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

INTERVIEW OF: MOLLY GASTON

Wednesday, February 25, 2026

Washington, D.C.

The interview in the above matter was held in room 2237 Rayburn House Office Building,
commencing at 9:55 a.m.

1 Appearances:

2
3
4
5 For the COMMITTEE ON THE JUDICIARY:

6 [REDACTED], GENERAL COUNSEL

7 [REDACTED], PROFESSIONAL STAFF MEMBER

8 [REDACTED], DIGITAL DIRECTOR

9 [REDACTED], CHIEF COUNSEL FOR OVERSIGHT

10 [REDACTED], COUNSEL

11 [REDACTED] RESEARCH ASSISTANT

12 [REDACTED], MINORITY FELLOW

13 [REDACTED], MINORITY SPECIAL COUNSEL FOR INVESTIGATIONS AND SENIOR ADVISOR

14 [REDACTED] MINORITY LEGAL INTERN

15 [REDACTED], MINORITY FELLOW

16 [REDACTED], MINORITY LEGAL INTERN

17 [REDACTED], MINORITY SENIOR INVESTIGATIVE COUNSEL

18
19 For MOLLY GASTON:

20 CATHERINE DUVAL, ESQ.

21 JACOBUS VAN DER VEN, ESQ.

22 Zuckerman Spaeder

23
24
25 [REDACTED]: Good morning. This is a transcribed interview of Ms. Molly Gaston.

1 Chairman Jordan has requested this interview as part of the committee's oversight of special counsel
2 Jack Smith and his team.

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

4 Ms. Gaston. Sure. I'm Molly Gaston.

5 [REDACTED]: We encourage witnesses who appear before the committee to freely consult
6 with counsel if they so choose. And it's my understanding that you are appearing today with
7 personal counsel. Is that correct?

8 Ms. Gaston. Yes.

9 [REDACTED]: Would counsel please state your name for the record.

10 Ms. Duval. My name is Catherine Duval. I'm with Zuckerman Spaeder, here with my
11 colleague.

12 Mr. Van Der Ven. I'm Cobus Van der Ven, also with Zuckerman Spaeder.

13 [REDACTED]: Thank you.

14 On behalf of the committee, I want to thank you for appearing here today voluntarily. The
15 chairman also appreciates your willingness to appear here today. My name is [REDACTED], and
16 I'm with Chairman Jordan's staff. I'll now have everyone else from the committee who is here in
17 the room introduce themselves as well.

18 [REDACTED]: Good morning. [REDACTED].

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

20 [REDACTED]: [REDACTED] from Ranking Member Raskin's staff.

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

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

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

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

25 [REDACTED]: [REDACTED] Jamie Raskin's staff.

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

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

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

4 [REDACTED]: Thank you. I'll now going over the ground rules and guidelines that we'll
5 follow during today's interview.

6 Our questioning will proceed in rounds. The majority will ask questions first for 1 hour, and
7 then the minority will have an opportunity to ask questions for an equal period of time if they so
8 choose. We'll alternate back and forth until there are no more questions and the interview is over.

9 Typically, we take a short break at the end of each hour, but if you'd like to take a break apart
10 from that, just let us know.

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

13 Ms. Gaston. Yes.

14 [REDACTED]: As you can also see, we have a videographer video recording the interview as
15 well.

16 So the court reporter can take down a clear record, we'll do our best to limit the number of
17 people directing questions at you during any given hour to just those people on the staff whose turn
18 it is. Please try and speak clearly so the court reporter can understand and so the folks down at the
19 end of the table can hear you. It's important that we don't talk over one another, interrupt each
20 other if we can help it. And that goes for everybody present at today's interview.

21 We want you to answer our questions in the most complete and truthful manner as possible,
22 so we'll take our time. If you have any questions, or if you do not understand one of our questions,
23 please let us know. Our questions will cover a wide range of topics, so if you need clarification at
24 any point, just say so.

25 If you honestly don't know the answer to a question or do not remember, it is best not to

1 guess. Please give us your best recollection, and it is okay to tell us if you learned information from
2 someone else. Just indicate how you came to know the information.

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

7 Ms. Gaston. I do.

8 [REDACTED]. This also applies to questions posed by congressional staff in an interview. Do
9 you understand this?

10 Ms. Gaston. I do.

11 [REDACTED]. Witnesses that knowingly provide false testimony could be subject to criminal
12 prosecution for making false statements under 18 U.S.C. Section 1001. Do you understand this?

13 Ms. Gaston. I do.

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

16 Ms. Gaston. No.

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

20 For the same reason, the marked exhibits that we'll use today will remain with the court
21 reporter so they can go in the official transcript, and any copies of those exhibits will be collected at
22 the end of the interview.

23 That is the end of my preamble. Is there anything my colleagues from minority would like to
24 add?

25 [REDACTED]. We would just thank you again for appearing here voluntarily. And I believe it's

1 already been noted for the record, but drawing your attention to the video cameras.

2 [REDACTED]: Ms. Duval, anything?

3 Ms. Duval. Again, Kate Duval for Ms. Gaston. We're here voluntarily, and Ms. Gaston's
4 going to do her best to answer your questions.

5 We don't know what documents you may or may not show to her. My understanding was it
6 probably wouldn't be document-heavy. But we've looked at what we could that's publicly available
7 and the news article that you mentioned, Caroline. And, you know, our purpose here is to give the
8 testimony and the facts that she can. If we run into a kerfuffle about Rule 6(e) or something like
9 that, we've talked about going off the record and figuring out a way to get to the information if we
10 can legally get there.

11 [REDACTED]: Great. The clock now reads 10:04 a.m. We'll start our first hour of
12 questions.

13 EXAMINATION

14 [REDACTED]:
15 Q Ms. Gaston, what years did you work at the Department of Justice?

16 A From 2011 until 2025. '25. Sorry.

17 Q Okay. And starting with 2011, what position did you go in at the Department?

18 A I was an attorney advisor in the Office of Legislative Affairs.

19 Q And how long were you an attorney advisor at OLA?

20 A I think about 2 years.

21 Q Okay. And were you promoted, or did you move on to another job --

22 A It was probably 3 years. Sorry.

23 Q Okay.

24 A I then moved onto another job in DOJ.

25 Q Okay. And what year was that? Do you remember?

1 A I think in 2015.

2 Q 2015.

3 A Yes.

4 Q And what role was that?

5 A I was a counselor in the Office of Attorney General.

6 Q And was that a lateral move? Was it a promotion?

7 A So in the Office of Legislative Affairs, eventually I became an attorney advisor and the
8 chief of staff. And then I moved to the Office of Attorney General as a counselor. They were
9 different sorts of jobs. Lateral move perhaps.

10 Q Okay. And in 2015 when you became a counselor to the Attorney General, who was
11 the Attorney General at that time?

12 A It was Eric Holder.

13 Q Okay. And after you served Attorney General Holder as a counselor in 2015, what was
14 your next role at the Department of Justice?

15 A Then I accepted a position in the Public Integrity Section.

16 Q And who offered you the position in the Public Integrity Section?

17 A The chief of the section and, I think, formally, the Assistant Attorney General for the
18 criminal division.

19 Q And who was the chief of the section at that time?

20 A Ray Hulser.

21 Q Ray Hulser. And what year was that that you went to PIN?

22 A I think 2015 -- and so I believe I was offered the position in 2015.

23 Q Okay.

24 A And then I spent the beginning of -- then I spent 9 months as a Special Assistant United
25 States Attorney in the D.C. United States Attorney's Office --

1 Q Okay.

2 A -- before I began work in PIN.

3 Q In PIN. Okay. And how long were you with PIN?

4 A I was with PIN from 2016 until 2018.

5 Q 2016 to 2018. And where did you go in 2018?

6 A I went to the D.C. U.S. Attorney's Office.

7 Q Okay. And how long were you at the D.C. U.S. Attorney's Office?

8 A I think technically I was at the D.C. U.S. Attorney's Office until January of 2025.

9 Q January of 2025. Okay. Can you tell us about the various roles that you held at the
10 U.S. Attorney's Office for D.C.?

11 A I went -- I went there to work in the fraud and public corruption section.

12 Q Okay.

13 A Which is a section whose name changed at points while I was there, but it was always
14 that section that I worked in.

15 Q Okay. And then you stayed there fully technically until January 2025? Is that
16 correct?

17 A Yes. Yes.

18 Q Okay. Did you ever go to the Office of Special Counsel? Were you ever detailed? --

19 A Yes. I was detailed to the office -- to the special counsel's office, and my start there
20 was in April of 2023.

21 Q April of 2023. But the -- were you working out of the D.C. U.S. Attorney's Office for the
22 full tenure there, 2018 to 2025?

23 A So I was also on another detail --

24 Q Okay.

25 A -- before the special counsel's office.

1 Q What can you tell us about that detail?

2 A It was a detail to the Deputy Attorney General's office.

3 Q And who was the DAG at the time?

4 A Lisa Monaco.

5 Q And what role did you play for DAG Monaco?

6 A I was an Associate Deputy Attorney General.

7 Q And what were your responsibilities as an ADAG?

8 A My portfolio was the criminal division and criminal matters.

9 Q Okay. And did you leave this detail to go on detail to the special counsel's office, or
10 was there a frame of time where you were just at the D.C. U.S. Attorney's Office?

11 A I went from the detail in ODAG to the detail in the special counsel's office.

12 Q Okay. And can you tell us the dates of your detail to the DAG's office?

13 A I think approximately it would have been September -- August or September of 2022.

14 Q Okay.

15 A Until April of 2023.

16 Q Okay. And then you were with the special counsel's office until January 2025?

17 A Yes.

18 Q Okay.

19 A And then I went back to the fraud and public corruption section in the U.S. Attorney's
20 Office.

21 Q Okay. And now to work backwards a bit, so you went to DOJ in 2011. What did you
22 do prior to going to the Department of Justice?

23 A So before going to OLA --

24 Q Uh-huh.

25 A -- I worked for the Energy and Commerce Committee.

1 Q And which member did you work for at the Energy and Commerce --

2 A The chairman was Henry Waxman.

3 Q Waxman. Okay. And flipping to your time at the special counsel's office, when did
4 you first meet Jack Smith?

5 A At the special counsel's office?

6 Q Ever during your tenure at the Justice Department. I know he was there a long time,
7 so.

8 A I first met Mr. Smith when I was in the Office of Legislative Affairs.

9 Q Okay. And what year was that?

10 A My guess is that it would have been in 2014?

11 Q 2014. Okay. And what was the context in which you were meeting Mr. Smith at that
12 time?

13 A So in my role in the Office of Legislative Affairs, the public integrity section was the
14 recipient of some oversight requests from Congress, and so I was facilitating that.

15 Q Okay. And did you have any more interactions with Mr. Smith between 2014 and
16 when you went to the special counsel's office in 2023?

17 A I'm just pausing to think for a second.

18 Q Of course.

19 A So, yes.

20 Q And what can you tell us about those interactions?

21 A I remember one interaction.

22 Q Okay.

23 A And it was -- I ran into him in the hallway --

24 Q Okay.

25 A -- at Main Justice. And we made small talk.

1 Q Okay. Was that in the later time frame or the earlier time frame, if you can
2 remember?

3 A It was -- it was in the later time frame when I was in ODAG.

4 Q In ODAG. Okay. Was he special counsel at the time or had he --

5 A No.

6 Q Okay.

7 A I'm sorry. Can you remind me of --

8 Q Of course.

9 A -- the -- so the question was between the special counsel -- between -- sorry. Can you
10 remind me the question again? I just want to make sure that I answered it completely.

11 Q So between the time that you were handling the oversight requests in OLA for PIN in the
12 2014 time frame and April 2023 when you went to the special counsel's office, did you have any
13 other interactions with Jack Smith?

14 A Got it. So there was the meeting in the hallway where we made small talk before he
15 was appointed.

16 Q Okay.

17 A And then after Mr. Smith was appointed, I had some interactions with him, helping,
18 essentially, with logistics of getting the special counsel's office set up.

19 Q Okay.

20 A Okay.

21 Q Okay. And do you by chance remember -- before he was appointed when you were in
22 the DAG's office, do you remember what year that was that you would have seen him in the hallway
23 or --

24 A So I think it would have been 2022.

25 Q 2022. Okay. And I know he's appointed November 18th, 2022, to serve as special

1 counsel. Did you have any role in the selection process for the special counsel?

