consideration, that some of the things that she could offer testimony on
24 would be hearsay, and we wanted to condense the case as much as possible for a clear
25 presentation.

1 Q Did you reach a determination about whether her testimony was reliable?

2 A I don't recall reaching any sort of conclusion like that because we were, again,
3 far away from trial. We hadn't made final determinations.

4 Q If you were a defense attorney and you were given the assignment of
5 cross-examining Ms. Hutchinson, would you consider that assignment a very challenging
6 one?

7 A Well, if I were a defense attorney and Ms. Hutchinson were a witness, the first
8 thing I would do was seek to preclude some of her testimony because it was hearsay, and I
9 don't have the full range of her testimony in front of me right now, but I do remember that
10 that was a decent part of it, and so that would have been my first gambit if I was a defense
11 attorney.

12 Q There was other evidence where she said she wrote a note, whether it was to
13 Mr. Meadows or Mr. Trump, but it wasn't her handwriting. Eric Hirschmann wrote the
14 note.

15 A Yes. There was a conflict between them on that issue. That's correct.

16 Q A witness says I wrote a note, that's my handwriting, I mean, that's a pretty
17 serious, potentially false statement, correct?

18 A Well, like I said, we didn't make any final determinations about who we were
19 going to call or not, but there were instances, you cited a couple, where we had evidence,
20 we had different perspectives about an issue. We had secondhand hearsay about an issue
21 or two witnesses not remembering something the same way. So those are all accurate.

22 Q Was your office -- let me restate and just say that numerous witnesses that
23 were ensnared by the investigation complained that they were debanked. Does the term
24 debank mean something to you?

25 A No.

1 Q Where they're basically told by their bank that they need to go find a different
2 bank. And there is a long list of, you know, Trump allied, you know, officials that were
3 subpoenaed for the grand jury, that were, you know, brought into your investigation that
4 claim they had been debanked and that Capital One told them to go find a different bank
5 and numerous other banks.

6 Do you know anything about that?

7 A No, I do not.

8 Q Okay. So your office didn't have any communications with banks urging a
9 bank to separate from any of their customers?

10 A I have no knowledge of that.

11 Q Are you aware of that allegations, or is this the first you're hearing of it?

12 A I'm trying to think. I didn't know what the term meant when you first said it,
13 so, I mean, in the scheme of the world, have I heard of the word debanking? Maybe. But
14 if you'd asked me to define it when you first said it, I don't think I could have.

15 Q Okay. But have you -- so you haven't heard that allegation that some of the
16 folks in President Trump's inner circle have complained that they, you know, were kicked
17 out of their bank?

18 A Complained to the special counsel's office?

19 Q No, they've complained publicly that, you know, the fallout from this
20 investigation has made their life very difficult, that they have been, you know, forced to get
21 a new bank because, you know, Capital One won't support them.

22 A I don't recall that but I'm not denying that people may have said that. I'm just
23 not aware of it.

24 Q Okay. This is sort of the first you're hearing of it?

25 A As far as I can recollect, yes.

1 Q Okay.

2 A Well, actually, sir, can I just add one thing there?

3 Q Of course.

4 A When you were interacting with my counsel and talking about the issues you
5 might ask about, you said debanking was one of the issues. That was the first I had ever
6 heard about it.

7 Q Okay. Fair enough.

8 [REDACTED] It looks like our hour is mostly up here, so I'll stop there.

9 Can we go off the record.

10 [Discussion off the record.]

11 [REDACTED] We'll go back on the record at 4:45 p.m. Eastern Time.

12 BY [REDACTED]

13 Q In the last hour with the minority, Mr. Smith, you talked -- we asked you about
14 folks that were interviewed during the course of your January 6 investigation. I think we
15 talked about Mr. Giuliani. We mentioned Mr. Meadows. We mentioned Vice President
16 Pence.

17 An individual that I failed to ask about was whether you interviewed Director Kash
18 Patel as part of your investigation with special counsel's Office?

19 A I can't get into that because of the -- Judge Cannon's injunction.

20 Q Okay.

21 Did Director Patel testify before the grand jury as part of your investigation?

22 A Same answer.

23 Q Do you mind saying that just for the record to make the record clear?

24 A I cannot answer that question due to Judge Cannon's injunction.

25 Q And did Director Patel assert his right against self-incrimination as part of your

1 investigation?

2 A I can't answer that question.

3 Q In general, just using your years of experience as a prosecutor, are you aware
4 of any prohibitions that would prevent Mr. Patel, or Director Patel, from disclosing his own
5 testimony if he did testify with the special counsel's Office?

6 A Just as a general matter, not specific to anything with this case, my
7 understanding is the witnesses can disclose their own testimony.

8 Q Thank you.

9 [REDACTED] Mr. Raskin.

10 Mr. Raskin. Mr. Smith, do you believe that the Supreme Court's decision on
11 executive immunity constitutes an exoneration of President Trump's conduct in the months
12 and weeks leading up to January 6 and on January 6?

13 The Witness. No.

14 Mr. Raskin. Would you just explain that for us, why you don't see that as an
15 exoneration for what he did?

16 The Witness. Sure. I understand the Supreme Court's decision. If I can just go
17 back for a second. This was an issue we litigated in the district court. The district court
18 agreed with us. We litigated it in the Court of Appeals. The Court of Appeals agreed with
19 us. We litigated it in the Supreme Court. The Supreme Court majority did not agree with
20 us. They took a view of executive power that was more expansive than what we argued.
21 I disagreed with it for the reasons we set forth in our brief, and the reasons stated by the
22 dissent in the case, Judge -- Justice Sotomayor.

23 But it is the law of the land, and what my office sought to do in responding to that
24 was to follow the law and see do we still have a case, and I think the evidence that we had
25 after that decision remained powerful.

1 I talked earlier today about State officials who put allegiance to the country before a
2 party. Those officials from Arizona, Wisconsin, Michigan, Pennsylvania --

3 Mr. Raskin. Georgia.

4 The Witness. All of those witnesses -- right -- all of those witnesses would still be
5 available to us. The heart of our case would still be available to us.

6 And I think it's important to know that, well, you know, our view was that he abused
7 his authority in the Justice Department to as one way, to effectuate this scheme. This was
8 about him as a candidate trying to say he won an election he didn't win, and so, having to
9 frame this in that manner, obviously, it limited some of the evidence. That's why we had
10 to supersede the indictment.

11 But I don't think it was an exoneration because I still believed that there was
12 substantial evidence that would allow us to prove the case beyond a reasonable doubt.

13 Mr. Raskin. Someone can be guilty of a crime in a factual sense, but still be
14 immunized from prosecution, right?

15 The Witness. Well, I mean, that's getting sort of like theoretical and metaphysical.
16 I mean, if the court says that's not a crime, then it's not a crime, but in our case, our view
17 was that that ruling excised a certain portion of our proof, but all the charges we brought we
18 felt were still valid. We felt we still had a lot of evidence to support those charges.

19 Mr. Raskin. Right. But I wonder if you would answer a question based on your
20 experience as a war crimes prosecutor. And I don't know whether over the course of your
21 long and distinguished career you've come to articulate a difference between ordinary
22 crimes, run-of-the-mill crimes, and crimes that have some kind of world historical
23 significance. Perhaps or perhaps not.

24 But I wonder if you do put war crimes, for example, in a different category from, say,
25 for example, robberies that you've prosecuted. How you would think about classifying the

1 crimes that you had investigated and were prepared to prosecute related to January 6 and
2 the attempt to overthrow a Presidential election?

3 The Witness. So I think as a prosecutor how you go about investigating those cases
4 and making a decision to prosecute those cases in my view, the principles in the robbery
5 case or, in my early career, domestic violence case, those are the exact same principles
6 you'd use in the most terrible war crimes case, or in the work I had as special counsel.

7 You follow the facts in the law. Nobody is above the law. You treat everybody
8 the same. Applying those principles in more complex cases requires experience, and is one
9 of the reasons I felt I was qualified to do this job, but the principles I think remain the same.

10 In my view, my personal view is that the difference is the harm. A domestic
11 violence case is awful. It should be prosecuted to the fullest extent of the law, but
12 generally there's one victim.

13 War crimes cases that I've worked on can affect an entire country, an entire culture.
14 I think -- and this isn't just me. The Court of Appeals in this case when we litigated it said
15 that if the things we allege were proven, it would amount to attack on the structure of our
16 democracy. Those aren't my words. Those are the court's words.

17 And so, whether a case is of that import or of less, I think you go about it the same
18 way, but, obviously, the consequences for our country are quite different.

19 Mr. Raskin. Have you made any statements, or are you willing to make any
20 statements on the firing and removal of Department of Justice prosecutors who worked on
21 January 6, on people at the FBI who were involved in the FBI investigation, or on the
22 President's mass summary pardon of 1,600 January 6 insurrectionists and other people
23 involved?

24 The Witness. Yeah. I think what has happened to career prosecutors and career
25 FBI agents is awful. It's contrary to the rule of law. It's contrary to who I think we are as

1 a country. One of the agents on our case, he served his country overseas multiple times,
2 war zones. Family are dedicated public servants. Wife's family, dedicated public
3 servants. He got fired for doing his job 2 weeks after his wife died. I went to the funeral.
4 I saw his family. I saw a church full of public servants. No reason a person like that
5 should have to go through that.

6 And I'm getting emotional. I'm sorry about that, but I just think that's wrong.

7 Mr. Raskin. Well, thank you for your service to America and to the Department of
8 Justice and the people.

9 BY [REDACTED]

10 Q Following up on that a little bit, if individuals are fired or lose their job simply
11 for taking part of an investigation into someone who is an authority figure or in a high
12 position of government, how does that impact our democracy?

13 A Well, if you take the position that you cannot work in the Federal Government
14 unless you have a political allegiance to the President, I think there are many harms to that.
15 Our country tried that in the past. It's called the patronage system, and what we learned
16 in our history -- and this would be if it's a Democrat or Republican. It would not matter.
17 But what we learned is that those systems are rife with not only corruption, but with
18 incompetence, because the people who have these jobs, they didn't get them because of
19 merit, because they dedicated their career to learning national security law, to learning how
20 to properly investigate a case.

21 They got their jobs because they're loyal to a particular person. That's not fair, but
22 it also makes for people who really don't know how to do the work. So I think that's a
23 danger to the country. It saddens and angers me in the short-term, but I think there are
24 great costs to us long-term if that's the direction we're going.

25 Q I'm going to pull on that last bit of your answer if you don't mind. The

1 damage it could cause long-term, do you mind elaborating on that a little bit, especially as it
2 relates to, you know, recruiting a talent to the government, the public servants who actually
3 has the knowledge and the specialty and the competency to do the job? What kind of
4 danger do you see if this continues?

5 A Well, I've just seen career prosecutors who have served, again, Republican and
6 Democratic administrations over and over again. These are the knowledge sources in the
7 Department in different areas. These are the people who mentor young lawyers, and
8 when you take them away, those young lawyers don't have anybody to learn from.

9 My experience in the Department, again, it doesn't matter the administration.
10 These are not partisans. They're people who have decided they don't want to make a lot
11 of money. They're not looking for fame. They just want to do good work, and I think
12 when you lose that culture, you lose a lot.

13 Q Speaking of, you know, sections within the government or within DOD
14 specifically that have particular skill sets and knowledge, I want to talk a little bit about the
15 public integrity section, or PIN. That's come up earlier in the majority's hour, but what's
16 the mission of PIN?

17 A The public integrity section was formed after Watergate, and the section
18 litigates complex corruption cases around the country. It does some of those cases on its
19 own. It does, or at least during my time there, it also does cases in conjunction
20 with -- in partnership with local U.S. attorneys' office, bringing expertise about some of the
21 issues we've talked about today to them.

22 And it also is a sort of clearinghouse for expertise on these issues like the Speech Or
23 Debate Clause or things of that nature.

24 Q Does the public integrity section play a role in checking potential abuses by DOJ
25 as it relates to investigating Members of Congress?

1 A Well, in particular, I think it's valuable for prosecutors to make sure they get
2 things right. They are the sort of keeper of these issues, and they are the people you go to
3 to make sure you're doing things the right way.

4 Q I guess are you aware of some of the firings or dismantling that's been going on
5 with the public integrity section since the beginning of 2025?

6 A Yes.

7 Q Do you care to elaborate on how this might affect the investigations or
8 prosecutions of public corruption and bribery case that you just mentioned?

9 A Well, I'm concerned that the Department is going to cease to have an ability to
10 prosecute public corruption, that there is going to be the expertise necessary to do that or
11 the direction to do that. And so, again, I think there are short-term costs and long-term
12 costs.

13 BY [REDACTED]

14 Q Isn't PIN also kind of a gatekeeper for even beginning any kind of prosecution
15 or investigation of public figures or congressional members? Like don't Department
16 regulations require that PIN be consulted or provide approval before certain steps can be
17 taken or, you know, litigation can commence?

18 A That's correct. There are several enumerated investigative steps or
19 procedures that public integrity oversees. It's not so much for public figures, but more for,
20 again, Members of Congress, people who are in government positions where the
21 investigations are sensitive, and it's important that we get it right and we work on the same
22 standards, everyone works off the same standards.

23 Q And what happens when public integrity is dismantled and that protection is
24 removed?

25 A Well, it always existed during my career in the Department, and I fear without

1 it there will be, as I said, an inability to prosecute public corruption, and also a lack of
2 expertise that when you do do it, to do it the right way.

3 Q I think during the majority hour, there were some intimations that PIN
4 sometimes may be rubber-stamping approvals or when, you know, prosecutors consult with
5 them, they just provide their clearance or approval without really engaging with the issues.
6 Has that been your experience?

7 A No.

8 Q All right.

9 BY [REDACTED]

10 Q Well, we're going to turn now to the classified documents investigation.
11 We're going to ask a few questions. We understand the disclosure that your attorney said
12 at the beginning and some that you talked about during earlier questioning, but we do have
13 a few questions.

14 And we're going to enter into the record what will be exhibit 13, which will be the
15 superseding indictment filed in the Southern District of Florida on July 27th of 2023.

16 [Smith Exhibit No. 13

17 was marked for identification.]

18 BY [REDACTED]

19 Q It's the United States versus Donald Trump, Waltine Nauta, Carlos De Oliveira.
20 And when we ask questions, we're going to be referencing this document, which is docket
21 number 85 with the court. So I'll give you a chance to look at the document. I'm sure
22 you're very familiar with it, but as I ask questions, I will do my best to reference paragraphs
23 in this indictment.

24 Before we actually get to the substance of this indictment, and I might have just said
25 this, but what court did you -- or what district did you actually indict Mr. Trump for

1 mishandling classified documents and his obstructive behavior after he left office in 2021?

2 A The Southern District of Florida.

3 Q And can you explain to us why you sought the indictment in Florida versus, for
4 example, in Washington, D.C.?

5 A When I took over supervision of this investigation, the investigation was
6 pending in a grand jury in Washington, D.C. Actually, I just want to think now whether the
7 answer to the question about venue is something -- if you have a filing about that, I'd be
8 happy to answer it, but I don't think there is anything about venue in this indictment.
9 Otherwise, I don't want to address that in the event that it's in the final report and not
10 somewhere else.

11 Q Okay. Understood. I understand.

12 Actually, let's just move on then to page 38 of this indictment. Let's talk about the
13 charges that were actually brought in the Southern District of Florida. Can you summarize
14 for us -- I know we haven't gotten to it very much, but can you summarize, starting with
15 page 38 through 52, the charges against Mr. Trump and his co-conspirators related to the
16 classified documents that he kept after leaving office in January of 2021?

17 A Sure. Counts 1 through 32 charge Donald Trump with willful retention of
18 national defense information. This regards classified documents. The remaining counts
19 would relate to -- and they charge Donald Trump, Waltine Nauta. And then other counts I
20 believe also charge Carlos De Oliveira with various counts relating to attempting to obstruct
21 that investigation, whether it's by moving boxes so that those boxes wouldn't be found by
22 an attorney who was doing a search of documents to return to the government, and also
23 false statements by, I believe, both Mr. De Oliveira and Mr. Walt Nauta.

24 And I think there is also in here counts related to attempts to destroy video footage
25 and delete security camera footage related to all three of the defendants.

1 Q Thanks.

2 Let's walk through what you just described, but through the lens of the indictment.

3 Let's start with page 10. I believe you talked about boxes of classified documents when

4 you were just giving your summary. Can you describe -- there's a picture on page 10.

5 What do we see in this picture on page 10 of this indictment?

6 A These are some of the -- and it's referenced in the paragraph above. These

7 are some of Donald Trump's boxes that were brought from the White House, and then

8 stored in various places. In this particular photograph, it shows them being stored on a

9 ballroom stage at the Mar-a-Lago social club.

10 Q And do you know -- you said the ballroom. Is this the gold ballroom? That's

11 what's in the indictment in paragraph 26.

12 A The white and gold ballroom, yes.

13 Q The white and gold ballroom.

14 What was the purpose of including these photos in the indictment?

15 A I think it was important to lay out the facts of our case, and sometimes a

16 picture can lay out the facts more clearly than words, and can make the words have more

17 clear meaning. And so here, I think, they show sort of circumstances in which these boxes

18 were being kept, boxes that contained highly classified documents.

19 Q So going along that same theme, if we go to page 12, there's another picture, it

20 appears, of boxes. Can you describe to us, and I believe it's in the indictment in paragraph

21 30, but can you describe what we see in this picture with the boxes on this page 12 of the

22 indictment?

23 A Yes. I think the photo on page 12 actually refers to the paragraph before that,

24 the paragraph 29, and this is -- the indictment lays out that these boxes were moved around

25 to various locations where lots of people had access to them. After they were on the

1 ballroom stage, they were in a business center, and then moved to a bathroom and shower.
2 And you can see the shower curtain behind the boxes, and so that's the room that's referred
3 to there.

4 Q And the last page, I want to ask about is on page 14. In paragraph 32, it looks
5 like Mr. Nauta texted another employee and says, quote, "I opened the door and found
6 this." And Nauta attached two photographs that he took of the spill it looks like of
7 documents.

8 Can you describe this picture as well, which is on page 14 of the indictment?

9 A Sure. So this refers to paragraph 32 of the indictment, and I believe it's
10 blurred out in this picture, but one of the classified documents that's actually charged in the
11 case is visible in this picture. I think it's Count Eight. And this is a room where others had
12 access to. Obviously, someone was able to go in there and spill this box of documents, and
13 Mr. Nauta took a picture of it. So I think it shows how accessible these documents were
14 and the sort of manner in which they were -- the care with which they were kept.

15 Q The court-authorized search of Mar-a-Lago has been subject of lots of
16 discussion on this committee. I think an important question to ask -- I'm going to
17 reference paragraph 38 on page 17 -- was whether any government agencies or individuals
18 within the government had tried or attempted to collect the classified documents from
19 President Trump after he left office in January of 2021?

20 A Yes. Sticking specifically to the indictment we have in front of us, beginning in
21 paragraph 38, these paragraphs detail efforts by the National Archives and Records
22 Administration to recover -- I think originally it wasn't to recover classified documents. It
23 was to recover Presidential records that were missing.

24 In the effort to do that, and as you can see, that took several months, what they
25 eventually got was a number of boxes. I believe it was -- I think he said it was going to be

1 12 boxes and then it was 15 boxes, yes. What came back was a large number of highly
2 classified documents, including secret documents, top secret documents, top secret
3 documents being documents that would cause grave danger to the national security.

4 Q Turning to page 21, paragraphs 51 and 52, did the FBI open a criminal
5 investigation into the potential classified material at Mar-a-Lago after President Trump left
6 office in January of 2021?

7 A That's correct. The dates are stated here, and that was, obviously, before I
8 became special counsel.

9 Q And did a Federal grand jury open an investigation, which I believe is
10 referenced in paragraph 52?

11 A Correct.

12 Q And why did the -- I guess did the FBI open its investigation, the Federal grand
13 jury open its investigation based upon the referral of an agency? And I believe it might be
14 referenced in paragraph 50.

15 A Yes, there was a referral by NARA to the Department of Justice on
16 February 9th.

17 Q Staying on page 21, after opening its grand jury investigation, did the grand jury
18 issue a subpoena for all documents with classified markings?

19 A Yes. You're referring to paragraph 53. Is that correct?

20 Q Yes, sir.

21 A Yes, the grand jury did.

22 Q So after sending out this grand jury subpoena, I believe this is when most of the
23 obstructive conduct takes place. And so, we're going to be flipping through pages 21
24 through 26 of the indictment, and I believe the indictment even titles this conduct as the
25 defendant's concealment of boxes.

1 Sticking to the indictment, can you summarize for us the efforts that the defendant
2 took to conceal the boxes of classified documents in Mar-a-Lago?

3 A Sure. So paragraph 53 references the fact that a grand jury subpoena was
4 issued on the 11th of May, and that two attorneys representing Donald Trump informed him
5 of the subpoena, and he authorized them to accept service. So he was on notice of the
6 subpoena at that point.

7 Eleven days later, Walt Nauta, who was -- the parlance is, I think, is his body man.
8 He'd previously been a valet for him at the White House -- went into the storage room,
9 which was the landing place, the last place these boxes were, and left 34 minutes later
10 carrying one of President Trump's boxes.

11 The next day is the day that Donald Trump met with his attorneys to discuss the
12 subpoena. They told him that they would need to search for the subpoenas and provide a
13 certification to show that they were in compliance with the subpoena. And below that is a
14 number of statements that one of those attorneys memorialized that Donald Trump said
15 during that conversation, and paragraph 56 would be as well.

1 [5:12 p.m.]

2 The Witness. Paragraph 57. Donald Trump confirmed his understanding that one
3 of those attorneys would return to the club on June 2nd to search for any documents with
4 classification markings to satisfy the subpoena.

5 And Donald Trump indicated that he actually wanted to be there that day when he
6 returned to look at the boxes. He told the second attorney that second attorney didn't
7 need to be there.

8 And so after that meeting he actually -- he had planned to depart Mar-a-Lago, but he
9 changed his summer plans to be there on the 2nd when the first -- Trump -- the attorney
10 came to review the boxes.