2 A I did not.

3 Q Okay. Are you familiar with Marshall Miller?

4 A Yes.

5 Q And did you work with Marshall Miller in the DAG's office?

6 A Yes.

7 Q Okay. And when Mr. Smith was here testifying, he talked about how he had had some

8 interactions with Mr. Miller in the summer of 2022 about his desire to come back to the Justice

9 Department. Were you aware of any of those communications?

10 A I was not.

11 Q Were you involved in any of those conversations?

12 A I was not.

13 Q Okay. And who asked you to join the special counsel's team in April of 2023?

14 A In terms of who directly asked me, it was J.P. Cooney.

15 Q J.P. Cooney. And what was his role at the time?

16 A He was the deputy special counsel.

17 Q Okay. And had you worked with J.P. Cooney prior to the special counsel's office?

18 A Yes.

19 Q How long would you say that you worked with Mr. Cooney?

20 A Over a number of years.

21 Q Okay. Was he also at the D.C. U.S. Attorney's Office at the time?

22 A Yes.

23 Q Okay. Was he in the fraud and public corruption section?

24 A Yes.

25 Q Okay. How long did you overlap while you were there, if you can remember?

1 A The entire time that I was in the D.C. U.S. Attorney's Office, he was as well.

2 Q Okay. And did you ever talk to Mr. Smith about your position with the special
3 counsel's office?

4 A Yes.

5 Q And how many conversations did you have with Mr. Smith before accepting the
6 position?

7 A I'm pausing just because --

8 Q Take your time --

9 A -- I remember only one conversation. I can't remember if that single conversation was
10 before or after I accepted.

11 Q Okay.

12 A It's possible it was after I accepted.

13 Q And what were the details of the conversation? What did you discuss with Mr. Smith
14 at the time?

15 A I don't remember --

16 Q Okay.

17 A -- the details.

18 Q Okay. You talked about a conversation you had with Mr. Smith after his appointment
19 regarding logistics of setting up the office. What can you tell us about that discussion you had with
20 Mr. Smith?

21 A I had more than one --

22 Q Okay.

23 A -- such discussion. And when I say "logistics," I mean logistics, like how to get him
24 equipment to start working.

25 Q Uh-huh.

1 A And things of that nature.

2 Q Okay.

3 A So very much nuts and bolts of getting an office started and not actually substance.

4 Q And when you came on in April 2023, how many people were working in the special
5 counsel's office?

6 A Let me just pause for a second and think through it. My very rough estimate would be
7 maybe 30.

8 Q Okay. Did that number fluctuate at all while you were at the special counsel's office?

9 A The number of folks working there did fluctuate.

10 Q Okay. And did it go up or down?

11 A I think it went down.

12 Q Down? Okay. Was 30 the most people that worked at the special counsel's office
13 that you can remember?

14 A If 30 is an accurate estimate, then yes. I think when I started there, it was the most
15 people working there that I -- that I experienced.

16 Q Okay. And were you officing out of the D.C. U.S. Attorney's Office at Main Justice, or
17 was there another building that you were at at the time?

18 A There was a building over in Noma.

19 Q Okay. And did you -- your whole tenure with the special counsel's office, did you work
20 out of there?

21 A Yes.

22 Q Did you have a role in bringing anyone else on the team -- I know you said J.P. Cooney
23 reached out to you about the position. Did you reach out to anyone about coming to work for the
24 special counsel's office?

25 A Not that I can recall.

1 Q And what was your title while you were with the special counsel?

2 A I was a senior assistant special counsel.

3 Q And what were your primary roles and responsibilities, if you had to distill it down?

4 A I think it was the equivalent of being an Assistant United States Attorney, but in the
5 special counsel context.

6 Q And who did you work most closely with at the special counsel's office?

7 A Probably Thomas Windom.

8 Q Okay. And there were, if you will, two investigations that the special counsel was
9 conducting, one about the documents case and one about the election interference case. Was
10 there an investigation or case that you worked on the most?

11 A Yes. I worked on the D.C.-based case.

12 Q Okay. And did you ever work on the documents case or the case out of the Southern
13 District of Florida?

14 A No.

15 Q Okay. And I know you had a long tenure at the D.C. U.S. Attorney's Office. When did
16 you begin investigating anything related to the 2020 election?

17 A To the 2020 election.

18 Q Correct.

19 A I'm just pausing because I -- the reason I'm pausing is because in the immediate
20 aftermath of January 6th, we worked on a lot of matters related to January 6th.

21 Q Uh-huh.

22 A I'm not sure I would say that that -- I guess it depends on whether you say that that's
23 related to the 2020 election.

24 Q Okay. We can break it down. So when did you start working on matters specifically
25 related to January 6th, 2021, and the events that occurred that day?

1 A As best as I can remember, many of us in the office started working on things related to
2 January 6th, 2021, possibly as even -- possibly as early as the night of January 6th.

3 Q Okay.

4 A Or the morning of January 7th, 2021 --

5 Q Okay.

6 A -- because there were a lot of people who had breached the Capitol, and we were
7 seeking to figure it out.

8 Q And on the night of January 6th, or morning of January 7th, what did your work focus on
9 at that point in time?

10 A My memory is that it focused on individuals who had breached the Capitol.

11 Q Okay. And when did you start investigating specifically President Trump and
12 members -- or people within his orbit and their responsibility for events that occurred on January
13 6th?

14 A So when one conducts an investigation, and I'm sure it's similar to what you do here,
15 you don't start with an individual or focusing on an individual. You gather a lot of evidence and you
16 sort of follow the evidence where it leads. And so the -- my experience in sort of coming to a point
17 of investigating the conduct of President Trump and others was really in the special counsel's office.

18 Q Okay. So in the January 2021, February 2021 time frame, did you ever talk about
19 individuals or investigate individuals who are close with President Trump and what their role may
20 have been for the events that day?

21 A When you say close with President Trump, what do you mean?

22 Q Thinking, like, Roger Stone, for example, or any individuals who worked in the White
23 House on that day.

24 A So I thought it was very important to look at individuals who possibly could have had
25 something to do with the breach of the Capitol on January 6th. And so, that was -- that was my

1 focus in January and February of 2021.

2 Q Okay. Did that investigation in January and February 2021 ever lead you to any
3 individuals that were associated with the President, whether they be on his campaign or in the White
4 House or, you know, Roger Stone, for example?

5 A So -- sorry. Could you repeat the question?

6 Q Yeah. In the January and February 2021 time frame, you were discussing individuals
7 who were responsible for the breach of the Capitol. During that investigation, in that time frame,
8 did it ever lead you to look at people within President Trump's -- I'll use "orbit" this time
9 around -- but close associates, anyone who worked in the White House, anyone who worked on his
10 campaign?

11 A So I remember that Roger Stone was in Washington on January 6th, 2021, and that
12 there were photographs of him with members of the Oath Keepers.

13 Q Uh-huh.

14 A That is what I remember about Roger Stone at the time.

15 Q Okay. And it has been reported that in this time frame, J.P. Cooney had a proposed
16 investigation to look at individuals within President Trump's orbit. Do you remember this
17 occurrence?

18 A So could we look at the article?

19 Q We can look at the article if you'd like to. Yes. We'll mark it as exhibit number 1.

20 Ms. Duval. Before you mark that, I neglected to ask you to include our letter from last night
21 as an exhibit.

22 [REDACTED]. Okay. We can make that number 1, and we'll make this number 2.

23 [Gaston Exhibits Nos. 1 and 2

24 were marked for identification.]

25 Ms. Duval. Thanks. Sorry.

1 [REDACTED]:

2 Q And if it's helpful, this piece comes from -- looks like it's the -- it's not page numbered.
3 It's like the fifth page, there's a heading that says "A plan to focus on Trump's orbit is batted down."

4 A And let me just say at the outset, I was not a source for this article.

5 Q Okay.

6 A So I can't tell you whether it's accurate or what they're basing stuff on.

7 Q And during your tenure at the D.C. U.S. Attorney's Office, did you ever talk to Carol
8 Leonnig or Aaron Davis?

9 A I had one contact with Aaron Davis.

10 Q Okay. And when was that?

11 A This was actually when I was in ODAG.

12 Q Okay. And then when you were with the special counsel's office, did you ever talk to
13 Carol Leonnig or Aaron Davis?

14 A I did not.

15 Q They wrote this book called "Injustice." You may be aware of it. They published the
16 book. And it talks about the special counsel's time and the, you know, prior investigations that
17 went on. Were you a source for that book?

18 A I was not a source for the book.

19 Q Okay.

20 Ms. Duval. You can talk about the contact with Aaron.

21 Ms. Gaston. Yes. I just want to explain it so that you don't think that I talked substantively
22 with him.

23 [REDACTED]. Absolutely.

24 Ms. Gaston. On a Sunday evening, I was having dinner with my family and there was a
25 knock on my door, and I opened the door and Aaron Davis was on my doorstep seeking to speak to

1 me, and I told him no, thank you. But what I remember about --

2 [REDACTED]: Sorry. I'm just -- let me just jump in here. So he just, like, showed up at your
3 house?

4 Ms. Gaston. He showed up at my house.

5 [REDACTED] He didn't text you or email you?

6 Ms. Gaston. Did not text, did not email.

7 [REDACTED] That seems like an odd way to develop a source.

8 Ms. Gaston. It seems like an odd way. And I remember it very clearly because I was having
9 my father over for dinner, so my entire family was sitting at my dinner table, and I had to step out
10 onto my doorstep to have this conversation. And the way that I remember it is that he essentially
11 suggested that he knew that I had worked with J.P. Cooney and thought that I could tell J.P.'s side of
12 the story of things. And so the sense I got was that he was frustrated that J.P. was also not speaking
13 to him, and he was trying to find a way around that.

14 [REDACTED]: When was this again?

15 Ms. Gaston. This would have been -- I think it would have been in the fall of 2022.

16 [REDACTED] Okay. So this is before the special counsel --

17 Ms. Gaston. Yes.

18 [REDACTED]: -- tenure.

19 Ms. Gaston. Yes.

20 [REDACTED]:

21 Q And looking at the article, I think I directed you to -- below, "A plan to focus on Trump's
22 orbit is batted down." If you look at the third paragraph, just to kind of help orient us where we're
23 going here, it says, "But a group of prosecutors led by J.P. Cooney, the head of the fraud and public
24 corruption section at the U.S. Attorney's Office, argued that the existing structure of the probe
25 overlooked a key investigative angle. They sought to open a new front, based partly on publicly

1 available evidence, including from social media, that linked some extremists involved in the riot to
2 people in Trump's orbit, including Roger Stone, Trump's longest serving political advisor; Ali
3 Alexander, an organizer of the "Stop the Steal" rally that preceded the riot; and Alex Jones, the
4 Infowars host."

5 Do you remember J.P. Cooney ever seeking to expand the investigation to look at individuals
6 within Trump's orbit?

7 A So with respect to Roger Stone --

8 Q Uh-huh.

9 A -- I remember there being sort of photographic evidence of him being with the Oath
10 Keepers. And so I think that I thought that we might want to look at whether there was a
11 connection there.

12 Q Okay. And when was this -- when was the time frame of this, if you can remember?

13 A Early -- early 2021.

14 Q Early 2021. Okay. And was there anyone else that you all were interested in besides
15 Roger Stone at that point in time?

16 Ms. Duval. I mean, I think there were many, many people --

17 Ms. Gaston. Yes.

18 Ms. Duval. -- they were interested in.

19 A So let me just pause and say at this time, in the early 2021 period, the effort was
20 massive, as you can imagine. And especially in the immediate time after January 6th, 2021, it felt
21 like the entire office. But I think much of the office was focused on trying to identify people who
22 had breached the Capitol; in particular, people who had attacked police officers and who had been
23 violent. And there was a very real fear that I can remember before inauguration that there might
24 be some sort of additional attack. And I don't know if you were here at the time, but --

25 Q I was.

1 A -- you probably remember the military fencing around the Capitol grounds and the
2 photographs of the National Guard sleeping in the Capitol. And so much of our focus was on finding
3 individuals who had been violent or individuals who we worried presented a continuing threat.

4 Q And were there other individuals similarly situated to Roger Stone and their closeness to
5 President Trump that you all sought to connect to the Oath Keepers, if you will?

6 A I don't remember there being photographs of other people with the Oath Keepers, but
7 we were investigating the Oath Keepers who had breached the Capitol.