11 BY [REDACTED]

12 Q I am going to stop you real quick.

13 A Sure.

14 Q I want to make sure the movement of boxes is clear from the indictment. And
15 I want to reference paragraph 59, I believe.

16 So it sounds like you were able to determine the evidence showed from this
17 indictment that Mr. Trump directed Mr. Nauta to remove the box of documents from the
18 storage room in Mar-a-Lago. Is that correct?

19 A Correct.

20 Q And how many boxes in total did Mr. Nauta remove from the storage room in
21 Mar-a-Lago? Abd I believe this is referenced in paragraph 59 as well.

22 A Yes. I believe, as it says in paragraph 59, between the 23rd of May, and I think
23 it was June 2nd, he removed at Trump's -- Donald Trump's direction a total of 64 boxes and
24 brought them to Trump's residence.

25 Q And he took them to Mr. Trump's residence from the storage room. Is that

1 right?

2 A Yes.

3 Q And just to confirm, Mr. Nauta moved these boxes just a day after Mr. Trump
4 met with his attorneys about responding to the grand jury subpoena. Is that correct?

5 A Well, yes. He actually -- the first day that is listed here is in paragraph 54,
6 when he moved the first box. And then -- yes. So then, if you look at paragraph 59,
7 subsection a, three boxes were moved on the 24th.

8 On the 30th, Trump and Nauta spoke by phone for about 30 seconds. And very
9 shortly after that, over a period of a little less than two hours, Nauta moved another 50
10 boxes from the storage room.

11 That same day, there was a text exchange between Nauta and the President's wife,
12 and in that she -- I'm summarizing here, but it's on paper -- she was saying we're not going
13 to have room for all these boxes on the plane.

14 And Mr. Nauta replied, "I think he wanted to pick from them. I don't imagine him
15 wanting to take the boxes. He told me to put them in the room and that he was going to
16 talk to you about them." And then, on the 1st, 11 more boxes were moved out of the
17 storage room.

18 Q So that's a lot of movement of boxes, and it makes sense that it's under the
19 concealment of evidence section of your indictment.

20 I believe, going to paragraph 63, you provide a pretty succinct summary of the
21 number of boxes that were moved versus the number of boxes that were returned to the
22 storage room.

23 So do you mind summarizing that piece for us so we understand exactly how many
24 boxes were left in the sun room?

25 A So paragraph 63 --

1 Q Or in the storage room. I'm sorry.

2 A Sure. Paragraph 63 summarizes that between May 23rd and June 2nd, Nauta,
3 at Trump's direction, moved 64 boxes from the storage room to the residence. And then
4 afterwards, Nauta and De Oliveira returned to the storage room only 30 boxes.

5 Q So there were only 30 boxes left in the storage room, although there were
6 64 boxes that were at Mar-a-Lago, to your knowledge, based upon this indictment?

7 A Well, they returned 30. How many more were still in there that they hadn't
8 taken at all, that would be added to that.

9 Q Why was the -- or was there any significance to moving all these boxes prior to
10 June 2nd of 2022? And I believe this was referenced in the false certification of the FBI
11 section of the indictment.

12 What's the significance of moving all these boxes just before June 2nd of 2022?

13 A Because Donald Trump was on notice that his attorney was going to search that
14 room, search for these -- for classified documents in that room. And in between the time
15 he was put on notice of that and the time that he actually did that, at Donald Trump's
16 direction, 64 boxes were taken out, but only 30 were returned.

17 Q So how many boxes did Mr. Trump's attorney actually review when he
18 returned to Mar-a-Lago for the review on June 2nd of 2022? And, again, I believe this was
19 in the false certification section of the indictment.

20 A Right. He looked -- the attorney looked through all the boxes that were in the
21 room and located -- reviewed the contents of the boxes in the storage room, and he located
22 38 documents with classification markings that he took out and he put in a red roll folder,
23 and that he then taped up.

24 Q Did the evidence show in the indictment that Mr. Trump's attorney believed
25 that he had reviewed the entire universe of documents at Mar-a-Lago?

1 A I'm trying to see if that's here in the indictment. I could answer that question.
2 Well, I can't answer anything that's not in this indictment, but --

3 Q And just to make it clear for the record, why can't you answer anything that's
4 not clear in this indictment?

5 A Well, that issue, the question of whether he reviewed all the boxes, if the
6 answer to that would be within the final report. And, again, I don't have a recollection one
7 way or the other. Unless there's another public filing about that, my understanding is I
8 can't discuss issues like that due to the injunction.

9 Q Understood.

10 Let's move on to the next section, about the attempt to delete security camera
11 footage. And we're working our way up to this August court-authorized search of
12 Mar-a-Lago, if you can't see where we're going here.

13 So on page 27, that's the section that starts "The Attempt to Delete Security Camera
14 Footage."

15 Do the evidence show that Mr. Trump attempted to or tried to direct someone else
16 to delete security camera footage at Mar-a-Lago?

17 A Yes.

18 Q Can you please describe -- from the indictment, of course -- what evidence
19 showed that Mr. Trump directed someone to delete security footage at Mar-a-Lago?

20 A Well, just speaking to what's in the indictment, not anything outside, unless
21 you direct me to a public filing, it starts on paragraph 74, and it goes through paragraph 87.
22 Is there any particular part you'd like me to address?

23 Q Yes. I want to start with June 22nd of 2022. It's paragraph 75. I believe
24 the Department of Justice sent a message to an attorney for Mr. Trump's business
25 organization that might have provided knowledge for him.

1 What was emailed to an attorney for Mr. Trump's business organization that kind of
2 started off this process?

3 A There was a draft grand jury subpoena for the production of security camera
4 footage. And the previous paragraph notes that agents had observed surveillance cameras
5 near the storage room where the classified documents were stored. And so a draft
6 subpoena was sent on the 22nd of June.

7 Q And then following the draft grand jury subpoena being sent to the attorney for
8 Mr. Trump's business organization, it looks like Mr. Trump had a phone call with Mr. De
9 Oliveira the day after, on June 23rd of 2022. Is that correct?

10 A For 24 minutes, yes.

11 Q And then the actual subpoena was sent by the Department of Justice to enter
12 Mr. Trump's organization on what day? And I believe it's in paragraph 77.

13 A Yes, Friday, June 24th.

14 Q And what was that subpoena -- what records was it requesting?

15 A Any and all surveillance records, videos, images, photographs, and/or CCTV
16 from internal cameras at certain locations at the Mar-a-Lago Club, including on the ground
17 floor basement, from January 10th to June 24th of 2022.

18 Q Notably, the same day that the Department of Justice emailed Mr. Trump's
19 attorneys the actual final grand jury subpoena. It looks like Mr. Trump may have tried to
20 reach out to Mr. Nauta. And it's described in paragraph 78.

21 Do you mind discussing or telling us what this interaction might have looked like
22 between Mr. Trump and Mr. Nauta?

23 A What paragraph 78 describes is an attorney for Trump speaking to Donald
24 Trump about the subpoena for security footage.

25 A little over two hours later, Waltine Nauta received a message from a coworker

1 indicating that Trump wanted to see him. And then less than two hours after that, Nauta,
2 who was supposed to be traveling with Trump to Illinois that date, changed his plans to
3 travel and began making arrangements to travel to Palm Beach instead of Illinois where he
4 was scheduled to be with Trump.

5 Q So fast-forwarding to paragraph 80, the same day, we're still on June 24th,
6 right? So Mr. Nauta changes his travel plans. And then Mr. Nauta and Mr. De Oliveira, it
7 looks like they reach out to a Trump employee.

8 What position did the Trump employee have that Mr. Nauta and Mr. De Oliveira
9 reached out to? This is in paragraph 80.

10 A Let me see. He was the director of information technology.

11 Q And what was -- and this is in the subsection of paragraph 80, subsections a
12 through e -- what was the nature of the conversation between Mr. Nauta and Mr. De
13 Oliveira and the director of information technology at Mar-a-Lago Club?

14 A Paragraph 80 reflects a series of contacts and conversations. First, Nauta
15 reaching out to the director of IT asking if he's around. Nauta then also reaching out to De
16 Oliveira. And then it appears they had a call after he reached out.

17 And then that same employee, the director of IT, texted back to Nauta that he was
18 available. Nauta responded to that.

19 At 6:56 that same day, De Oliveira texted the director of information technology,
20 saying: "Hey, buddy, how are you? Walter called me early, said it was trying to get in
21 touch with you. I guess he's coming down tomorrow. I guess needs you for something."

22 And the employee responded that: He reached out, but didn't say what he wanted.
23 I told him I'm local, entertaining family that came from New York City, and he told me no
24 worries.

25 And then the last entry is Trump -- that same employee, the employee -- the director

1 of information technology texted Nauta to say: "If you need me, I can get away...Just let
2 me know." And Nauta responded, saying: "Sounds good!! Thank you."

3 Q So fast-forwarding to paragraph 82, because now we're moving on to the next
4 day, which is June 25th. After having these conversations, it looks like Mr. Nauta and
5 Mr. De Oliveira actually go and look at some of the information technology at Mar-a-Lago
6 Social Club.

7 Can you tell us what Mr. Nauta and Mr. De Oliveira, who did they go visit back at the
8 security guard booth. Is that correct?

9 A Yes, there's a security guard booth where in that -- at that booth it has where
10 the cameras are, so you can see where the surveillance cameras, like, that would be where
11 you could see them. And then they walked with a flashlight through the tunnels where the
12 storage room was located and observed and pointed out the surveillance cameras that were
13 there.

14 Q And then Monday morning, first thing in the morning, or 9:48 a.m. in the
15 morning on Monday, June 27th, 2022 -- and I'm trying to keep this tight timeline going -- it
16 looks like Mr. De Oliveira continues talking or at least visiting other IT officials at Mar-a-Lago.
17 I believe this is in paragraph 83 and 84.

18 Do you mind summarizing what happened just two days later, on June 27th of 2022?
19 And as you can see, we're building our way up to July and the August court-authorized
20 search of Mar-a-Lago.

21 A So that day, this is paragraph 83 and 84, De Oliveira walked to the IT office
22 where the same director of IT was working with another employee -- there were two people
23 there -- and requested that the director of IT step away so he could talk with him.

24 They left the area, and they walked through a basement tunnel to a small room that
25 was known as an audio closet.

1 And once inside that closet, he told them -- he told -- "he" being De Oliveira -- told
2 the employee first that their conversation should remain between them. He then asked
3 how many days the server footage was retained. And the employee told him
4 approximately 45 days.

5 And then De Oliveira told the employee that "the boss" wanted the server deleted.
6 The employee responded that he would not know how to do that, and he did not believe he
7 would have the right to do that.

8 Trump employee -- that same employee told De Oliveira that De Oliveira would have
9 to reach out to another employee who was a supervisor of security for Trump's business
10 organization. But De Oliveira persisted and insisted that Trump Employee 4 -- insisted to
11 Trump Employee 4 that "the boss" wanted the server deleted and asked, "What are we
12 going to do?"

13 Q That same day, so June 27th, I believe, of 2022, did the evidence show that Mr.
14 Trump had any conversation with Mr. De Oliveira? And I'm referencing paragraph 87.

15 A Yes. On 3:55 p.m., they spoke for about three and a half minutes.

16 Q So we're on June 27th of 2022. Then they move to July of 2022.

17 Did the FBI and grand jury actually obtain any of the surveillance that they requested
18 through their grand jury subpoena?

19 A They did.

20 Q And then following the FBI and grand jury obtaining the surveillance video, can
21 you explain what happened? And this is referenced in paragraph 89.

22 A Sure. The FBI executed a search warrant at Mar-a-Lago. The search warrant
23 was authorized. The FBI did search and seize, among other things, all classified
24 documents.

25 There's one thing I just want to correct, though.

1 Q Yes.

2 A The chronology we've gone through, all of those facts were not known to the
3 FBI at the search warrant. Many of them were, but, for example, this last bit, where we
4 talked about attempting to delete the server, that was not uncovered until later.

5 Q Thank you.

6 And during the execution of this court-authorized search of Mar-a-Lago Club in
7 Florida, did the FBI actually seize any documents with classified markings -- classification
8 markings?

9 A Yes.

10 Q And, approximately, how many documents did they seize with classification
11 markings?

12 A Paragraph 90 states that they seized 102 documents with classification
13 markings. And there's a chart that lists the level of classification and where they were
14 found.

15 Q And just to note for the record, some of the classification markings that were
16 found included top secret classification markings, secret and confidential, and as you just
17 said, for a total of 102 documents.

18 A Yes. And if I could, I want to correct something I said before. I stated that
19 the -- what it means if a document is top secret, and I said it is grave damage to the national
20 security. Actually, a top secret document, and I am looking at paragraph 14a, is
21 information that reasonably could be expected to cause exceptionally grave damage to the
22 national security. Secret is grave damage to the -- serious damage to the national security.

23 Q Going back, taking a step back to the actual Mar-a-Lago Club -- and this is
24 referencing paragraphs 11 through 13.

25 Was the Mar-a-Lago Club a place that members and staff frequently attended or was

1 in the presence of or on the location of Mar-a-Lago?

2 A Can you direct me to a paragraph again?

3 Q Paragraphs 11 through 13.

4 A And I'm sorry, what was your question?

5 Q Were there hundreds of members of the Mar-a-Lago Club?

6 A Yes, there were hundreds of members and 150 full-time or part-time or
7 temporary employees.

8 Q Were some of the members or people who attended Mar-a-Lago, were they
9 foreign nationals?

10 A I can't answer that question.

11 Q Were any of the staff that might have worked at Mar-a-Lago foreign nationals?

12 A Both of those are questions I can't answer because they're not in the
13 indictment here. If you have a filing about that, I'm happy to answer those questions.

14 Q And were any of the temporary employees, were they foreign nationals?

15 A Same answer.

16 Q In addition to just the members and the staff that were there, what types of
17 events might have been held at Mar-a-Lago where these classified documents were found
18 during your court-authorized search in August of 2022? And this is referencing paragraph
19 12.

20 A So paragraph 12 states that in the period between January 2021 and August
21 of 2022, the club hosted more than 150 social events, including weddings, movie premieres,
22 fundraisers, and those events together drew tens of thousands of guests.

23 Q We're going to enter into the record two exhibits. I believe they will be
24 exhibits 14 and 15.

25 [Smith Exhibits Nos. 14 and 15]

were marked for identification.]

BY

Q Exhibit 13 [sic] will be a House Judiciary GOP tweet that says: "This is what happens in third world countries. Not the United States. Doesn't the FBI have better things to do than harass the former PRESIDENT?" And this, too, is from August 8th of 2022.

And then exhibit 15 will be an August 8th, 2022, tweet from Speaker Kevin McCarthy that says: "Attorney General Garland: preserve your documents and clear your calendar."

Q What is your response to statements -- and actually I want to preface this by saying, look, I understand that you were not the special counsel when this search was conducted in August of 2022. But what is your response to statements made accusing the FBI of harassing Mr. Trump in the aftermath or after the FBI conducted its court-authorized search of Mar-a-Lago?

A I don't think those statements are accurate.

Q Can you explain why you do not believe they're accurate?

A The search of the Mar-a-Lago Social Club was conducted pursuant to a warrant, a search warrant, as the Department of Justice and FBI does every day, continues to do every day. It was approved by a United States magistrate and --

Q In your prosecutorial experience, can you describe what type of factors a prosecutor were to consider before seeking a court order to search someone's home or private residence?

A Well, most clearly, you would need to have a factual support for that basis and need a reason to believe that evidence of a crime would be recovered and probable cause to believe it would be recovered at the locations you're asking to search based on the facts.

1 Q And that's kind of what we just went through with the indictment, the various
2 paragraphs that we just went through in the indictment. Is that correct?

3 A That's correct.

4 Ms. Scanlon. Can we just wrap up?

5 [REDACTED] Yes, please.

6 Ms. Scanlon. So before there was the court-ordered search at Mar-a-Lago, you
7 were -- your folks went before a court and established probable cause that a crime had been
8 committed and that evidence of that crime would be found at the site of the search of
9 Mar-a-Lago.

10 The Witness. It was before I was special counsel. But, yes, they got a -- they
11 presented an affidavit to a court, and that court approved a search warrant.

12 Ms. Scanlon. Okay. Thanks.

13 BY [REDACTED]

14 Q And even earlier than that, I mean, would you say that President Trump had
15 multiple opportunities to return the classified documents that he had retained back to the
16 Federal Government voluntarily?

17 A Yes.

18 Q He had an opportunity to return them when the National Archives first asked
19 for them back, right?

20 A Yes.

21 Q And then he also had another opportunity to return them when he was
22 subpoenaed by the grand jury, right?

23 A Correct.

24 Q And he did not return all the documents back during that time, right?

25 A That's correct.

1 Q And based on your indictment, is there information that led you to believe that
2 he was aware that at least some of these documents are highly sensitive documents?

3 A Yes.

4 Q Can you draw any conclusions about his refusal to return those documents in
5 spite of having been given multiple opportunities?

6 A I don't think I can answer that question because it may involve nonpublic facts
7 that are a part of the final report that is currently under an injunction.

8 Q Okay. Can you draw any conclusions about his motive for refusing to return
9 these documents?

10 A Unless you can point me to a filing, a public filing on that issue, I don't want to
11 run any risk of running afoul of the injunction. And so without a public filing on that issue,
12 I don't think I can answer that.

13 Q Just one last question. Did you come across in the course of your
14 investigation any evidence about why President Trump took those documents in the first
15 place?

16 A Again, I don't think that's in the indictment here, and unless you have a public
17 filing, that given the current state of the injunction, I don't think that's a question I can
18 answer.

19 Q Okay. Thank you.

20 BY [REDACTED]

21 Q So starting on paragraph 33 on page 14 -- oh, Mr. Koski.

22 A Oh, yeah. I mean, just one other fact to mention. This is a -- my counsel just
23 gave me -- this is a filing on the docket of Southern District of Florida. This is
24 regarding -- this is an order from Judge Cannon on June 27th, 2024, denying a Franks
25 hearing. And --

1 Q We'll make that an exhibit.

2 A And this issue about whether there was, in fact, probable cause for the search
3 warrant was litigated, and the judge denied the motion for a Franks hearing and
4 found -- and this is in footnote 2 -- that the defense motion does not even meaningfully
5 challenge the presence of probable cause in the affidavit.

6 Q Thank you.

7 And we've marked this order denying the motion for a Franks hearing, which I
8 believe is document 655, dated June 27th, 2014, we've marked it as exhibit 16.

1
2 [Smith Exhibit No. 16

3 was marked for identification.]

4 BY [REDACTED]

5 Q How much time do I have left? We've got about 6 minutes.

6 All right. In my remaining time I want to talk about and direct you to paragraph 33,
7 and I believe this focuses on conversations at the Bedminster Club.

8 The Bedminster Club is separate from the Mar-a-Lago Club in Florida. Is that
9 correct?

10 A Yes.

11 Q Okay. And the Bedminster Club is in New Jersey? Is that your recollection
12 from the indictment?

13 A Yes.

14 Q In paragraph 36 you detail a meeting at the Bedminster Club in August or
15 September of 2021.

16 Can you describe what happened in this meeting and whether Mr. Trump shared
17 classified information?

18 A And I just want to start by saying, I don't feel like I can say anything more than
19 what's in the indictment here, unless you point me to anything otherwise. So I can read a
20 portion, if you want.

21 Q Please.

22 A Well, in paragraph 34, references on July 21st of 2021 Trump gave an
23 interview -- and this was when he was no longer President -- at Bedminster. Two members
24 of his staff were there. And the interview was audio recorded with his knowledge and
25 consent.

1 Before the interview, media had published reports that at the end of Trump's term
2 as President a senior military official purportedly feared that Trump might order an attack
3 on Country A, and the senior military official advised Trump against doing so.

4 Paragraph 35 says: "Upon greeting the writer, publisher, and his staff members,
5 Trump stated," and I quote, "'Look what I found, this was [the Senior Military Official's] plan
6 of attack, read it, and just show...it's interesting."

7 And then following that there are additional statements that Donald Trump made
8 regarding the document that he was showing and what other people in the room said.

9 Q Going to paragraph 36, did the individuals that Mr. Trump shared this
10 information about the ongoing military operations with, did they have a security clearance
11 or need to know classified -- need to know about the classified information about that
12 military operation?

13 A Paragraph 36, it states that: "The PAC Representative did not have a security
14 clearance or any need-to-know classified information about the military operation."

15 Q Are you aware of whether the FBI conducted a similar search of Mr. Trump's
16 residence at Bedminster?

17 A Whether that happened or didn't happen, I'm just trying to be very cautious.
18 I don't think I can answer that due to the injunction.

19 Q Do you think that the FBI was able to retrieve all the classified documents that
20 President Trump improperly retained after he lost the 2020 election?

21 A I'm struggling because I can't recall if that is in the final report. And because
22 I'm not sure of whether it's in there, I don't think I should answer that question.

23 [REDACTED] All right. We'll go off the record.

24 [Recess.]

1 [5:45 p.m.]

2 [REDACTED] We're back on the record.

3 I'm marking exhibit 17.

4 [Smith Exhibit No. 17

5 was marked for identification.]

6 BY [REDACTED]

7 Q This is on the topic of the mis-ordering of the documents. And there's a filing
8 that I wouldn't ordinarily mark, but given the situation on the Florida case, we'll mark that,
9 because you -- your office addresses what came to be a mis-ordering of the documents.

10 And so the question is, do you have any information about how the documents that
11 were seized from Mar-a-Lago were mis-ordered?

12 A Let me start by saying, I think there's also another filing on that --

13 Q Okay.

14 A -- that we did later as well.

15 So, between those two filings, what I can tell you is, when a search warrant is
16 executed at a location, there are documents in boxes. The search warrant can be executed
17 in a manner where you just take out the documents that you're looking for or you take the
18 box with the documents that surround that box. The -- both ways are proper.

19 In this particular case, obviously the search warrant happened before I was special
20 counsel, and the special master litigation occurred -- or began, certainly, before I was special
21 counsel.

22 In that litigation, my recollection is that President Trump's attorneys took the
23 position that the government should not have even taken all the documents in the boxes
24 and just taken the classified documents, such that, if things were done the way they
25 proposed, there would not be other documents in the boxes; it would just be those.