8 Q Okay. And a little bit further down on that page, three more paragraphs down, the
9 "According to three people," I'll read that. It said, "According to three people who either viewed or
10 were briefed on Cooney's plan, it called for a task force to embark on a wide-ranging effort, including
11 seeking phone records for Stone, as well as Alexander. Cooney wanted investigators to follow the
12 money -- to trace who had financed the false claims of a stolen election and paid for the travel of
13 rallygoers-turned-rioters. He was urging investigators to probe the connection between Stone and
14 members of the Oath Keepers, who were photographed together outside the Willard Hotel in
15 downtown Washington on the morning of January 6th."

16 Do you know if there was ever a task force that was created?

17 A I'm not sure if task -- I don't know if "task force" is the right word.

18 Q Strike force. Whatever.

19 A I remember there were a group -- I mean, so much of the office was devoted to figuring
20 out how to respond to January 6th. I remember there were a group of us who were trying to figure
21 out, sort of, a structure for the investigation. But I don't know if "task force" is the right word for it.

22 Q Okay. What was Mr. Cooney's role at this point in time in the January 6th-related
23 investigations?

24 A As I recall, he was one of many supervisors in the office who were trying to sort of
25 organize how the office was going to respond.

1 Q Okay. And how many prosecutors worked for Mr. Cooney at the time?

2 A So in the fraud and public corruption section --

3 Q Uh-huh.

4 A -- at that time, I would estimate, but this is an estimate, like 20 prosecutors. But it
5 could -- let me take that back. I think it was probably 10 to 20. So that's -- I know that's a broad
6 range. I just can't remember particularly.

7 Q And if you flip the page on the article, the paragraph starting with "Axelrod" -- and he
8 was one of the individuals who went to the Department of Justice for the new Biden administration
9 early on. It said, "Axelrod called a meeting for the last week of February with Sherwin, D'Antuono,
10 Abbate, and other top deputies. Cooney wasn't there to defend his plan, according to three people
11 familiar with the discussion. But Axelrod and Abbate reacted allergically to one aspect of it:
12 Cooney wanted membership rolls for Oath Keepers as well as groups that had obtained permits for
13 rallies on January 6th, looking for possible links and witnesses. The two saw these steps as treading
14 on First Amendment-protected activities, the people said."

15 Then a little bit further down, it says, "All who assembled for the late February meeting were
16 in agreement, with Axelrod making the final call: Cooney's plan would not go forward."

17 Do you remember in this time frame, the January 2021, February 2021 time frame, any sort of
18 dissent between the Washington field office of the FBI and the U.S. Attorney's Office for D.C. in
19 pursuing specific angles of investigation?

20 A So all of these people were very much -- this was very much above my pay grade, so.

21 Q Just to kind of take it back, how often did you interact with -- I believe his first name is
22 Michael -- Sherwin? He was the acting U.S. Attorney at that time. How often did you interact with
23 U.S. Attorney Sherwin?

24 A Not very often.

25 Q Okay. And Steven D'Antuono was the assistant director in charge of the Washington

1 field office for the FBI at that time. Did you ever interact with Mr. D'Antuono?

2 A Not that I can remember.

3 Q Not that you can remember. Okay. Who did you interact with most frequently at
4 FBI?

5 A The folks that I interacted with at FBI were generally line agents or supervisory special
6 agents, so not -- the ADIC is, like, pretty high in the organizational structure. So it would not have
7 been -- it would not have been normal for me to have communications with Mr. D'Antuono.

8 Q And the line agents and supervisory special agents out of the Washington field office,
9 you were in the fraud and public corruption section, and there was FBI, WFO, kind of public
10 corruption section which was named CR 15. Are those the agents that you most frequently
11 interacted with, if you can remember?

12 A So in the fraud and public corruption section, we worked -- there are a lot of -- there are
13 a lot of FBI squads around D.C. In terms of my work, because my work was mostly corruption and
14 civil rights, we worked with two different squads. So there's a squad here in D.C. that's, like, a local
15 corruption squad, and so I worked with them. I had a lot of cases of local corruption, cases
16 like -- like bribery in the Office of Tax and Revenue here in D.C. and things of that nature. So I
17 worked with those agents on local corruption matters, and then with agents at CR 15, which was out
18 in Manassas, on Federal corruption matters.

19 Q Okay. And I'm assuming you probably never interacted with the deputy director, Paul
20 Abbate, at the FBI?

21 A I may have met him --

22 Q Okay.

23 A -- and shook his hand when I was in ODAG. But when I was in the U.S. Attorney's
24 Office, I don't think I ever met him.

25 Q But in terms of January 6-related work, you never had any interactions with Sherwin,

1 D'Antuono, or Abbate?

2 A Not that I can recall.

3 Q Do you know how frequently Mr. Cooney would have communicated with any of these
4 individuals?

5 A I don't.

6 Q Did he ever -- did Mr. Cooney ever communicate to you any sort of dissent that he
7 received from the Washington field office about pursuing January 6th-related investigations?

8 A I'm not remembering that.

9 Q Okay. And in the January 12th, January 13, 2021, time frame, U.S. Attorney Sherwin
10 and ADIC D'Antuono held a press conference on the progress of the January 6th-related work. Do
11 you remember that press conference at all?

12 A I don't.

13 Q At that press conference, I'll represent to you that he talked about -- Mr. Sherwin talked
14 about a specialized task force or strike force --

15 A Okay.

16 Q -- to examine conspiracy and sedition charges that were -- that was comprised of senior
17 national security prosecutors and public corruption prosecutors. Do you remember a strike force
18 that kind of specialized in that area or looked at that angle?

19 A So my guess is that's a reference to -- when I said there was a group of us trying to figure
20 out how to organize, how to respond.

21 Q Okay.

22 A I did not know that he called it a strike force.

23 Q And when did you -- when did it come about that there were a number of you trying to
24 figure out how to organize and respond to the various investigative angles?

25 A That would have been early 2021.

1 Q And who all was on that team, if you will?

2 A So there were a couple of us from the fraud and public corruption section; a few, I think,
3 from the national security section. And then my general memory is that the supervisory structure
4 was sort of the section chiefs, so Mr. Cooney, the section chief of the national security section.

5 Q Okay. And in this team, strike force, individuals who were looking at how to organize
6 how to respond, was there any sort of output from that task force? Was there any sort of, you
7 know, investigative plan or outline that was produced?

8 A I don't remember.

9 Q Okay.

10 Ms. Duval. I'm assuming you guys don't have a document that shows that?

11 Ms. Gaston. If you have a plan, I'd be happy to look at it.

12 [REDACTED]:

13 Q We have some messages between you and Mr. Cooney about a task force, and he talks
14 about an outline that was given to Mr. Sherwin? Does that -- and it's dated January 13th, 2021.
15 It's right after the press conference. Is that a helpful point of reference? Does that -- we can give
16 you the message exchange --

17 A Can I look at the message?

18 Q Yes.

19 A Great.

20 [Gaston Exhibit No. 3

21 was marked for identification.]

22 [REDACTED]:

23 Q This will be exhibit number 3, and it's just -- the very top few messages kind of talk
24 about a task force and an outline, if this helps jog your memory at all.

25 A So my guess is that we created some sort of outline of the structure we were trying to

1 create --

2 Q Okay.

3 A -- and that Mr. Cooney provided it to Mr. Sherwin.

4 Q Okay. And then, you know, this is the January, February time frame that you're talking
5 about. Matthew Graves, the appointed U.S. Attorney, comes in in November 2021. What can you
6 tell us about your investigative efforts on January 6th between February and November 2021?

7 A So as best as I can recall, the office sort of stood up a structure for addressing January
8 6th.

9 Q Uh-huh.

10 A And at some point, I turned my focus back to trying to keep the work -- the other work
11 of the fraud and public corruption section going.

12 Q Okay. And I know you said "at some point." Do you remember when you would have
13 turned back?

14 A I'm sorry. I don't remember specifically.

15 Q That's okay. And so, would you say that there was a period of time in 2021 that you
16 weren't focused on January 6th-related investigations?

17 A There was a time period when I transitioned from my January 6th cases because I
18 had -- I had multiple individual cases.

19 Q Okay.

20 A Like people who had breached the Capitol.

21 Q Okay.

22 A I transitioned those to other people. And so actually I could look at the docket and
23 sort of figure out when that was happening.

24 Q Uh-huh.

25 A I'm sorry. What was the question?

1 Q That's okay. Was there a period of time where you weren't solely focused on January
2 6th-related cases in 2021?

3 A Yes. I sort of shifted focus, or at least was trying to do both things.

4 Q And in 2021, was there a period in time when you shifted back to focusing more on
5 January 6th-related cases?

6 A Not that I recall.

7 Q Okay. And as I said, in November 2021, U.S. Attorney Graves is confirmed. He comes
8 to the office. And he approves the detail of Thomas Windom to come to the D.C. U.S. Attorney's
9 Office, and this was in November 2021. Do you remember Thomas Windom being detailed to the
10 U.S. Attorney's Office for D.C.?

11 A I do. Can I -- can I go back to my previous answer and then come back to this?

12 Q Of course.

13 A So I transitioned back to, sort of, general fraud and public corruption work. I did
14 maintain one individual case related to January 6th.

15 Q Uh-huh.

16 A It involved a Capitol police officer who had been in communication with someone who
17 breached --

18 Q Okay.

19 A -- the Capitol. And so that was one that I continued working on while I did other stuff.

20 Q Okay.

21 A And then I remember that Thomas came to the U.S. Attorney's Office.

22 Q And was there ever a period of time when you started working closely with Mr. Windom
23 while he was at the D.C. U.S. Attorney's Office?

24 A There was not.

25 Q There was not? Okay. And do you remember why he was detailed over to the D.C.

1 U.S. Attorney's Office?

2 A I do not -- I do not know why he was detailed to the office.

3 Q Okay. In November 2021, to the extent you remember -- this is also from the article.

4 Mr. Windom took an idea to Mr. D'Antuono about subpoenaing the Willard Hotel. Do you
5 remember this occurring at all?

6 A I don't. I was not involved in that.

7 Q Did Mr. Windom ever talk to you about an idea to get records from the Willard Hotel?

8 A Not that I recall.

9 Q And then when did your work shift back to focusing more on January 6th-related cases?

10 A It did not.

11 Q Okay.

12 A So I continued working in the U.S. Attorney's Office until my detail to the DAG's office.

13 Q Okay. At some point in time, I think it was the late 2021 time frame, early 2022 time
14 frame, Mr. Windom asked some National Archives and Records Administration, NARA, Inspector
15 General investigators to kind of help supplement his team that was looking into some investigative
16 threads. Do you remember any involvement with the Archives IG?

17 A I don't.

18 Q Did you ever have any contact with Waleska McLellan?

19 A I don't think so.

20 Q Okay. And when you were at the special counsel's office, to jump ahead a bit, was
21 there -- did you ever have any interactions with the Archives IG in that time frame?

22 A I don't think so.

23 Q Okay. Anyone from NARA at large?

24 A Not that I recall.

25 Q And switching entities here, Mr. Windom also kind of liaised with individuals from the

1 U.S. Postal Inspection Service. Did you ever have any interactions with anyone from U.S. PIS?

2 A I don't think so.

3 Q Okay. And in the time frame when you were at the special counsel's office, did you
4 have any interaction?

5 A I don't think so.

6 Q Okay. And while you were detailed to the DAG's office, I think you said September
7 2022 to April 2023, did you have any involvement in January 6th-related work while you were at the
8 DAG's office?

9 A I did. That was in my portfolio.

10 Q Okay. And what can you tell us about your work in the DAG's office on January 6th?

11 A So, sort of, January 6th matters were in my portfolio. So I was tracking the trials that
12 were occurring, the investigations in the U.S. Attorney's Office, that sort of thing.

13 Q Okay. And in the August 2022 time frame, the D.C. U.S. Attorney's Office seized the
14 cell phone of Representative Scott Perry. Did you have any involvement in this episode?

15 A I was not involved in that.

16 Q Okay. Did you ever have any conversations with Mr. Cooney or Mr. Windom involving
17 Mr. Perry's cell phone?

18 A I may have.

19 Q And I know you said you may have, but do you remember what you may have discussed
20 with one of them?

21 A So I think this would have been later, because I think there was litigation occurring
22 related to that, and that was something that I was generally aware of.

23 Q Okay. And in the August 2022 time frame -- I know you said August or September
24 2022 you were detailed to the DAG's office. Were you there in August or --

25 A I think I did not get there until September because I was sort of wrapping up and

1 transitioning -- I was -- I was a deputy chief in the -- or unit chief. These names switch over
2 time -- in the fraud, public corruption, and civil rights section, or fraud and corruption section. And I
3 think I was largely focused on sort of transitioning all of my work to other folks so that I could go on
4 the detail.

5 Q And did you ever become aware that prior to executing the search warrant to seize
6 Mr. Perry's cell phone, the FBI surveilled Mr. Perry for a week? Did you ever become aware of that?

7 A I don't -- don't know about that.

8 Q And you didn't have any conversations with Mr. Windom or Mr. Cooney --

9 A I don't remember having any such conversations.

10 Q -- about that?

11 Were you aware of any conversations that were had regarding the Speech Or Debate Clause
12 in relation to seizing Mr. Perry's cell phone?

13 A So I sort of knew that the Speech or Debate Clause was some of the subject of the
14 litigation that occurred later.

15 Q Okay.

16 Ms. Duval. And I would just ask if you have something showing her talking about any of this,
17 like a text or something that might refresh her, she's giving you --

18 [REDACTED]. Not on Mr. Perry's cell phone --

19 Ms. Duval. -- what she remembers -- years ago.

20 And I'm not suggesting that such thing exists or that I know anything different than what she's
21 testifying to, but --

22 [REDACTED]
23 Q And in regards to Mr. Perry's cell phone, when you were detailed to the special
24 counsel's office, did you ever view any information or evidence that came from Mr. Perry's cell
25 phone?

1 A I think -- I think so.

2 Q Okay. And do you remember specifically what -- was it, like, a text message or email
3 exchange or the general topic?

4 A I think that there were messages that the judge provided after the litigation, like his text
5 messages.

6 Q And why were Mr. Perry's messages relevant to the investigation that was going on at
7 the time?

8 A As best as I recall, it was related to issues at the Justice Department in the lead-up to
9 January 6th.

10 Q And when the FBI agents executed the search warrant to obtain Mr. Perry's cell phone,
11 a DOJ Inspector General Office agent went with them. Do you know what the IG's involvement was
12 in this matter?

13 A I wasn't involved at that time. What I can tell you is that in my time as a prosecutor, I
14 worked with DOJ IG agents as the law enforcement partner on various cases. And in those
15 instances, it was when a DOJ official was the subject of the investigation.

16 Q Okay. And when you went to the special counsel's office, was the DOJ IG still involved
17 in the investigation at all?

18 A Not involved in the investigation.

19 Q Okay. And did you ever interact with the DOJ IG in relation to any January 6th
20 matters?

21 A I -- yes.

22 Q Okay. And who did you interact with at the IG's office?

23 A So I don't remember the name of the agent.

24 Q Okay.

25 A It was because of the earlier involvement in the special counsel's office investigation,

1 and OIG had collected evidence, and so if -- if it was evidence that we planned to use at trial, we
2 were going to have to talk to -- the agent was going to have to be ready to testify at trial about
3 collecting the evidence.

4 Q And do you know what evidence was collected by the IG's office?

5 A I can't remember.

6 Q Okay. And one of the investigators for the IG's office, the names that we've come
7 across, is Brian Burnett. Do you remember Brian Burnett at all?

8 A No. That was not the -- the person who --

9 Q Okay.

10 A That's not -- like, that name does not strike me as the person who I spoke with.

11 Q Okay. And in the time we have left in our hour, I want to talk to you about subpoenas
12 for Congress Members' phone records. Were you involved in issuing grand jury subpoenas to
13 service providers for Congressional Members' phone records?

14 A I was -- I was involved in contemplating doing so.

15 Q Okay. And when did the contemplation begin?

16 A I think in the spring of 2023, or my contemplation began then.

17 Q Okay. And what was your involvement in the contemplation, if you will?

18 A Yes. And let me just -- let me explain why I'm using that term.

19 Q Of course.

20 A And I'm not trying to be cute or unhelpful.

21 Q Uh-huh.

22 A But what I am trying to do is to be as helpful as possible and answer as many questions
23 as I can. But what I can't do is confirm matters occurring before the grand jury. And so I'm trying
24 to thread that needle and -- so that's -- that's why I'm using that term.

25 Q I know you said your contemplation began in the spring of 2023. There's a couple of

1 subpoenas that we're aware of prior to that time frame, and one is for Chairman Jordan's phone
2 records. That subpoena was issued on April 25th, 2022. Did you have any involvement in that
3 subpoena?

4 A I wasn't part of the investigation at that point. I have -- I don't know anything about it.

5 Q Okay. Did you ever have any conversations with Mr. Cooney or the other -- the
6 prosecutor who signed the subpoena is Timothy Duree, or Duree. I've heard it both ways. Did you
7 ever have any conversations with them about Mr. Jordan's phone records?

8 A I don't remember having any conversations about that.

9 Q And the -- Mr. Jordan's subpoena for his phone records is the largest time frame that
10 we've seen. It was January 1st, 2020, to April 25th, 2022. Do you have any knowledge of why it
11 was such a wide time frame there?

12 A I don't know why.

13 Q Okay. And was there ever a period of time where you contemplated needing
14 Mr. Jordan's phone records?

15 A I -- I don't remember that.

16 Q Okay. The DOJ IG, the special agent Brian Burnett, served the warrant or -- excuse
17 me -- the subpoena on Verizon. Do you know why the DOJ OIG was involved, to the extent you
18 know?

19 A I don't.

20 Q Okay.

21 
22 Q Who was leading that matter, if you know?

23 A Who was leading the investigation at that time?

24 Q No, with respect to Mr. Jordan's toll records.

25 A Oh. I don't know. I wasn't involved at that time.

1 Q Okay. During your tenure, who was involved with the member toll record subpoenas?
2 Or was it different -- different AUSAs?

3 A So when I got to the special counsel's office, the structure was that Thomas Windom
4 and I were the senior assistant special counsels, and then we led a team of assistant special counsels.

5 Q And during that time frame, did you subpoena member toll records?

6 A I think -- I contemplated subpoenaing member toll records and had communications
7 with the public integrity section about doing so.

8 Q Okay. Which members, do you recall -- contemplating this?

9 A I recall that the members that we contemplated getting the subpoenas for were
10 individuals who President Trump, Mr. Giuliani, and others at the White House had -- we had evidence
11 that they had tried to contact those members on or around January 6th.

1

2 [10:59 a.m.]

3

4 Q And what were the names of those Members?

5 A I remember -- I can't remember. I remember there were two Members with the same
6 last name, and I think we temporarily confused them.

7 Q You needed to subpoena toll records for two Members with the same last name, or
8 there were two Members with the same last name you needed to subpoena toll records for one of
9 them?

10 A For one of them. So we had evidence that President Trump or Mr. Giuliani, or
11 someone in the White House, had tried to reach a Senator with -- sorry. I'm just trying to
12 remember the last name. I do not know why the name is escaping me, but one of the -- it was a last
13 name that two Senators share.

14 Q Okay. And did you have any discussions with your colleagues at that point about the
15 speech or debate implications?

16 A I think we probably did.

17 Q Okay. And we have a hard time understanding from our perspective how it is that the
18 Department doesn't view toll records, you know, everybody that these Members or Senators are
19 having telephone conversations with a, how that's not a protected data set from the speech or
20 debate standpoint. Can you help us understand the alternative perspective?

21 A So, when you say a protected data set --

22 Q Yes.

23 A -- what do you mean?

24 Q The individuals that Members of Congress or Senators have discussions with, just the
25 fact that these discussions occurred, from our point of view, and we've litigated this, are, you know,

1 protected by the Speech Or Debate Clause of the Constitution. And I'm asking, what is the contrary
2 argument there? Like why do you not see it that way?

3 A Sorry. See it which way?

4 Q That that is data that you can just go out and get as opposed to being off limits because
5 of it is Speech Or Debate nature?

6 A So I'm not aware of any court case that stands for the proposition that the Justice
7 Department cannot issue a toll record subpoena to a third-party provider for a Member of Congress'
8 toll records.

9 Q You don't think the Rayburn case deals with that?

10 A I don't think the Rayburn case is on point.

11 Q Okay. And why is that?

12 A The Rayburn case dealt with a search warrant of a Member's office here and concerned
13 getting paper, like substantive records from the Member's office.

14 Q Okay. And so why wouldn't a list of telephone numbers that a Member interacted
15 with fall into that type of category?

16 A I think it's very -- it's a very different thing.

17 Q Okay. And what's Public Integrity Section's viewpoint on that, to the extent you can
18 remember?

19 A I think Public Integrity Section's view was the same, that no court has determined that
20 the Justice Department cannot issue a toll record subpoena to a third-party provider for Member
21 records.

22 Q But PIN also decided that it was so unlikely that it would be litigated, that it didn't
23 matter. Is that correct?

24 A I don't think that's right.

25 Q Okay. We've run out of our time, but we have some email traffic on that we can share

1 during our next hour.

2 A Great.

3 [REDACTED]: We'll go off the record.

4 [Recess.]

5 [REDACTED] We'll go back on the record.

6 EXAMINATION

7 [REDACTED]

8 Q Ms. Gaston, nice to see you here today. My name is [REDACTED]. I'll be asking the
9 questions for the minority today. I'm joined here by my colleague, [REDACTED], who will also
10 be asking questions.

11 So I wanted to take a moment and go through your background a little bit more. I know our
12 colleagues on the majority covered that, you know, during their hour. But where did you go to
13 college?

14 A I went to Princeton University.

15 Q And then what did you do after that?

16 A Right after college, I worked on a congressional campaign.

17 Q Okay. And did you eventually go to law school?

18 A Yes.

19 Q Where did you go to law school?

20 A Georgetown.

21 Q And, after leaving Georgetown, what was your first job?

22 A I worked for the Energy and Commerce Committee.

23 Q And how long were you there before you went to DOJ?

24 A I think about 2 years.

25 Q And what prompted the move to DOJ?

1 A A lot of things.

2 Q Sure. And so what, if anything, did you bring to DOJ from your role as a congressional
3 investigator?

4 A So I had worked on congressional oversight matters, and my first job at DOJ was to help
5 facilitate responses to it.

6 Q And, again, the majority covered this a little bit in the last hour, but could you just
7 briefly walk through the positions you've held at DOJ since you joined in, I believe, it was 2011?

8 A Sure. So I worked in the Office of Legislative Affairs and the Office of the Attorney
9 General. I worked in the Public Integrity section, and the D.C. U.S. Attorney's Office.

10 Q And which of those positions involved investigating and bringing cases to trial?

11 A I did that in -- when I was a special assistant United States attorney, when I was a trial
12 attorney in PIN, and when I was an assistant United States attorney.

13 Q And could you estimate how many cases you investigated and brought to trial through
14 the course of your career?

15 A Many, especially including Superior Court in D.C.

16 Q And what type of cases were you working on when you were in PIN and the D.C. U.S.
17 Attorney's Office? Was there, you know, a certain subject matter that you were an expert in?

18 A So, in the Public Integrity's section, that section's mission is public corruption matters
19 and elections crimes. And, in the D.C. U.S. Attorney's Office, I was in the Fraud and Public
20 Corruption Section, which also included civil rights matters.

21 Q And did you have a specific position in the D.C. U.S. Attorney's Office's Public Corruption
22 Section, or were you a line attorney?

23 A I started as a line attorney and then, at some point, became a supervisor.

24 Q And, when the Biden administration began, so January 20th, 2021, what was your
25 position in DOJ?

1 A I was a supervisor in the fraud, public corruption, and civil rights section, or whatever
2 the name was at that point of the same section.

3 Q And had you served in DOJ during the entire first Trump administration?

4 A Yes.

5 Q So I'll move on to the January 6th investigation, in particular, and recognizing that
6 there's sort of two sides of this, right: the actual breach of the Capitol, and then the what we'll call
7 the election interference, or certification interference, part of the investigation.

8 So how did you come to be involved in the January 6th cases? And I'll refer to that as the
9 breach of the Capitol.

10 A So, in the immediate aftermath of January 6th, many people in the U.S. Attorney's Office
11 sort of worked on whatever cases needed to be worked on.

12 Q And roughly how many January 6th breach cases did you work on?

13 A Between those I personally investigated and prosecuted, and those that I supervised, it
14 would be probably more than 10.

15 Q And you mentioned during the last hour that you gradually transitioned away from
16 some of those cases. Why did that transition occur?