1 Q Uh-huh.

2 A As I think we've set forth in our filings, when this issue got raised initially in
3 court, our attorney misstated that the documents were, in fact, in the exact order that they
4 were found.

5 Q Uh-huh.

6 A I think you can see from the timing of these filings that, once we realized that
7 was incorrect, we corrected it with the court as quick as we could.

8 And then, at that point, when President Trump's attorneys were now alleging that
9 this was an important issue, we looked into a more detailed -- exactly why it was not
10 possible to keep the documents in the exact order.

11 And I would just say, everything I say today I'm deriving just from the filings we did
12 on this. But my recollection from those filings is that one of the central issues about
13 keeping the documents in the same order is that President Trump kept these incredibly
14 highly classified documents in boxes with all different sorts of things of all different sorts of
15 shapes and sizes -- clothing, memorabilia, newspaper clippings, things of that nature.

16 And so, while agents, I think, sought or wanted to keep the documents in order as
17 best they could, I think, once they saw the order of these boxes, clearly that was going to be
18 an impossible thing to do.

19 And so we set out our views about that in these filings. And, again, I'm speaking
20 only from these filings.

21 Q Uh-huh. What's the upshot of the documents being taken -- taken out of
22 order?

23 A My view is there is no upshot, in the sense of, these documents were -- staff
24 members referred to these documents as the, quote, "'Beautiful Mind' boxes,"
25 meaning they were -- and this wasn't just one staff member; it was multiple staff members.

1 And it referred to the fact that Donald Trump -- these were his boxes, they were exclusively
2 his belongings in them, he had curated them and what was in them.

3 And so, in our view, that was not a live issue in the litigation. Once the defense
4 raised it and said, "Oh, now that you can't say what order they're in, we think that's a big
5 issue," we responded.

6 Q Uh-huh.

7 A But I think, ultimately, in the litigation, given -- President Trump stated that he
8 believed these were all his, these were his documents. And so the litigation, in this case, in
9 my view, was not going to turn on the location of documents in the boxes, given his position
10 was, "All of this is mine."

11 Q Uh-huh. Do you know if he was intending to save those materials for his
12 Presidential library?

13 A You mean the classified documents?

14 Q The items in the boxes, all of them.

15 A Well, if he -- if his defense were that he was intending to take classified
16 documents that he had no authority to take and he did it intentionally because he wanted to
17 start a Presidential library and keep these documents in the locations that we talked about
18 today, that's a crime.

19 Q No, but my question was, all the items in the boxes, the shirts and the, you
20 know, mementos, were they being saved for a Presidential library, to the extent you were
21 able to develop that in the course of your investigation?

22 A You know, I mean, there were newspaper clippings in there, there were, I think,
23 you know, different sorts of things that I wouldn't -- wouldn't, to me, seem like the sort of
24 things that would be in a Presidential library. I -- to be honest, I've never been to a
25 Presidential library, so -- but if I were starting one, I don't think that's the sort of things I

1 would put in it.

2 Q Okay. But you didn't develop any evidence during the course of your
3 investigation that the materials were intended to be saved for a Presidential library?

4 A I don't recall that. And I also want to be careful of not getting outside the
5 parameters of these filings, because I don't think we addressed that issue in the filings we're
6 talking about.

7 Q Okay.

8 And during the times relevant that we're discussing, Mar-a-Lago was protected by
9 the Secret Service. Is that correct?

10 A That's correct.

11 Q So, to the extent an adversary wanted to come in and steal some of these
12 classified documents, they would've had to have gone through the Secret Service to get
13 them, right?

14 A Well, as we alleged in paragraph 13 of the indictment, the Secret Service
15 provided protection services to Trump and his family after he left office, including at
16 Mar-a-Lago --

17 Q Uh-huh.

18 A -- but it was not responsible for the protection of boxes or their contents.

19 And the indictment states that Trump did not inform the Secret Service he was
20 storing boxes of classified documents at Mar-a-Lago, meaning --

21 Q Right.

22 A -- they didn't know that they were protecting classified documents.

23 Q Right.

24 But if Joe Q. Citizen had classified documents from their time serving in government
25 and they brought it home to their basement and some foreign adversary was aware of that,

1 it would be much easier for a foreign adversary to break into the Joe Q. Public's basement
2 and take those classified documents.

3 If the foreign adversary wanted to go and get those documents out of Mar-a-Lago, it
4 would've been a lot more difficult. I mean, a person can't just walk into Mar-a-Lago and
5 try to abscond with these materials, right?

6 A I would very much like to answer that question, but I cannot answer that
7 question due to the final report.

8 Q Oh, okay.

9 Was there an effort by your office -- did you consider seeking the removal of Judge
10 Cannon?

11 A Again, I don't think that's in any public filing, and so I cannot address that --

12 Q Uh-huh.

13 A -- given the injunction.

14 Q Whether, you know, the internal office discussions involved consideration of
15 removing Judge Cannon? I mean, that's not something you can talk about?

16 A I don't think I can talk about things today, again, consistent with our discussion
17 this morning, if it's not in a public filing. I haven't seen the final report in almost a year.
18 I'm not comfortable discussing issues like that because -- solely because of that issue.

19 Q Okay.

20 A And I'm trying to be as consistent as I can about that.

21 Q Okay.

22 The book by The Washington Post reporters that we were referencing earlier
23 reported that you considered -- and by "you," I mean your office, your -- you know,
24 collectively, the collective "you" -- considered petitioning the removal of Judge Cannon, but
25 the Solicitor General's Office recommended against it because -- and if you had gone to the

1 Attorney General, that would've had to have been reported to -- publicly reported to
2 Congress.

3 Is that something you have a recollection of?

4 Mr. Koski. [REDACTED] sorry. I just -- on this point, I just want to make sure that
5 we're in agreement that the Department of Justice has taken an expansive interpretation of
6 Judge Cannon's order in its application to Mr. Smith and that he's not permitted to disclose
7 non-public information --

8 [REDACTED] Okay.

9 Mr. Koski. -- that may be contained in Volume Two of the special counsel's report.

10 And I know you cited this book, but the email that we both received from the
11 Department of Justice this morning said that "this prohibition does not apply to information
12 that has been made publicly available through authorized means." And so, if something
13 was leaked to some reporters who wrote a book about it, I would not consider that to be
14 made publicly available through authorized means.

15 [REDACTED] Okay.

16 You got a page over there?

17 Noted. And I'll just -- just to give more context to what I asked, it's on page 349 of
18 the book.

19 It states, "The final straw for Smith came when Cannon dismissed the documents
20 case, citing as a basis Thomas's concurring opinion, which carried zero legal weight, making
21 the choice a striking departure from judicial standards. Solicitor General Elizabeth" -- how
22 do you say her name? Is it "Prelogar"?

23 A "Prelogar," I think.

24 Q "Prelogar"? Okay. Excuse me.

25 "-- ultimately approved the appeal of Cannon's ruling, but the former Garland law

1 clerk rejected Smith's plan to seek to have Cannon recused, saying he didn't have enough
2 evidence to try to remove her. Smith could've asked Garland to reconsider his trusted
3 counselor's position, but he did not. If Garland turned him down, it would've had to have
4 been reported to Congress."

5 And so I guess the question in light of your counsel's observation is, if you asked the
6 Attorney General for something and he turned you down, was it your understanding that it
7 had to be reported to Congress?

8 A So, putting aside this whole situation?

9 Q Yes.

10 A I believe it states something to that effect in the special counsel regulations.

11 Q Okay. And was that something you were concerned with, that you
12 wouldn't -- you know, you wouldn't want something like that reported to Congress?

13 A That was not a concern of mine.

14 Q Okay.

15 I believe earlier you indicated you did not have any communications with White
16 House officials. I think the minority asked you about whether you spoke with President
17 Biden; you said no.

18 Did you have communications with any White House staff?

19 A I did not.

20 Q Okay. Did anyone in your office?

21 A My office interacted with staff in the White House in the following ways.

22 There was one instance where -- that I recall where we sought to interview a career
23 National Security Council staffer, and to make arrangements to do that interview, we had to
24 do it through the White House.

25 Q Uh-huh.

1 A With respect to the classification of the documents that we were using in the
2 classified-documents case, there were -- some of those documents the National Security
3 Council had equities in. And, as a result, we needed a contact point to speak to -- I believe,
4 to speak to a career person who could be our contact point for that classification review.
5 And so there was interaction between my staff and people, I believe, from the White House
6 Counsel's Office.

7 I would add that all -- all -- my understanding and my direction was that any
8 interactions would be pursuant and consistent to the White House contacts policy.

9 Q Okay.

10 A And I think also, in the beginning of my time as special counsel, there was this
11 litigation I referenced previously about executive privilege.

12 Q Uh-huh.

13 A And we noticed both the current White House and -- though I don't know that
14 we had to -- we noticed also President Trump on that, in terms of whether they would waive
15 executive privilege or not.

16 I think in that instance -- I'm not sure of this, but I think in that instance we
17 requested the White House -- we requested the DAG's Office to ask the White House about
18 that, and so we didn't have direct contact.

19 Q Uh-huh.

20 A But I wasn't involved in those contacts, so I'm not sure.

21 Q Okay. So nobody in your office had communications with the White House
22 chief of staff, Jeff Zients?

23 A Not that I recall.

24 Q And nobody had communications with the Counsel's Office on -- in terms of
25 your strategies for prosecuting these cases?

1 A No.

2 Q In conjunction with your final report, a letter was prepared by President
3 Trump's defense counsel, Todd Blanche and John Lauro, and they raise issues concerning
4 their review of the report over the Christmas season. And they indicate that they were
5 placed in a veritable hardship trying to review the report, because the Special Counsel's
6 Office required them to come to D.C.; the Special Counsel's Office wouldn't let them, you
7 know, use their laptop; they wouldn't, you know, have access to any, you know, internet.

8 Can you walk us through your posture on some of those onerous conditions that
9 defense counsel raises?

10 A Sure. And just for clarity, I'm going to confine my remarks to the election-side
11 case, because whatever letter they sent or didn't send regarding the classified-documents
12 case -- I don't remember if there was a letter, but I don't want to, for the reasons we talked
13 about, talk about that.

14 Q I am referencing the letter in the -- part one of the report.

15 A Okay. Great.

16 So I do recall that. And I recall being surprised and disappointed about their letter
17 on that point. Because my recollection is that we -- and I'm not going to remember the
18 specific dates, but I remember, we gave them a time period and conditions to look at
19 the -- to look at the report. And they -- and it dealt -- it was around the Christmas holidays.

20 Q Uh-huh.

21 A And they were unhappy with those conditions, and we then changed the
22 conditions to better suit what they wanted.

23 And I think this is in -- what I am talking about, if I recollect it correctly, this may be in
24 the letter that we attached to our -- to the final report as well.

25 And I remembered them expressing appreciation to us for allowing them to change

1 the schedule. That's my recollection of that. So --

2 Q Uh-huh.

3 A -- when they complained about the schedule, I remember being surprised
4 about that.

5 Q Okay.

6 A And, again, the letter that we wrote, I believe, reflects this, and that letter will
7 be a better recollection of this than my memory --

8 Q Right.

9 A -- a year from now.

10 Q They indicate in that letter, though, that they were required to delete prior
11 discovery productions, preventing them from reviewing the underlying documents
12 referenced in the report.