17 A Because we wanted to keep the regular work of the U.S. Attorney's Office going.

18 Q And, again, just for the record, when did you join Special Counsel Smith's team?

19 A April 2023.

20 Q And what were your duties at DOJ immediately preceding joining that team?

21 A I was an Associate Deputy Attorney General.

22 Q And why join Special Counsel Smith's team? Obviously, a position in the Office of the
23 Deputy Attorney General is very prestigious; what brought you to the Special Counsel's team?

24 A I liked being a prosecutor.

25 Q So the chair of this committee has said that Jack Smith's investigation, the Special

1 Counsel's Office investigation, was, quote, always about politics and to get President Trump. Do
2 you agree with that statement?

3 A I do not agree that it was about politics or getting anybody.

4 Q Okay. What was it about?

5 A It was about following the facts and the law.

6 Q And I know you can only speak for yourself here, but in the past, had you previously
7 investigated Democratic public officials?

8 A Yes.

9 Q Can you give us some examples?

10 A So, immediately after I was hired by Jessie Liu to be in the U.S. Attorney's Office in D.C.,
11 my first trial was a trial against President Obama's White House Counsel. I worked on the
12 investigation of Representative Henry Cuellar. And some of the cases that I felt most strongly about
13 were of individuals whose political persuasions I have no idea about, things like an investigation into
14 a corrupt official at the D.C. Office of Tax and Revenue who took a lot of bribes in order to write off
15 millions of dollars' worth of taxes in D.C. or at the D.C. fire department, the firehouse manager who
16 was taking kickbacks so that firemen and firewomen in D.C. didn't have the supplies they needed at
17 their firehouses. So I investigated all kinds of -- investigated and prosecuted all kinds of cases.

18 Q Is it fair to say that political affiliation did not factor into your charging decisions during
19 that time?

20 A That is correct.

21 Q And, just for the record, you said that you were involved in a trial of former White
22 House Counsel. What was the White House Counsel's name?

23 A Greg Craig.

24 Q And he was a Democrat?

25 A He was President Obama's White House Counsel.

1 Q Sure. So, with regards to the Special Counsel's investigation, were you investigating
2 Donald Trump because he was a Republican?

3 A So, in the Special Counsel's Office, we were investigating potential -- we were
4 investigating facts. We were investigating potential crimes and ultimately determined that we
5 should present to a grand jury allegations against President Trump.

6 Q And did his status as a Republican and a Republican candidate for President ever factor
7 into your charging decisions?

8 A No.

9 Q And would you have made the same charging and investigative decisions if he were a
10 former Democratic President who was vying for the Democratic nomination?

11 A Yes.

12 [REDACTED] So we'll introduce as, I believe it's exhibit 4, the Special Counsel's report, volume
13 one.

14 [Gaston Exhibit No. 4

15 was marked for identification.]

16 [REDACTED]
17 Q And I'll give everyone a moment to look at that very large document. And, just a
18 preview, the first page I'll direct your attention to is on page 71.

19 A I'm sorry. Could you explain that again?

20 Q The first page I'll direct you to is page 71.

21 A Oh, okay.

22 Q So, as stated, this is the Special Counsel's report, volume one, into Donald Trump's
23 efforts to overturn the election. Volume two, regarding the classified documents case, is not
24 available and has been blocked and distorted by a judge in Florida. Did you assist in the preparation
25 of this report?

1 A Yes.

2 Q And you're familiar with its contents, generally?

3 A Generally.

4 Q So what is the purpose of the Special Counsel's report? Why prepare it?

5 A The Special Counsel regulation specifies that the Special Counsel should provide a report
6 of his activities to the Attorney General.

7 Q And what is the purpose of that regulation? Why should the Special Counsel's report
8 be made available to the public?

9 A I don't think the regulation provides that it will be made available to the public.

10 Q Okay. What does the regulation provide?

11 A It provides that the Special Counsel should provide a report to the Attorney General.

12 Q And are these typically made available to the public?

13 A I think that's a determination made by the Attorney General.

14 Q So, in your experience, has Special Counsel reports previously been made available to
15 the public?

16 A I can think of Special Counsel reports that have been made available to the public.

17 Q Okay. In this case, did you think it was important for the public to be generally aware
18 of, you know, Jack Smith and your findings, and your office's findings, in this report?

19 A I don't know that I thought of it that way.

20 Q So, in this report, the Special Counsel documents, Donald Trump's crimes in attempting
21 to overturn the election results, and on page 71, which I just directed you, the Special Counsel's
22 Office wrote, "The conduct of Mr. Trump and co-conspirators, however, went well beyond speaking
23 their minds or contesting the election results through our legal system. Instead, Mr. Trump
24 targeted a key Federal Government function -- the process by which the United States collects,
25 counts, and certifies the results of the Presidential election -- and sought to obstruct or defeat it

1 through fraud and deceit." Do you stand by this description of Donald Trump's crimes in this
2 report?

3 A Yes. This description is a description of one of the charges in the indictment.

4 Q And which charge is that?

5 A That's fraud against the government.

6 Q And do you believe that, had this case proceeded to trial, Donald Trump would have
7 been found guilty beyond a reasonable doubt of that charge?

8 A The Justice Manual, which is a manual that all prosecutors, all Federal prosecutors
9 review and hopefully abide by, provides that a prosecutor is not to present an indictment to a grand
10 jury unless the prosecutor believes that there is evidence beyond a reasonable doubt of the crimes
11 alleged.

12 Q And did you follow and did your office follow the Justice Manual in this case?

13 A Yes.

14 Q And so did you believe that, if this case had proceeded to trial, Donald Trump would
15 have been found guilty beyond a reasonable doubt of that charge?

16 A Yes.

17 Q Okay. And I'll direct you to page 3 of the Special Counsel report. I'll give you a
18 second to flip through. And, on that page, the office writes, "Indeed, Mr. Trump's cases
19 represented ones in which the offense was the most flagrant, the public harm the greatest, and the
20 proof most certain." Do you agree with that statement?

21 A I'm sorry. This is page three?

22 Q And it's the bottom of the second full paragraph.

23 Ms. DuVal. Is it the page 3 of the report or of the --

24 [REDACTED] Sorry. Page 3 of the prelude, I should have said.

25 Ms. DuVal. Of the letter.

1 [REDACTED]. Of the report.

2 Ms. DuVal. Of the cover letter. Okay.

3 Ms. Gaston. So that is -- so this is Mr. Smith's letter.

4 [REDACTED]

5 Q Okay. And I'll reframe the question. So, in this case, Mr. Smith wrote, "Mr. Trump's
6 cases represented ones in which the offense was most flagrant, the public harm the greatest, and the
7 proof the most certain." Do you agree with Mr. Smith in expressing that sentiment?

8 A Yes. Let me explain what this paragraph represents. So what you just read is a
9 quote, and it is a quote from a famous speech by Jackson about the duties of a Federal prosecutor.
10 And what -- I think what Mr. Smith is doing here is basically explaining the thought process, or the
11 principles behind seeking charges.

12 Q Understood. And what in your view was Mr. Smith saying about Donald Trump's
13 offenses specifically?

14 A He was explaining why he sought charges.

15 Q Okay. And, in invoking Justice Jackson and saying, "the public harm was the greatest
16 and the proof the most certain," in this matter specifically, why do you believe, or why did Special
17 Counsel Smith believe that the public harm was the greatest in this situation?

18 A I don't know why Mr. Smith might have believed that.

19 Q Did you believe that Donald Trump's attempts to overturn the election as reflected in
20 this report was a serious crime?

21 A I believe that the crimes alleged in the indictment and superseding indictment were
22 serious crimes.

23 Q And did you believe that there were significant public harm from these crimes?

24 A Yes.

25 Q What was that public harm?

1 A I think there was potentially a great deal of public harm. You know, it was a case that
2 implicated the electoral system and the peaceful transfer of power. So those are serious matters.

3 [REDACTED] I just want to touch on, real quick, and I appreciate the caution with the
4 former Special Counsel's reports that were released, and I also appreciate the regulation that the
5 Attorney General has the discretion to release it. I just want to point out a few examples. Was
6 Special Counsel Hur, to your knowledge, was his report or portions of it released publicly after he
7 concluded his Special Counsel investigation?

8 Ms. Gaston. I believe that's right.

9 [REDACTED]. And was Special Counsel Robert Mueller's report, or portions of it, released
10 by the Attorney General at the conclusion of their investigation, to your knowledge?

11 Ms. Gaston. I think portions of it were released.

12 [REDACTED]. Thank you. And released to the public, just to make sure, make clear. Is
13 that correct?

14 Ms. Gaston. I think that's right.

15 [REDACTED] Thank you.

16 [REDACTED]
17 Q I want to pick up where the majority left off in the last hour with the subpoenas of
18 Members' phone records. And we'll just start generally with how this investigation involved
19 Members of Congress. And I also believe the majority covered this, but did you become aware that
20 DOJ prosecutors issued subpoenas for phone records before you joined the Special Counsel's team?

21 A I was not in the office at that time. So I can't really speak to that.

22 Q Okay. And one of the first Member's subpoenas was Jim Jordan, who is the chair of
23 this committee. Were you involved in or consulted on that subpoena?

24 A I was not involved in that.

25 Q And I believe you also spoke about Representative Perry during the last hour. Were

1 you involved or consulted in that subpoena?

2 A I did not work on that.

3 Q And, just to sort of put a bow in that timeframe, so to speak, the search of Mar-a-Lago
4 occurred in the late summer of 2022. Were you involved in any of the discussions around that
5 search?

6 A No.

7 Q So, during your time in the Special Counsel's Office, there was a subpoena for records
8 related to a number of Members of Congress, including, but not limited to,
9 Lindsey Graham, Marsha Blackburn, Tommy Tuberville, Josh Hawley, Ron Johnson, and others. Are
10 you familiar with those subpoenas?

11 A I am familiar with contemplating a subpoena to Members of Congress that President
12 Trump and others in the White House may have reached out to.

13 Q And so it's fair to say you were one of the prosecutors who was involved in deciding
14 whether to issue subpoenas on that matter?

15 A I was involved in the contemplation of those subpoenas.

16 Q Okay.

17 [REDACTED] We'll introduce as exhibit 5 an FBI document regarding the toll records analysis of
18 this Member subpoena.

19 [Gaston Exhibit No. 5

20 was marked for identification.]

21 Ms. DuVal. And the same caution applies about rule 6(c). Ms. Gaston has been operating
22 with that as a guide on her public comments throughout her career as a prosecutor, and she cannot
23 talk about matters before the grand jury. So we -- if we need to go off the record to try to
24 get -- how to question, let me know.

25 [REDACTED] Okay. Yes. Of course.

1 [REDACTED]:

2 Q I'll give your counsel a moment to review. Do you recognize this document?

3 A I recognize the form, or the format of this document.

4 Q Okay. But you don't recognize this document specifically?

5 A I do not recognize this document specifically.

6 Q And what is the form or the format of this document?

7 A So there are various common forms of FBI recordkeeping. You may be familiar with
8 something called an FD-302; that's a report of investigation that agents write based on their
9 investigative activity. This appears to be an FD-1057, which, I think, but could be wrong, indicates
10 some sort of analysis of evidence.

11 Q And what is the evidence, to the extent you can tell, that is being analyzed in this
12 document?

13 A I can read to you what it says. It says that a special agent conducted preliminary toll
14 analysis on limited toll records associated with the following U.S. Senators, and then it lists
15 individuals.

16 Q And, when you were involved in contemplating the decision whether to subpoena the
17 toll records of Members of Congress, were these some of the Members that you contemplated
18 subpoenaing?

19 A I'm just going to take a moment to think about how to answer that.

20 Q Sure.

21 Ms. DuVal. Would it be easier to answer the question without reference to this document?

22 Ms. Gaston. Yes. I think it would be easier to answer questions about what we
23 contemplated with reference to records of what we contemplated, if that makes sense.

24 [REDACTED]. Sure. So we'll introduce it as exhibit 6 a production from DOJ involving
25 deliberations regarding the subpoenas, and we'll go from there.

1 [Gaston Exhibit No. 6

2 was marked for identification.]

3 [REDACTED]. And, to provide to baseline here, this is a number of emails, memos, that relate to
4 the subject we were just discussing. We have provided a larger packet in case there's other context
5 in there. There's several versions of this memo, for instance, that are included within this packet.
6 So feel free to sort of look through if you think another document might sort of also illustrate what
7 the -- the process of what was happening at this time.

8 Ms. DuVal. Take your time to read through this. It's several pages. And am I right that
9 this is not just one email? This is several different emails?

10 [REDACTED]. This is a number of emails, but I will be drawing her attention to specific parts of
11 it.

12 Ms. DuVal. This is probably a great time for me to reiterate that Ms. Gaston has not -- if
13 they're not publicly available, Ms. Gaston has not seen documents from her files for years.

14 [REDACTED]. Understood.

15 Ms. Gaston. Before I go on reviewing, can I supplement one of my answers to the questions
16 in the first hour? I think I was asked if I contemplated a subpoena for Chairman Jordan, and I don't
17 remember doing so, but there's an email from me here that has his name. I just want to -- on the
18 first page, it's the second email down. So I don't remember this, but I just wanted to point that out.

19 [REDACTED]:

20 Q And, for the record, that is an email on the 16th of May, 2023, where you as MGG?

21 A Yes. MGG is me.

22 Q Okay. And you state, quote, "We should also include, to the extent we don't have, Jim
23 Jordan and Lindsey Graham"?

24 A Yes.

25 Q Okay. And so I'm going to direct you to the third page of this, which is a memo, which

1 is attached to an email that you sent on the 17th of May, 2023.

2 So, in the first page of that memo, beginning on the second paragraph, you state, quote, "We
3 intend to subpoena toll records for January 4th, 2021, to January 7th, 2021, for Senators Marsha
4 Blackburn, Lindsey Graham, Bill Hagerty, Josh Hawley, Cynthia Lummis, Ron Johnson, John Kennedy,
5 and Tim Scott, Dan Sullivan, Tom Tuberville, and Representative Mike Kelly." And, also, I thought I
6 would just ask, do you recognize this document, this memo?

7 A I don't remember drafting this document, but I am not contesting that I did.

8 Q Okay. To the best of your recollection, do you believe you were involved in the
9 drafting of this document?

10 A Yes.

11 Q Okay. And obviously there's a number of Members of Congress who are listed here.
12 How did you, and the rest of the Special Counsel's team, choose to contemplate sending a subpoena
13 for these Members' phone records?

14 A These are individuals from whom we had evidence that President Trump, Mr. Giuliani,
15 or others in the White House tried to contact with reference to the -- tried to contact with regard to
16 January 6th.

17 Q And how would you describe at this time these Members and their role in the
18 investigation? Were they targets of the investigation? Were they witnesses? Or were they
19 something else?

20 A So, at the Justice Department, in the Justice Manual there is a definition of those kinds
21 of terms. So the term "subject" is an incredibly broad term. It basically means anybody who is at
22 all involved in an investigation. And a "target" is a term that I would almost never use. And
23 frequently in conversations with attorneys for individuals, they'll ask, "Is my client a witness or a
24 subject," and the answer, in layman's terms, is almost always witness. But, under the Justice
25 Manual broad definition, they are a subject because they're somehow involved in the investigation.

1 And so to put -- to be very technical about it, because these individuals may have been contacted,
2 they -- really they are witnesses, but it depends on the definition of the term.

3 [REDACTED]. I'm sure defense counsels love that answer, witness, but subject, technically.
4 I'm sure they love it.

5 [REDACTED]. We appreciate technicalities here.

6 [REDACTED]
7 Q So is it fair to say that these individuals you viewed as primarily witnesses to the
8 conduct that occurred during this time with the understanding that you just stated, that, under the
9 Justice Manual, there could be, you know, other factors?

10 A Yes.

11 Q Okay. And what were they witnesses to?

12 A We had evidence that President Trump and Mr. Giuliani, and others at the White House,
13 may have contacted these individuals related to January 6th.

14 Q Okay. And what crime were they potentially witnesses to? What was -- how were
15 they relevant to the investigation?

16 A So the evidence that we were seeking was to determine what was occurring at the
17 White House on or approaching January 6th. So that's the evidence that we were attempting to
18 gather.

19 Q Okay. And, in calling these individuals, you stated Rudy Giuliani, or Donald Trump,
20 might have been the one calling these individuals, what were they in your mind potentially speaking
21 to the Members of Congress about?

22 A I don't know.

23 [REDACTED]. I guess what we're trying to ask, the Special Counsel's report outlines some of
24 the conspiracies, or what was going on with the President, Mr. Giuliani, although Mr. Giuliani is not
25 named in the Special Counsel report, in terms of trying to get Senators maybe to not vote to certify

1 the election. Is that the evidence that you're talking about here when you're answering the
2 questions?

3 Ms. Gaston. We were really just seeking to figure out everything that was occurring at the
4 White House on January 6th and in the days leading up to it.

5 [REDACTED]: Okay.

6 [REDACTED]:

7 Q And so that brings me to my next question, why did you consider seeking these
8 Members' toll records? Why not just rely on the White House's toll records, or Rudy Giuliani's toll
9 records?

10 A I think this memo reflects some of the reasons why we were seeking them.

11 Q And, in your own words, what were some of those reasons?

12 A So I think some of the evidence that we had -- like this memo says, for instance, that we
13 had gaps in the records we had already collected.

14 Q Okay. And so why was it important if it was to fill those gaps?

15 A I think, if you look at the indictment that was ultimately returned by the grand jury, the
16 timing of what occurred leading up to and on the day of January 6th was important.

17 Q Okay. And apologies for just asking very simple questions, but like why was it
18 important? Why was the timing so important to the indictment and the crimes that were being
19 charged?

20 A It was important for many different reasons. So we could look at the indictment, but I
21 think the timing was important in terms of understanding the allegations.

22 Q And it states here on the first page, it gives times for Mr. Giuliani's toll records,
23 6:59 p.m. to Blackburn; 7:02, for example, to Tuberville; was that timing significant, the fact that they
24 were later in the day?

25 A I think all of the timing on the day of January 6th was important.

1 Q Okay. So what kind of process is there, if there is any, for seeking records related to a
2 Members of Congress? Is it business as usual, or is there special things that a prosecutor can and
3 should do?

4 A I would, in that context, I would consult with the Public Integrity Section. I don't know
5 whether that was required or advisable.

6 Q And why consult with Public Integrity?

7 A They are sort of the experts in the field on these areas of law.

8 Q And what areas of law specifically are implicated by this type of subpoena, or
9 consideration of a subpoena?

10 A I think, if you look at the Justice Manual, it recommends consulting with the Public
11 Integrity Section in matters involving Members of Congress.

12 Q Okay. And did you, in fact, consult with the Public Integrity Section on these potential
13 subpoenas?

14 A Yes.

15 Q Okay. And we'll go just a few pages further in this document and we'll -- it will be page
16 7.

17 Ms. DuVal. So ours aren't numbered. If you could give us -- you've numbered them?

18 Ms. Gaston. No. They numbered them.

19 Ms. DuVal. Ours aren't numbered.

20 [REDACTED] Last minute thought. Apologies, we don't get these from DOJ with sort of
21 numbers in them, but we are on page 7, which is an email, 17th May 2023, at 11:12, at the very top.

22 Ms. DuVal. Again, this is a separate email from what we were talking about.

23 [REDACTED] Uh-huh.

24 Ms. DuVal. A new document in terms of how it would have occurred in the files.

25 [REDACTED] Exactly.

1 [REDACTED]

2 Q And I'll give you a second. It's a two-page email, and it is a chain that I believe is
3 forwarded to different individuals. So I'll give you a full period of time. Do you recognize this
4 email chain?

5 A I don't remember this email exchange, but this is my email exchange.

6 Q Okay. So, on the second page, which is the beginning of the email chain, you state,
7 quote, "I'm ready to consult with PIN on some narrowly tailored subpoenas that we plan to issue for
8 toll records belonging to Members of Congress," end quote.

9 Just to start off, what are toll records?

10 A Toll records are -- you might not be old enough to have received a paper phone bill, but
11 it is essentially similar to old school paper phone records. It reflects the number; there's the subject
12 of the subpoena, calls that that number placed or received, the time, and the duration.

13 Q Thank you for getting my youthful appearance on the record. I appreciate that. So,
14 when you receive the toll records in relation to a subpoena, what would you typically do after
15 receiving those toll records?

16 A Toll records are useful to an investigation because they -- normally prosecutors and
17 agents, or prosecutors or agents, would analyze the toll records to determine their evidentiary value.

18 Q And what is the difference between toll records and other investigatory, you know,
19 processes, tools that you have, such as a 2703(d) order?

20 A A toll record does not provide any content. A 2703(d) record may not reflect any
21 content, either. But a toll record does not contain any content.

22 Q Are there other tools that DOJ can use to obtain the content of calls?

23 A I'm not aware of a way to retroactively get the content of -- the content of a phone call.

24 Q What about affirmatively for the future?

25 A So there is a tool called a Title 3, which is a wiretap, in which the government is able to

1 get realtime content from a phone call.

2 Q And it's fair to say that's not what this memo to PIN concerned. It concerned toll
3 records, the records that were in the past?

4 A That is not what this concerned.

5 Q Okay. And it says here that these are narrowly tailored subpoenas. And, when you
6 were contemplating requesting or seeking these Members' toll records, how did you narrowly tailor
7 them? And we're still on that first sentence.

8 A One aspect of tailoring, I think, is the time period for which we were contemplating
9 seeking these.

10 Q And what was the time period?

11 A January 4th to January 7th, 2021.

12 Q And did you believe that there could be relevant communications that fell outside of
13 that timeframe?

14 A There could have been.

15 Q Then why only seek 3 days of toll records?

16 A We were most focused on this time period.

17 Q Okay.

18 [REDACTED] To be clear, January 6th was within this time period that you just stated,
19 correct?

20 Ms. Gaston. Yes?

21 [REDACTED]

22 Q And we'll proceed to sort of the memo itself, which is on the next page. And this is the
23 subpoena -- or, sorry, excuse me, the memo that you sent -- attached to this email chain.

24 A Which page are we talking about?

25 Q So the page directly after the one we were just looking at. Page 8 in your numbering.

1 A So I'm looking at page 9?

2 Q I believe it's page 8, but it is a copy of the memo that you sent to J.P. Cooney and Ray
3 Hulser.

4 Ms. DuVal. So you're representing that, as they occurred in the normal course, that this
5 memo to J.P. Cooney and Ray Hulser from the election investigation team regarding limited toll
6 record subpoenas for Members of Congress is an attachment to the email that precedes it in this
7 packet of documents?

8 [REDACTED]. That's correct.

9 Ms. DuVal. From May 17th, 2023, an email chain involving Ms. Gaston cc'g Mr. Windham,
10 going to Mr. Hulser and Mr. Cooney, I think is who those --

11 [REDACTED] That's correct. And I know Ms. Gaston has not necessarily been shown these
12 records, but you'll see in attachments, at the top of the page, it's 2023.05.17, toll record memo.

13 Ms. Gaston. Okay.

14 [REDACTED]

15 Q So, at the bottom of this toll record memo, it states, "Finally, we propose subpoenaing
16 records related to Senator Johnson and Rep. Kelly because there is evidence that campaign officials
17 involved in the electors scheme asked staff to Johnson and Kelly to accept Wisconsin's fake
18 certificates and provide them to Vice President Mike Pence on January 6th." Do you see that?

19 A I do.

20 Q Can you elaborate on this? What occurred regarding the transfer or acceptance of
21 fake certificates that lead you to request Senator Johnson and Representative Kelly's toll records?

22 Ms. DuVal. To contemplate requesting them?

23 [REDACTED]

24 Q To contemplate requesting them, yes.

25 A Do you have a copy of the indictment?

1 Q I don't necessarily in front of me. We can get that for you if it would be helpful
2 to -- we'll go off the record for a second.

3 [Recess.]

4 [REDACTED] We'll go back on the record. And I'll mark what has just been handed to
5 Ms. Gaston as exhibit 7, the superseding indictment in the matter of U.S. versus Trump in the U.S.
6 District Court.

7 [Gaston Exhibit No. 7

8 was marked for identification.]

9 Ms. Gaston. Som if you look at page 28 of the superseding indictment, paragraph 83, it
10 reads, "On the morning of January 6th, an agent of the defendant contacted a United States Senator
11 to ask him to hand-deliver documents to the Vice President. The agent then facilitated the receipt
12 by the Senator's staff of the fraudulent certificates signed by the defendant's fraudulent electors in
13 Michigan and Wisconsin, which were believed not to have been delivered to the Vice President or
14 Archivist by mail. When one of the Senator's staffers contacted a staffer for the Vice President by
15 text message to arrange for delivery of what the Senator's staffer had been told were alternative
16 slates of electors for Michigan and Wisconsin because the Archivist didn't receive them, the Vice
17 President's staffer rejected them."