13 A Well, the deletion of discovery, that was pursuant to the protective order in the
14 case. And so put aside the final -- the final report of their review. The protective order
15 that both parties signed -- and, again, there will be a record of this.

16 Q Uh-huh.

17 A That protective order stated that when the case was concluded the discovery
18 had to be deleted.

19 And that was an order that both sides signed with the court, so that wasn't -- that
20 was as much an obligation on their part to the court as to us. And by this point in time, the
21 cases as to Donald Trump had been dismissed, whatever date that was in November.

22 Q Right. But they were reviewing the final report to try to, you know, position
23 their client to, you know, make some of the -- some rebuttals and that type of thing, which
24 is certainly, I think you would agree, a fair reason to want to have access to the report,
25 correct?

1 A Yes.

2 Q What types of communications did you or your staff have with the January 6th
3 Committee?

4 A So, when I was appointed as special counsel, I asked at some point whether we
5 had gotten evidence from the special couns- -- from the select committee. We had not.
6 And so I directed my staff to get that evidence, get whatever evidence we could from them.

7 And I think it was in -- I think it was in December or so that we did, in fact, get
8 evidence from them and get a copy of their final report.

9 And this is the -- this is referenced in the -- in our final report, there's a paragraph or
10 a footnote regarding that.

11 Q Okay. Do you know who at the select committee your staff was
12 communicating with? Were you?

13 A I was not.

14 Q Okay. So you didn't have any communications with members or staff of the
15 select committee?

16 A I did not, no.

17 Q Okay. And who on your staff did?

18 A What I recall is tasking J.P. Cooney to do this. I don't -- I don't know if he then
19 tasked somebody else or if he did it himself or with somebody else.

20 Q Okay.

21 A But that's who I remember speaking to about this.

22 Q Okay.

23 The book we've been referring to reports that, "on January 1, less than 48 hours
24 before Republicans could lock down all the evidence or perhaps delete it entirely" -- I don't
25 think we would do that -- "a committee staffer summoned an attorney from Smith's team to

1 Capitol Hill to receive a hard drive containing the committee's work."

2 Is that consistent with your understanding of what happened?

3 A I wouldn't have remembered that level of detail if you hadn't read it, but we
4 asked to get everything they would give us, and we took everything they gave us --

5 Q Okay.

6 A -- and we disclosed to the defense everything we got.

7 Q Okay. You disclosed everything you received from the --

8 A Yes.

9 Q -- January 6th Committee?

10 A The stuff we got from the January 6th Committee, I directed my staff to
11 disclose it to the defense.

12 Q Okay.

13 And the book reports that, you know, Cooney drove to the Capitol and at the last
14 minute succeeded in collecting two hard drives containing about 200 interview transcripts
15 less than 24 hours before Republicans began shutting down the committee's website.

16 Is that something you have any recollection of?

17 A That level of specificity, I don't. I can't say that that's not accurate, but I don't
18 recall that level of specificity.

19 Q And do you know if the hard drives that you obtained contained video of the
20 interviews the January 6th Committee conducted?

21 A As I sit here right now, I don't recall one way or the other. If they were in
22 there, we looked at them when we provided them to the defense. But I don't know one
23 way or the other.

24 Q Okay.

25 And when it comes to deleting documents, you know, while the Republicans didn't

1 do that, what I can tell you is that the January 6th Committee files, when we were able to
2 have access to them, did not include the videos that they -- that they recorded.

3 And so the question is, you know, do you know -- and I apologize if I'm repeating this,
4 but -- do you know if the Special Counsel's Office, you know, took possession of the videos
5 of the interviews? Because we didn't get it. They were gone by the time we had access
6 to it.

7 A Yeah. As I sit here now, I don't know. What I recall is, "Give us everything
8 you can. Give us any evidence you can."

9 Q Okay.

10 A And then we reviewed that evidence and disclosed it to the defense.

11 What it included, in terms of that level of specificity --

12 Q Right.

13 A -- I don't have that recollection right now.

14 Q The videos that they used at their -- at the public hearings were obviously
15 snippets --

16 A Uh-huh.

17 Q -- and they were -- you know, they were -- they were cherry-picked. I don't
18 really mean that in a pejorative way, but they were selected to make the points they wanted
19 to make.

20 And, you know, if there was a defense attorney involved with the proceeding, if
21 there was an active minority involved with that proceeding, you know, we would've had a
22 chance to point out that, you know, the videos are selectively edited and didn't have, you
23 know, the full -- the full context.

24 And you would agree, as a prosecutor, that if there is a video, you'd want the whole
25 video, not just the snippet?

1 A Yeah. We asked for everything they would give us. So we wanted whatever
2 they were willing to give us.

3 Q Okay.

4 Let's mark the next exhibits, which will be No. --

5 [REDACTED] 18 and 19.

6 [Smith Exhibit No. 18
7 was marked for identification.]

8 [Smith Exhibit No. 19
9 was marked for identification.]

10 BY [REDACTED]

11 Q These are exhibits relating to what I referenced during our last hour about
12 President Trump's access to classified information.

13 A Thank you.

14 Q Was it your understanding that the SCIF that was in existence at Mar-a-Lago
15 before President Trump, you know, left office -- was it your understanding that there was a
16 possibility they could've recommissioned that SCIF?

17 A Can I just take 1 minute to look at this?

18 Q Of course. Of course.

19 A Yeah.

20 Okay. Thank you for allowing me to look at that.

1 [6:12 p.m.]

2 BY [REDACTED]

3 Q Sure.

4 So you would agree, if an individual, not necessarily President Trump, is being
5 prosecuted for mishandling of classified information and is going to trial, you would agree
6 that that, you know, putative defendant would have -- ought to enjoy the ability to discuss
7 the charges in a SCIF with his lawyer, correct?

8 A Yes.

9 Q And have an ability to review the documents in question in an environment
10 with his lawyer, correct?

11 A In a SCIF, yes.

12 Q Right.

13 Now, if -- you know, in President Trump's case, he had a decommissioned SCIF at
14 Mar-a-Lago, correct?

15 A I am not sure about that. That may be true. I don't recall that.

16 Q Okay.

17 A But I'm not -- if there's a filing that says that --

18 Q Okay. Do you have any recollection, did the defense ask that, you know, the
19 SCIF be recommissioned or a secure area at Mar-a-Lago be established so that he can have
20 these communications with his lawyer?

21 A What I recall is that there was a SCIF at some point at Mar-a-Lago -- or a
22 temporary SCIF sort of thing.

23 Q Uh-huh.

24 A When you say "decommissioned," I didn't know that there was anything like a
25 SCIF -- unless you can show me something otherwise, I don't remember there being a SCIF,

1 like, there that was, like, there but not being used. I'm not sure. And, again, maybe
2 my -- maybe that's my recollection.

3 But our position about this is reflected in this filing, and it's, in sum, that the
4 government was not aware of any case in which a defendant had been permitted to discuss
5 classified information in a private residence, and this would be exceptional treatment
6 inconsistent with the law.

7 I'll just add one other thing that might be helpful, is, we did work with the FBI to
8 make Donald Trump's review of classified information at the SCIF -- and I think it was in
9 Miami -- more convenient and easier. I do recall having conversations to do that.

10 We did oppose him having classified documents at his home and social club, which is
11 the same place where he was keeping these illegally. So that -- that is accurate.

12 Q Right. But if a SCIF was established -- I mean, this isn't just any normal
13 person. This is the former President of the United States, now current President of the
14 United States. And, you know, if a SCIF could be recommissioned at the Mar-a-Lago
15 residence, I mean, why would you have an issue with that?

16 A Well, I think you just hit on it: "any normal person." He should have the
17 same rules as everybody else. And he, at this time, was a private citizen, and I am not
18 aware of any private citizen in the litigation, no matter how important a person they are, no
19 matter how busy they are, being allowed to have a SCIF in their home for their convenience.

20 Again, I think -- my recollection is, we worked to make his review of classified
21 documents at the SCIF -- and I think it was in Miami -- more convenient, and we did that.
22 But I did not think it was appropriate, because I think he should be treated like anybody
23 else.

24 Q Okay.

25 Initially, in the documents case -- sorry, not the documents case -- the D.C. election

1 case, how quickly did you want to proceed to trial after that case was indicted? What was
2 the timeframe, if you remember?

3 A I know we requested a trial date -- there's a public record of this.

4 Q Right.

5 A I think the judge had a status conference where we discussed it. We
6 proposed a date. They proposed the date in 2026. The date that the judge chose was
7 not the date that we proposed but was --

8 Q Right.

9 A -- I think, 2 months after the date we proposed.

10 Q Right.

11 A I'm going to say it's -- I'm going to guess 4 months, but there's a -- there's a
12 record of that.

13 Q Right. Yeah, I think the Special Counsel's Office proposed initially trying
14 President Trump in January of 2024. The judge, Judge Chutkan, came back with the Super
15 Tuesday date, which, of course, raises a whole other set of questions which aren't
16 necessarily directed to you.

17 But do you think, in hindsight, that -- I mean, how many -- how many months -- was
18 that 4 or 5 months after the -- when did the indictment drop? Was it August --

19 A The indictment was in August.

20 Q -- August 1st of 2023?

21 A Thereabouts. I don't remember the exact date.

22 Q Okay. So we're looking at 4 months or 5 months, depending on when it is in
23 January. That's a pretty aggressive timeline, isn't it?

24 A We organized the discovery in a way that we felt that that was a fair date.

25 Q Do you remember, you know, as you sit here today, how many pages of

1 documents there were for that case?

2 A I don't.

3 Q Okay. Does the number 13 million -- I mean, if I told you 13 million, would
4 that be something that you would -- says -- you know, sounds about right?

5 A Again, I couldn't say.

6 Q And how many -- how many witnesses, you know, did the defense need to
7 digest? You know, how many possible trial witnesses did the defense need to digest?

8 A I don't think we got to -- because the court, obviously, didn't --

9 Q Right.

10 A -- accept that trial date, so I don't think we got to that question.

11 Q And how many hours of video footage?

12 A You mean, like, footage at the Capitol, of the attack on the Capitol --

13 Q Just, how many hours of video footage? You know, if the defense was going
14 to take that to trial, you know, in 4 months, how many hours of footage would they need to
15 digest?

16 A I'm just trying to think if there was any video footage other than the footage of
17 the attack on the Capitol. I don't -- I can't answer that --

18 Q President Trump's defense team, you know, indicated that it was, like,
19 thousands of hours of video.

20 And so to digest thousands of hours of video, to digest 13 million pages of
21 documents would have put them in a situation to, you know, either, A, not review the
22 documents or, B, you know, they're looking at, like, reviewing 100,000, you know, pages per
23 day.

24 I mean, do you think that's reasonable?

25 A I thought the trial date that we proposed, given the case, given the discovery,

1 was reasonable, yes.

2 Q So, if the math works out that they had to digest about 100,000 pages a day,
3 you think that's a -- you think that's reasonable?

4 A I don't know if that's the math, and I don't know if that's the proper way to
5 measure it, but I do think the date was reasonable.