18 So we had evidence that these documents from Wisconsin had, I believe, but I am not certain
19 of this, had been provided to Representative Kelly's office, and then they were transferred from that
20 office to Senator Johnson's office to try to provide them to the Vice President.

21 [REDACTED]
22 Q And, to back up just slightly, what were these fraudulent certificates in the portion you
23 just read? Could you elaborate on how they came into being, and how they were involved in this
24 sort of conspiracy?

25 A So the -- if you look at the manner and means of the indictment, which is on page 5, and

1 if you look at paragraph B, it describes activity by individuals to create fraudulent documents
2 representing individuals as valid electors under the Electoral Count Act to have their electoral votes
3 presented at the certification.

4 Q And it says here in this portion, and, again, this is the superseding indictment, that you
5 just described that there was -- you know, they were, quote, attempting to mimic the procedures
6 that the legitimate electors were supposed to follow under the Constitution, and other Federal and
7 State laws. And, when you're speaking of these fraudulent certificates, how are they attempting to
8 mimic procedures related to the electoral process?

9 A My recollection is that the certificates were worked up to resemble, you know, electoral
10 certificates, that the electors met these people who would have been President Trump's electors had
11 he won the election in those States, would have met and voted and sent them to the Archivist and
12 the Vice President.

13 Q But they were not legitimate certificates from the electoral college. Is that right?

14 A They were not the electors that the executives of those States had appointed.

15 Q Okay. And who were the staff mentioned here trying to get those fraudulent electoral
16 certificates to?

17 A Sorry. Could you repeat the question?

18 Q This mentions campaign officials asked Johnson and Kelly to accept Wisconsin fake
19 certificates. You stated that there was staff potentially involved in that. Who were they trying to
20 get these fake certificates to?

21 A I believe that the agent described in the indictment was hoping to get the certificates to
22 the Vice President.

23 Q And were they eventually able to get them to the Vice President?

24 A No.

25 Q And what was their intention in trying to provide them to the Vice President? What

1 were they hoping the Vice President would do with these certificates?

2 A So I would have to guess if I'm talking about somebody else's intention.

3 Ms. DuVal. Don't guess.

4 [REDACTED] What was the role the Vice President played on January 6th?

5 Ms. Gaston. The Vice President on January 6th, as the President of the Senate, counts
6 electoral votes -- or -- sorry. Let me retract that. The Vice President presides over the certification
7 proceeding where the votes are counted.

8 [REDACTED] Okay.

9 [REDACTED]
10 Q And so what, to your knowledge, was the intention of giving the Vice President fake
11 elector certificates?

12 A Presumably to create, either confusion, or have the fraudulent certificates counted.

13 Q And so we'll -- I'll redirect you to the consultation, the memo that we were discussing
14 earlier, and specifically PIN's response to that. So page 7. Yeah, page 7 of the toll records. And
15 who is John Keller, who is giving you a response to your original email regarding the justification for
16 seeking, or potentially seeking these toll records?

17 A John Keller was the Principal Deputy Chief of the Public Integrity Section.

18 Q And what was his reaction to your email seeking -- I guess, what was the purpose of
19 emailing John Keller?

20 A The purpose was to consult with the Public Integrity Section.

21 Q And what was John Keller's reaction to your email outlining a potential plan to subpoena
22 toll records?

23 A He responded that PIN concurred in seeking the subpoenas.

24 Q Okay. And, when PIN concurs in something along these lines, what is it saying? Is it
25 saying that it's legally justified? Is it saying that it's good investigative stuff? What exactly is PIN

1 trying to tell you here?

2 A PIN is concurring in the investigative step, and sort of agreeing that the proposed step
3 can go forward. If PIN has concerns about the step, then it would not concur. It would seek
4 further discussion of the step.

5 Q Okay. And what would be the process if it did not concur? Would that be a formal
6 discussion, or informal discussion?

7 A I think it depends. I think there would probably be -- the discussion, there would
8 probably be more emails, that sort of thing.

9 Q Okay. And so, at the bottom of John Keller's response, he states, even putting aside,
10 quote, "even putting aside the government's potentially meritorious argument that the calls over the
11 relevant period, especially unsolicited incoming calls, would not constitute protected legislative acts,
12 given my understanding that the low likelihood that any Members listed below would be charged,
13 the litigation risk should be minimal here."

14 What did Mr. Keller mean here by "litigation risk" in this context? And I'm asking that
15 question generally; what is litigation risk?

16 A Well, litigation risk is omnipresent. So I think -- sorry. That is my reaction to the
17 phrase, "litigation risk."

1 [12:12 p.m.]

2 [REDACTED]
3 Q Okay. And in layman's term, what is litigation risk?

4 A It is the potential that -- that an issue might arise in litigation.

5 Q And as you stated, that is omnipresent. Does the presence of litigation risk mean you
6 should not send a subpoena or that it's otherwise illegal to do so?

7 A No.

8 Q Okay. And so, by saying that there was litigation risk in this matter, was Mr. Keller
9 saying that these records were protected by the Speech and Debate Clause?

10 A I do not understand him to be saying that.

11 Q Okay. So was it your view that these records were protected by the Speech and
12 Debate Clause?

13 A I did not believe that seeking the records violated the Speech or Debate Clause.

14 Q And why was that?

15 A No court has held that seeking toll records of a Member of Congress from a third-party
16 provider violates the Speech or Debate Clause.

17 Q And do you believe that Mr. Keller would have stated that these were covered by the
18 Speech or Debate Clause if that was indeed the case?

19 A I think if -- sorry. Could you ask the question again, please?

20 Q If Mr. Keller believed that the records had been stated -- had been covered by the
21 Speech and Debate Clause, would he have stated that to be the case? Is that the type of thing that
22 PIN would consult on?

23 A I think if Mr. Keller had concerns about the propriety of the investigative step, we would
24 have had further conversations.

25 Q And in your mind, he -- and based off your reading of this email -- he did not have

1 concerns about the propriety of the investigative step?

2 A That is not how I read the email.

3 [REDACTED] Okay. We'll go off the record.

4 [Recess.]

5 [REDACTED]: We can go back on the record. The time is now 12:20 p.m.

6 [REDACTED]

7 Q Ms. Gaston, I know last hour you were going through this packet of information with my
8 colleagues on the subpoenas. Just quickly to go back to page 1 of that packet.

9 A Do you have the same packet?

10 Q Yes, I do.

11 A Okay.

12 Q In your email where you said, "We should also include, to the extent we don't have, Jim
13 Jordan and Lindsey Graham," did you ever become aware at that point in time that you already had
14 the toll records of Mr. Jordan?

15 A I don't remember. I don't remember becoming aware, and so I'm just not -- I'm not
16 sure why I said to the extent we don't have them.

17 Q And why at this point in time did you think that Mr. Jordan needed to be included in this
18 list?

19 A I don't remember that either.

20 Q Okay. And earlier on in the chain, before you emailed about Mr. Jordan and Senator
21 Graham, Mr. Cooney suggested that they needed Speaker McCarthy's phone records.

22 Were you aware at that point in time that you had already received Speaker McCarthy's toll
23 records?

24 A I don't remember that either.

25 Q And that occurred in January 2023, and I know you hadn't come onto the special

1 counsel's team yet, but was there any discussion about, you know, the constitutionality of Speech or
2 Debate Clause regarding getting the Speaker's toll records?

3 A I don't remember knowing that that had happened, so I don't remember conversations
4 about it.

5 Q And beyond this email exchange here, was there any other contemplation or
6 consideration of other Members to include on this list?

7 A Not that I recall. Not that I recall. And in the list that's in the bottom, I believe it was
8 Senator Scott that was the name I was thinking of before where there were two Senators with the
9 same last name.

10 Q And which Senator were you interested in? Were you interested in both of the
11 Senators or --

12 A I think we were interested in the Florida Senator Scott.

13 Q Okay.

14 A Or that the indications were that that was the Senator Scott that folks at the White
15 House had contacted.

16 Q And in the previous hour, you had discussions about how the Members' records -- the
17 team needed those records because of evidence of President Trump, Mayor Giuliani, and White
18 House officials being in contact with Members of Congress. And I know my colleague asked several
19 times, you know, why did you need the Members' records. I'm going to ask it again.

20 But if you had all of the phone records and you were really interested in what was happening
21 at the White House, why go to Members of Congress?

22 Ms. Duval. Or why consider going to --

23 Ms. Gaston. Yes. Why consider -- so my memory is that we didn't have complete records
24 of the phone calls. So I think there were some inconsistencies in Mayor Giuliani's toll records. I
25 think it was difficult to get reliable records of phone calls being placed from -- from the White House

1 switchboard.

2 [REDACTED]: Uh-huh.

3 Ms. Gaston. And then some of the evidence we had that calls had taken place were from I
4 think text messages or emails or even a handwritten note. So there were -- there was a -- there
5 were various kinds of evidence that calls had taken place and it was not all from other toll records.

6 [REDACTED]: And what did you think was occurring on these phone calls between the White
7 House and Members of Congress?

8 Ms. Gaston. So we wouldn't get content from a toll record. So part of the -- part of the
9 use of the evidence was establishing the timeline of what was occurring at the White House.

10 [REDACTED] And you had no other way to build the timeline without going and getting toll
11 records from Members of Congress.

12 Ms. Gaston. We were building the timeline in many ways, by gathering lots of evidence of
13 what was happening at the White House on January 6th.

14 [REDACTED]:

15 Q So on January 6th, the Members were going through the deliberations of whether to
16 certify the election or not, correct?

17 A I think at times during the day, the Members were on the floor.

18 Q Right. But even when they're not on the floor, they're thinking through what they're
19 going to do when it comes time to vote, correct?

20 A Possibly.

21 Q And that's an official duty, right?

22 A An official duty?

23 Q Of a legislator? That is the official duty of a legislator, to consider how they're going to
24 vote on the floor; in this case, how to vote on the certification of the electors on January 6th, right?

25 A Sorry. What is the question?

1 Q I'm asking you -- I mean, it's very obvious that the telephone calls placed or received by
2 Members of Congress on January 6th, as they're considering whether they're going to vote to certify
3 the election results, is part of their official, you know, legislative duties, correct?

4 A I don't necessarily agree with that.

5 Q And why not?

6 A I think you said that it was obvious that -- I think you said it was obvious that, basically,
7 everything occurring that day was a legislative duty.

8 Q The In Re Grand Jury Investigation case states -- and Keller quotes this -- "Thus,
9 telephone calls placed or received by the Member or his staff in gathering from outsiders information
10 which is weighed in the process of deciding how to vote, drafting legislation, and then preparing for
11 argument may still be privileged as to use against him, even if not as to use against third parties."

12 So it certainly is a consideration that the records of who the incoming and outgoing calls of
13 Members are -- you know, touches the Speech or Debate protections.

14 A So I think one thing that is important to step back and understand about the cases that
15 Mr. Keller cited is that they are from different circuits with different law. So I have not read In Re
16 Grand Jury Investigation in a long time, but my memory of it is that it involved a legislator in the Third
17 Circuit who was himself under investigation and was challenging a grand jury subpoena because it
18 was being used against him. And use immunity under the Speech or Debate Clause is something
19 that is common in all circuits. In the D.C. Circuit, there is use immunity, and then there is compelled
20 production privilege from Rayburn.

21 And so this citation of the two different cases is sort of mashing together two different kinds
22 of immunity that no court has mashed together, if that makes sense.

23 Q Okay. But Keller concludes that it doesn't really matter because none of these
24 Members are ever going to find out and they won't have a chance to challenge it.

25 A That's not how I understand his conclusion.

1 Q Well, how do you -- I'm just looking at the last sentence. "Even putting aside the
2 government's potentially meritorious argument that the calls over the relevant period, especially
3 unsolicited incoming calls, would not constitute protected legislative acts" -- that's DOJ's position.
4 Given my understanding of the low likelihood that any of the Members listed below would be
5 charged, the litigation risk should be minimal here, right?

6 So, I mean, I think we can all agree that, you know, Members -- there are instances when
7 Members have an opportunity to intervene and oppose the use of materials that they believe are
8 Speech or Debate protected, correct?

9 A Yes.

10 Q But in this instance, that would never come to fruition because none of these Members
11 are ever going to know about it.