6 Q And while all this was going on -- we went into this a little bit before, but -- you
7 have the D.C. case going on, you have the Florida case going on, and you know that
8 President Trump is required to be in Manhattan for the district-attorney-of-New-York case.

9 You know, at any point in time, did you stop to -- you know, stop to think that maybe
10 you ought to -- should've given him a little bit more time to deal with all these cases, these
11 competing cases?

12 A Well, we thought through the dates we asked for. We thought they were
13 reasonable.

14 Q Uh-huh.

15 A We also deferred to the judges. So when we asked for a date and the judge
16 picked a different date, I don't recall that we objected to that date.

17 Q Uh-huh. A lot of times, though, the judge just splits the baby, right?

18 A Well, I don't know that that's always the case. Sometimes they pick the date
19 that one party says, sometimes they pick the other --

20 Q Right.

21 A -- sometimes it's in the middle, so --

22 Q Yeah. I mean, Judge Chutkan certainly picked a date closer to yours than the
23 2026 date.

24 Getting back to the Robert Jackson, you know, statement that I read this morning,
25 you know, he concludes that "a sensitiveness to fair play and sportsmanship is perhaps the

1 best protection against the abuse of power, and the citizen's safety lies in the prosecutor
2 who tempers zeal with human kindness, who seeks truth and not victims, who serves the
3 law and not factional purposes, and who approaches his task with humility."

4 Do you think, in hindsight, that you exhibited the kindness in dealing with President
5 Trump that Robert Jackson evinces here?

6 A I think in our conducting both of these investigations, we did it consistent with
7 the best traditions of the Department and the principles that Justice Jackson was talking
8 about there. So, yes, I do think in both cases we adhered to those principles.

9 Q Uh-huh. And is it also fair to say that you were, in fact, trying to get these
10 cases wrapped up before the election in 2024?

11 A We were trying to move these cases expeditiously. In our briefs, we cited to
12 repeated Supreme Court precedent that states that the interest in a speedy trial, the right to
13 a speedy trial, isn't just the defendant's right, it's the public's right as well.

14 Q Right.

15 A And given the gravity of these crimes and the public interest, it was our duty to
16 move them forward as expeditiously as we thought fair and reasonable.

17 Q Okay. So, in hindsight, there's nothing about the aggressiveness of your
18 schedule that you would've done differently?

19 A I thought the schedule was appropriate.

20 Q I just have a couple other questions. I'll jump around, and then I'll be done.
21 Hopefully I can do that very quickly.

22 The Florida case -- initially, you had a grand jury operating in Washington, D.C.
23 How does that work? You're taking evidence in D.C. for a case that, you know, you
24 ultimately decided to venue in Florida.

25 Were you able to use the material from the grand jury in D.C. for the case? Or did

1 you have to repurpose -- did you have to recirculate that material through a grand jury in
2 Florida?

3 Mr. Koski. [REDACTED] I'm sorry. I'm just -- I'm a little concerned that questions
4 about the grand jury in D.C. and the Southern District of Florida may implicate both 6(e)
5 issues --

6 [REDACTED] Uh-huh.

7 Mr. Koski. -- and the scope of Judge --

8 [REDACTED] Okay. Fair enough.

9 BY [REDACTED]

10 Q Can I ask hypothetically, then, if you have a case that you're operating a grand
11 jury in the District of Kansas and you're going to -- and you decide to move a case to, you
12 know, the Central District of California, how would you ordinarily -- what's the Department's
13 posture on that?

14 A In what sense?

15 Q So you have a grand jury operating in Kansas, and you collect evidence. Are
16 you allowed to use that evidence if you ultimately decide to venue a case in the Central
17 District of California, collected in Kansas?

18 A Yes.

19 Q Okay. And are there any concerns about that?

20 A You're speaking about a hypothetical --

21 Q Hypothetical --

22 A -- case, but I think we were kind of speaking about the case in Florida. And
23 so --

24 Q Uh-huh.

25 A -- I think whether there would ever be concerns depends on the specific case

1 we're talking about.

2 Q Okay.

3 A And, again, I don't feel comfortable answering that because of this injunction.

4 Q Okay.

5 A But for the injunction, I'd be happy to answer it.

6 Q Okay.

7 Mr. Jordan wanted me to point out that there was a discussion earlier -- I think it was
8 with Congresswoman Scanlon -- talking about the Pennsylvania election. And you -- I think
9 you used the term that, you know, in the normal course of things, the -- you know, things
10 that happened in Pennsylvania -- am I jogging your memory with this?

11 A I -- I know we spoke about that.

12 Q Uh-huh.

13 A There was another series of questions about this --

14 Q Yes.

15 A -- so I do remember that, yeah.

16 Q Okay.

17 And we just wanted to point out for the record that, I mean, there was nothing
18 normal about what happened in Pennsylvania during the, you know, the 2020 election. I
19 mean, you know, the State legislature, who ordinarily is responsible for making, you know,
20 the election law, picking the time, place, and manner and prescribing the blow-by-blows in
21 an election, was, you know, basically usurped by the Pennsylvania Supreme Court, and they
22 changed all sorts of things in the 2020 election.

23 You know, for example, they said that the election, instead of ending on -- ordinarily
24 would end on a Tuesday, election day, was going to end on a Friday.

25 The Supreme Court said that, where signature verification was ordinarily required,

1 that was -- that was the Pennsylvania State legislature's -- you know, that's how the statute's
2 set up, you know, in terms of administering elections. And the Supreme Court changed
3 that and said that, you know, signature verification wasn't required.

4 You know, the volume of absentee ballots was completely different than an ordinary
5 election. There were over 2 million, you know, absentee ballots.

6 And so, you know, we just wanted to point out and, I guess, ask you the question,
7 were you aware of all these irregularities and disparities because of the -- you know,
8 because of COVID and so forth? So many things had changed by the time it had gotten to
9 election day in Pennsylvania.

10 A What I can say is that some of the issues you raised are the sort of issues that a
11 campaign or someone who's a candidate can raise in the courts, and I believe a lot of these
12 issues were raised in the courts.

13 Q Uh-huh.

14 A I think Donald Trump lost those litigations.

15 Q Uh-huh.

16 A And as we pointed out in our indictment, that bringing a lawsuit for some of
17 the issues you talked about, that's the proper way to dispute these things, or asking for a
18 recount, as President Trump did in two States.

19 Q Uh-huh.

20 A Our case was about false allegations of fraud. Our case, the things you just
21 mentioned, we didn't allege those to be part of the fraudulent conduct targeting a
22 government function.

23 Q Uh-huh.

24 A And so, again, those were issues that I think we were aware of in studying
25 these things and in speaking to election officials there. But they're the sort of issues that

1 are dealt with through litigation in our court system, and I think that's what happened in the
2 election, or after it.

3 Q Okay.

4 Let me go off the record briefly.

5 [Recess.]

6 [REDACTED] Go back on the record.

7 BY [REDACTED]

8 Q Do you recall any discussions with Public Integrity -- this is in the toll-records
9 topic area --

10 A Uh-huh.

11 Q -- any back-and-forth with Public Integrity about acquiring toll records of staff,
12 congressional staff?

13 A One of -- one of the subpoenas we asked for was for a staff member.

14 That's -- yes.

15 Q Okay. And do you remember, House or Senate?

16 A House.

17 Q Okay. And do you remember who it was or what the circumstances were?

18 A I do. It was a staff member for Congressman Gohmert.

19 Q Okay. And that was the only time that you saw toll records for a staff
20 member?

21 A That's my only recollection as I sit here now, yes.

22 Q Okay.

23 [REDACTED] We can go off the record.

24 [Recess.]

25 [REDACTED] We can go back on the record. It's 6:29.

1 BY [REDACTED]

2 Q So, Mr. Smith, you spoke earlier today about threats and attacks
3 against -- made by Donald Trump against witnesses, prosecutors, judges who had
4 challenged him, including threats against yourself.

5 Do you remember that?

6 A Yes.

7 Q So did President Trump target you personally in posts on Truth Social?

8 A Yes.

9 Q Are you aware, for example, that he called you a, quote, "deranged lunatic,"
10 unquote; quote, "Trump hater," unquote; and, quote, "psycho"?

11 A Yes.

12 Q Do you recall that, on October 15th this year, President Trump, speaking to
13 reporters, standing next to the Attorney General and the Deputy Attorney General, said,
14 quote, "Deranged Jack Smith, in my opinion, is a criminal," unquote?

15 Then he also talked about investigating Lisa Monaco, Andrew Weissmann, and Adam
16 Schiff, saying, quote, "I hope they're looking at all these people. And I'm allowed to find
17 out. I'm, in theory, the chief law enforcement officer," unquote.

18 A Yes, I'm aware of that.

19 Q And are you aware that President Trump posted on Truth Social on October
20 29th of this year that, quote, "these thugs should all be investigated and put in prison. A
21 disgrace to humanity. Deranged Jack Smith is a criminal!!!" with three exclamation marks,
22 unquote?

23 A That may be. I know there were several posts like this.

24 Q Okay.

25 Do you think those were a direction, potential direction, to Department of Justice to

1 retaliate against you because of your role as special counsel in the investigation of him?

2 A Yes.

3 Q You are joined by your counsel today from Covington & Burling. Is that right?

4 A Yes.

5 Q And did President Trump or the White House take any actions against your
6 attorneys due to their relationship with you?

7 A Yes.

8 Q And what action did they take?

9 A They filed an executive order against the law firm and sought to withdraw the
10 security clearances of my attorney.

11 Q Okay.

12 I'm just going to offer this as exhibit 20. And this is exactly what you just talked
13 about.

14 [Smith Exhibit No. 20
15 was marked for identification.]

16 BY [REDACTED]

17 Q So exhibit 20 is an executive order issued by the White House on February 25,
18 2025, and it is entitled "Suspension of Security Clearances and Evaluation of Government
19 Contracts."

20 And I just want to read into the record that this executive order says, "I hereby direct
21 the Attorney General and all other relevant heads of executive departments and agencies to
22 immediately take steps consistent with applicable law to suspend any active security
23 clearances held by Peter Koski and all members, partners, and employees of Covington &
24 Burling LLP who assisted former Special Counsel Jack Smith during his time as Special
25 Counsel, pending a review and determination of their roles and responsibilities, if any, in the

1 weaponization of the judicial process."

2 And the executive order also directs "the Attorney General and heads of agencies to
3 take such actions as are necessary to terminate any engagement of Covington & Burling LLP
4 by any agency to the maximum extent permitted by law and consistent with the
5 memorandum that shall be issued by the Director of the Office of Management and
6 Budget."

7 Did I read that correctly?

8 A Yes.

9 Q To your knowledge, is this executive order still in effect?

10 A I believe it is.

11 Q What do you think was his purpose for issuing this executive order?

12 A To seek retribution against me.

13 Q Is it also to -- to harm your relationship with your attorney and to make it more
14 difficult for lawyers to represent you?

15 A I think it's to chill people from having an association with me.

16 Mr. Koski. I just want to say for the record, we're still here, proud to represent Jack
17 Smith.

18 [REDACTED] Thank you.

19 BY [REDACTED]

20 Q So, once President Trump took office, were members of the Special Counsel's
21 Office -- was their employment affected?

22 A Yes.

23 Q Were they fired?

24 A Yes.

25 Q Do you know roughly how many people were fired?

1 A I don't have specific numbers.

2 Q Is it more than a dozen?

3 A I believe so, yes.

4 Q Okay. Do you know who fired the former members of the Special Counsel's
5 Office?

6 A You mean who told them or who issued --

7 Q Yeah. Who actually communicated -- well, let's break it. Do you know who
8 authorized the firing of these staff members?

9 A I'm assuming the President did. I don't know the specifics, but --

10 Q Okay. Do you know how the termination messages were communicated?

11 A I don't recall if they were -- how they were communicated.

12 Q And these are career attorneys and agents. Is that right?

13 A That's correct.

14 Q Okay. They're not political appointees. They've served different
15 administrations with different political parties at the head. Is that right?

16 A That's correct.

17 Q Do you know what justifications were given for terminating those staff
18 members?

19 A My understanding is no justification was given.

20 Q Are you aware of any reason to target these individuals besides their work on
21 your investigation or association with your investigation?

22 A None. I think it's a travesty.

23 Q Do you believe -- well, you just answered it, but -- do you believe it's proper to
24 retaliate against career prosecutors for their involvement in a Federal investigation?

25 A Of course not.

1 Q What about the support staff who aided those prosecutors?

2 A I don't understand that, why you would do that.

3 Q And what about FBI agents who carried out this investigation?

4 A As I said earlier, I don't understand why someone would seek to do that.

5 Q Do you think that firing all of these public servants will make the country safer?

6 A No.

7 Q Why not?

8 A As I mentioned previously, I think when you fire people who are career public
9 servants serving both parties over many decades, you -- you lose the expertise about how to
10 do the job properly. And that has an effect on the Department today, and it will have an
11 effect on the Department for some time, if those people aren't there to be leaders and to
12 teach young lawyers how to be public servants.

13 Q Do you feel like you have a target on your back?

14 A I believe that President Trump wants to seek retribution against me because of
15 my role as special counsel.

16 Q Would you be surprised if President Trump directs the DOJ to indict you?

17 A No.

18 Q Are you concerned about the safety of people who associate with you, like your
19 former colleagues and your attorneys here today?

20 A I would prefer, if it's all right, not to talk about my safety, because I think doing
21 so could, in fact, endanger my safety and those of people around me.

22 Q Understood.

23 BY [REDACTED]

24 Q I'm going to turn a little bit to the folks who actually attacked the Capitol on
25 January 6.

1 I believe your -- your report talks about the rioters, the crowd that violently attacked
2 the law enforcement officers attempting to secure the building, on page 25 of your report.

3 One of those rioters was Daniel Rodriguez, who multiple times plunged a stun gun
4 into the neck of Officer Michael Fanone, causing Officer Fanone to suffer a heart attack and
5 sustain other injuries. Mr. Rodriguez was subsequently sentenced to 12 years in prison
6 after a Federal judge called him a, quote, "one-man army of hate."

7 Are you aware of President Trump pardoning Mr. Daniel Rodriguez?

8 A I am -- not him specifically, but my understanding is he pardoned all the people
9 who violently assaulted police officers that day.

10 Q So, in pardoning all the people who assaulted police officers that day, another
11 example is a Mr. Patrick McCaughey III, who used a stolen police riot to -- police riot shield
12 to crush Officer Daniel Hodges in a metal door frame at the entrance of the Lower West
13 Terrace Tunnel. And he left Officer Hodges trapped, bleeding, even crying for help from
14 his fellow officers.

15 Officer Hodges testified -- and this is a quote -- "If I was there much longer being
16 assaulted in such a way, I knew that it was very likely I wouldn't be able to maintain my
17 consciousness."

18 Judge Trevor McFadden described Mr. McCaughey as a, quote, "poster child of all
19 that was dangerous and appalling about January 6," stating that his actions were, quote,
20 "some of the most egregious crimes that were committed that day," end quote.

21 Mr. McCaughey was sentenced to more than 7 years in prison.

22 Are you aware that Mr. McCaughey was one of those rioters who assaulted law
23 enforcement on January 6 that were pardoned by President Donald Trump?

24 A Again, I don't know his specific name, but I know people like him who did
25 things like he did were pardoned.

1 Q And are you aware of the more than 140 police officers who were injured by
2 the pro-Trump mob on January 6, sustaining injuries such as cracked ribs, traumatic brain
3 injuries, smashed spinal disks, and heart attacks as rioters used bats, flagpoles, chemical
4 sprays, stolen police shields, and batons to beat officers? Are you aware of those facts on
5 that day?

6 A Very much so.

7 Q Do you believe that pardoning individuals like this who committed crimes
8 against law enforcement that day makes our country safer?

9 A It does not, in my view.

10 Q Can you explain why, from your prosecutorial experience prosecuting gangs,
11 prosecuting violent crimes, why pardoning individuals who committed violence on January 6
12 doesn't make our country safer?

13 A Well, I don't think it's really my opinion; I think we've already seen some of the
14 people who were pardoned go on to commit other serious crimes. And I don't have much
15 doubt that in the coming months and years we'll see more of that. People who would
16 otherwise be incarcerated, communities protected from them, they're going to be -- they're
17 out in communities, and my view is that we will continue, unfortunately, to see people who
18 were pardoned for committing violence on January 6th continuing to commit additional
19 crimes. That's my view.

20 [REDACTED] Can we go off the record for a second?

21 [Discussion off the record.]

22 [REDACTED] We'll go back on the record.

23 BY [REDACTED]

24 Q Were you aware that on November 10th of 2025 President Trump issued a
25 second, sweeping pardon proclamation granting, quote, "full and complete and

1 unconditional," end quote, pardons to at least 77 individuals related to efforts to overturn
2 the 2020 election? Were you aware of that second pardon from November 10th of 2025?

3 A I was.

4 Q And many of these individuals that were one of these 77 individuals, they were
5 individuals identified as unindicted co-conspirators in your investigation. Is that correct as
6 well?

7 A I believe that's correct.

8 Q Some of these individuals that were pardoned include Mr. Giuliani, who we
9 talked about earlier today, who was willingly -- willing to spread knowingly false claims and
10 worked to subvert the results of the 2020 election.

11 Are you aware of that?

12 A Yes.

13 Q I guess, taking a step back and looking at the fact that President Trump
14 pardoned these folks, these 77 individuals who were previously working to overturn the
15 election, the 2020 election, what message does that send to folks living in the country,
16 particularly as it relates to election integrity in future elections?

17 A You know, I -- I -- I just -- I don't understand why he would pardon people who
18 assaulted law enforcement. I think it sends lots of messages. One of the messages is to
19 law enforcement. The people who defended the Capitol that day, in my view, are heroes,
20 and I think pardoning people who assaulted them is wrong.

21 Q And what about pardoning the folks who actually worked on the conspiracy to
22 overturn the election? What message does that send about election integrity to folks
23 living in the country?

24 A Well, I don't have a full list of all the people that he pardoned there, and so I
25 don't want to speak generally about all those cases.

1 Q Uh-huh.

2 A We didn't charge anybody other than Donald Trump. And so I'm not going to
3 speak about pardoning people who weren't charged with crimes.

4 Q All right.

5 [REDACTED] Okay?

6 [REDACTED] Yes.

7 [REDACTED] All right. We'll go off the record.

8 Thank you.

9 [Whereupon, at 6:44 p.m., the deposition was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date

Jack Smith
U.S. House Committee on the Judiciary
December 17, 2025, Deposition Errata

Throughout: Change “special counsel” to “Special Counsel”

Throughout: Change “speech or debate” to “Speech or Debate”

Throughout: Change “district court” to “District Court”

Throughout: Change “court of appeals” to “Court of Appeals”

Throughout: Change “attorney general” to “Attorney General”

Throughout: Change “public integrity section” to “Public Integrity Section”

Page 10, Line 14: Change “witness” to “witness’s”

Page 21, Line 15: Change “time with the Department of Justice” to “time at the Department of Justice”

Page 28, Line 3: Change “all witnesses” to “all our witnesses”

Page 29, Line 5: Change “and, again, Republicans” to “and, again, to Republicans”

Page 39, Line 2: Change “The” to “Then”

Page 43, Line 12: Change “I don’t know” to “I don’t -- no.

Page 44, Line 24: Change “Court of the D.C. Circuit” to “Court or the D.C. Circuit

Page 53, Line 8: Change “the Hague” to “The Hague”

Page 53, Line 19: Change “offices” to “District Attorney’s Office”

Page 66, Line 14: Change “6(c)” to “6(e)”

Page 68, Line 18: Change “Federal prosecutor” to “federal prosecutor”

Page 68, Line 19: Change “international criminal court” to “International Criminal Court”

Page 72, Line 10: Change “fronts” to “front”

Page 77, Line 10: Change “colleges” to “colleagues”

Page 79, Line 20: Change “American has” to “America has”

Page 82, Line 13: Change “6(c)” to “6(e)”

Page 88, Line 22: Change “experience and complex investigations” to “experience in complex investigations”

Page 90, Line 2: Change “was a senior position” to “was in a senior position”

Page 94, Line 21: Change “because that violence started” to “because the violence had started”

Page 97, Line 16: Change “anything than what it was” to “anything other than what it was”

Page 107, Line 2: Change “Bratton” to “Bratt”

Page 107, Line 3: Change “the Hague” to “The Hague”

Page 107, Line 24: Change “last however many period of time was ever” to “-- last however many period of time -- was ever”

Page 110, Line 11: Change “public social” to “public sources”

Page 113, Line 15: Change “And that, I’ll just say,” to “On that, I’ll just say,”

Page 120, Line 12: Change “maybe it was ‘til Sun” to “maybe it was not ‘til Sun”

Page 130, Line 6: Change “that they had” to “that he had”

Page 133, Line 7: Change “was, ‘Affirmative’” to “was affirmative”

Page 137, Line 3: Change “That -- text records” to “Records”

Page 142, Line 17: Change “Michigan, Georgia” to “Michigan and Georgia”

Page 154, Line 6-7: Change “State and most have said so” to “State . . . said so”

Page 170, Line 22: Change “anything. It was really” to “anything -- it was really”

Page 181, Line 18-19: Add internal quotation marks around “Well, I know how to make a complaint if I want to. Take that for what you will.”

Page 184, Line 12: Change “I’ve seen and experienced a prosecutor do” to “I’ve seen an experienced prosecutor do”

Page 185, Line 2-3: Change “be in each individual thing” to “be in any -- but I certainly”

Page 192, Line 7: Change “Justice Department to -- in one way, to effectuate” to “Justice Department as one way to effectuate”

Page 193, Line 5: Change “principals” to “principles”

Page 194, Line 2: Change “severance” to “servants”

Page 194, Line 15: Change “patron” to “patronage”

Page 194, Line 21: Change “local” to “loyal”

Page 195, Line 19: Change “It does -- or at least during my time there. It also does” to “It does, or at least during my time there, it also does”

Page 195, Line 22: Change “Speech Or Debate” to “Speech or Debate”

Page 196, Line 19: Change “public integrity oversees” to “Public Integrity oversees”

Page 234, Line 6: Change “consistent with the law” to “inconsistent with the law”