12 A So he does not say it's because they're not going to know about it.

13 Q I mean, that's the implication, though, that because the Members aren't being charged,
14 the litigation risk is nonexistent or minimal.

15 A So that is not the implication I take from it.

16 Q Okay.

17 A The implication I take from it is that he's saying the use immunity that exists when
18 seeking to use Speech or Debate Clause-protected material against a Member doesn't exist because
19 we would not be using materials against these Members.

20 Q Okay. The evaluation provided by PIN is strictly -- you know, it's strictly guidance to
21 Justice Department lawyers about how they can use this information. Is that right? I mean,
22 there's no -- nobody's looking out for, you know, the Members of Congress and their speech or
23 debate privileges here.

24 A I don't agree.

25 Q Okay. So you think the Public Integrity Section is, in fact, evaluating the Members'

1 speech or debate constitutional protections?

2 A I think that the Public Integrity Section and the special counsel's office was attempting
3 to be mindful of the Speech or Debate Clause protections and all other applicable law.

4 Q Okay. The toll records -- I mean, it provides an extraordinary amount of information.
5 Not content. Nobody is saying that the Justice Department is seeking to tap the Members'
6 telephone calls or to get the content of their text messages. But the toll records do capture a lot of
7 information. I mean, it records every incoming, outgoing call, correct?

8 A Depending on what the subpoena asks for. If the subpoena asks for incoming and
9 outgoing calls, yes.

10 Q Okay. You know how long a call lasted? Subpoenas seek that information.

11 A If the subpoena seeks duration, then yes.

12 Q The subpoena can tell you whether a voicemail is left. Is that correct?

13 A In my experience, some providers can -- have that information to provide, whether a
14 voicemail was left.

15 Q Right.

16 A I think some are not able to.

17 Q And so, you know, for example, the toll records subpoenaed for the chairman of the
18 Judiciary Committee or the Speaker of the House, you know, that's pretty valuable information for
19 political adversaries, a list of all people calling Speaker McCarthy. I mean, don't you agree that that
20 is pretty valuable information for a political adversary to have?

21 A I -- I can't speculate as to what a political adversary would want.

22 Q And so, you know, the concern here is that the Justice Department is just creating a, you
23 know, long list of telephone calls that the Speaker, the Senators, chairman of the Judiciary
24 Committee, you know, was having during these relevant times. And it just doesn't seem like -- I
25 mean, we've spoken to a number of your colleagues at this point, and it doesn't seem like the special

1 counsel's office factored that in at all.

2 A It was certainly not the special counsel's office's intention to make some sort of, like,
3 database of all of the calls. The intention in contemplating these subpoenas was to gather the
4 limited evidence for the case.

5 Q But they do make the database. I mean, like, there's a whole section at the FBI --

6 [REDACTED]. What's the name of it?

7 [REDACTED]. Oh, the CAST.

8 [REDACTED]. The CAST?

9 [REDACTED]. Cellular Analysis Survey Team, I believe.

10 Ms. Gaston. I'm familiar with the acronym, but I did not know till now what it stood for.

11 [REDACTED]. Right. That digests this information and creates a pretty robust record of who,
12 you know, the targets here, the recipients of the toll record subpoenas were telephoning.

13 Ms. Gaston. I'm actually not familiar with -- with that, with some sort of database.

14 [REDACTED] What is the -- what's -- the CAST team?

15 [REDACTED] CAST.

16 [REDACTED]:

17 Q So what's your understanding -- what does the CAST team do with this data?

18 A So my understanding is that FBI agents receiving toll records in general look through the
19 toll records for the specific evidence that is relevant to the investigation, and we use that -- that
20 evidence in a case.

21 Q Okay. And it's limited to that?

22 A That is my understanding.

23 Q Okay. Can you tell us what was done with this information, you know, after you
24 acquired the toll records, you know, via subpoena?

25 A So I think that the indictment reflects some information about phone calls placed by the

1 President and Mr. Giuliani.

2 Q Okay. Is that the extent that that information was used?

3 A To the best of my memory, the evidence that we gathered from myriad sources in the
4 course of the investigation was used purely for evidentiary value in the course of the prosecution,
5 not for -- not for making a database or anything like that.

6

7 Q And in looking at the email from Mr. Keller that we've been on for a while, it says,
8 "Based on the email below and our conversation, PIN concurs the subpoena for toll records for the
9 identified Members," and then, "As you are aware, there is some litigation risk regarding whether
10 compelled disclosure of toll records of a Member's legislative call violates the Speech or Debate
11 Clause in the D.C. Circuit."

12 What was the litigation risk? Did Mr. Keller ever explain that to you in your conversation?

13 A So I think -- and, you know, I -- I have had conversations with Mr. Keller about the D.C.
14 Circuit in my role in the D.C. U.S. Attorney's Office completely separate from this. I think what he's
15 saying is a court has not decided this issue -- or has not held something entirely on point on this
16 issue.

17 Q So there could have been a litigation risk in that the toll record subpoenas could have
18 violated the Speech or Debate Clause. Is that what Mr. Keller's analysis was?

19 A No. I think he's just saying that there's litigation risk in sort of what I was saying
20 before, about the mashing of the -- sort of the Rayburn principles and this case law from other
21 circuits.

22 Q And how would it -- how would this litigation have come about?

23 A I don't know.

24 Q I guess, what was the remedy for the Members who had their toll records subpoenaed?
25 What was their remedy to litigate their Speech or Debate Clause privileges?

1 A So I -- my understanding is that -- sorry. Could you ask the question again?

2 Q What was the remedy for Members who wanted to assert that their toll records fell
3 under the privilege of the Speech or Debate Clause?

4 A So I don't think that there is a potential violation under the case law of the privilege
5 through this proposed course of action.

6 Q And I get that that is your understanding. But Members of Congress and the House
7 believes that these are protected by the Speech or Debate Clause. So what remedy did these
8 Members who were affected by these toll record subpoenas, what remedy did they have to assert
9 their Speech or Debate Clause privileges?

10 A So the records were not being used against them, and so there's not -- there's not a way
11 to seek a remedy for a privilege that is not violated.

12 Q And I understand that that is your interpretation. But the House and Members believe
13 that their toll records are covered by the Speech or Debate Clause. What remedy did they have,
14 prior to their records being turned over to the Justice Department, to assert their speech or debate
15 privilege? What remedy did they have?

16 A So -- and this goes back to the two different kinds of privileges. So there is a privilege
17 against compelled disclosure that is described in Rayburn --

18 Q Uh-huh.

19 A -- in a Member's -- in the Rayburn context, it is in -- compelled disclosure of legislative
20 materials from the Member's physical office. That is the compelled disclosure privilege.

21 Then there is the use privilege that is the -- the fact that the government cannot use
22 legislative materials against the Member of Congress. So the potential to seek a remedy for the use
23 privilege would come if the government tried to use the records against the Member of Congress.
24 And in the compelled disclosure privilege, my understanding and my reading of Rayburn, which
25 obviously is a very different case and very different circumstances, is that it is not a compelled

1 disclosure in the meaning of Rayburn if it's from a third-party provider.

2 Q Okay. And as I said, I get that that is your understanding, and Members believe that
3 they have speech or debate privilege over their toll records. And what could they do -- prior to DOJ
4 getting these records, how could they assert those privileges?

5 A I'm not sure.

6 Q Okay. Because there were nondisclosure orders that accompanied these subpoenas.
7 Is that correct?

8 Did you contemplate nondisclosure orders to accompany these subpoenas?

9 A Thank you. So this discussion doesn't mention nondisclosure orders. I don't
10 remember a nondisclosure order being part of this discussion or analysis or contemplation. So that
11 just did not -- that was not part of the thinking or consideration of the subpoenas, as I remember it.

12 Q So there were no discussions about whether or not to seek a nondisclosure order to
13 accompany these subpoenas.

14 A I don't remember any such discussions.

15 Q And to the extent there were nondisclosure orders sought -- I will represent to you that
16 there were nondisclosure orders that accompanied the specific May 2023 subpoenas -- the
17 subpoenas for the toll records -- was there any conversation about whether or not to tell judges that
18 you were seeking toll records of Members of Congress with these subpoenas?

19 A So I don't remember a discussion of a nondisclosure order in this context. I -- I will
20 leave it at that.

21 Q Okay. And when Mr. Smith came before the committee, we asked him the same
22 question. He said, We did not tell judges that we were seeking toll records for Members of
23 Congress. Does that match your recollection?

24 A So I don't have a recollection. What I can say is, in my larger experience, I am not sure
25 that the identity of the holder of the phone number would be in an application to the judge.

1 Q Okay. So it wouldn't surprise you if Judge Boasberg didn't know that he was signing an
2 NDO that covered subpoenas for Members of Congress' phone records?

3 A I'm going to leave it at the way I tried to answer.

4 Q And had you sought nondisclosure orders during your tenure at the Justice Department
5 that accompanied toll record subpoenas?

6 A I sought nondisclosure orders for all kinds of subpoenas in the course of my work at the
7 Justice Department.

8 Q And in the text of the nondisclosure orders, it says, you know, the court finds reasonable
9 grounds to believe that such disclosure will result in flight from prosecution, destruction of or
10 tampering with evidence, intimidation of potential witnesses, and serious jeopardy to the
11 investigation.

12 Was there any contemplation or discussion of how revealing to a Member of Congress that
13 you were seeking their toll records could cause them to flee?

14 A I don't remember discussions about nondisclosure orders.

15 Q Okay. And so you don't remember talking about how Members could destroy
16 evidence or tamper with evidence?

17 A I don't remember discussions of nondisclosure orders.

18 Q Okay. Are you aware of how the telecommunication companies responded to the
19 subpoenas for lawmakers' data?

20 A I'm not sure what you mean.

21 Q Did they provide the toll records to you?

22 A Is there -- is there a different way to --

23 Q If it's helpful, I can enter an exhibit and talk to you about how a telecommunications
24 company pushed back against the special counsel's office -- is that helpful? -- in providing toll
25 records for a Member of Congress.

1 A You can -- you can show me anything, and then I'll figure out --

2 Q Okay. This will be exhibit No. 8.

3 [Gaston Majority Exhibit No. 8

4 was marked for identification.]

5 Ms. Duval. Could we go off the record for just a second?

6 [REDACTED]. Yes. We'll go off the record.

7 [Discussion off the record.]

8 [REDACTED] We can go back on the record.

9 [REDACTED]:

10 Q Okay. In exhibit 8 that I just gave to you, the second bullet point -- and this is a letter
11 from an AT&T vice president to Chairman Grassley in response to Senator Grassley's request for
12 information regarding subpoenas for Members of Congress' toll records.

13 The second bullet, it says, "In May 2023, Special Counsel Smith sent AT&T a grand jury
14 subpoena that included a request for phone records associated with AT&T accounts for two other
15 Members of Congress. However, when AT&T raised questions with the Special Counsel Smith's
16 office concerning the legal basis for seeking records of Members of Congress, the special counsel did
17 not pursue the subpoena further, and no records were produced. For your convenience, attached
18 is a copy of that subpoena and associated nondisclosure order, which expired in May 2024."

19 I introduced this to help your recollection with how telecommunication companies responded
20 to the subpoenas for lawmakers' data, and if it's helpful.

21 Was AT&T the only telecommunications company that pushed back on providing records?

22 A I --

23 Ms. Duval. I think this is a 6(e) issue in part because it's premised on subpoenas.

24 Ms. Gaston. So let me --

25 [REDACTED]:

1 Q Did you have discussions with AT&T regarding records for Members of Congress?

2 A So let me take a step back and just explain. I'm not trying to be difficult.

3 In the grand jury context, the recipient of a subpoena is free to go out into the world and hold
4 it up and say, I was subpoenaed. And a witness to the grand jury is free to walk out of grand jury
5 testimony and say, I just testified in the grand jury, and I said A and B and C.

6 Even when that happens, lawyers for the Justice Department are not able to comment on it
7 or confirm it, if that makes sense. And that might seem, like, weird. The reason for it -- part of the
8 reason for it is the secrecy of the grand jury process to basically protect witnesses. Like, when I
9 used to be a prosecutor, when I would be explaining the grand jury process to a witness, I would tell
10 them that they were free to tell the world that they were a witness but that the government and the
11 grand jurors were not, and so if they wanted that status to stay a secret, it would stay a secret. And
12 the reason for that is so that people feel free to provide testimony without fear of outside influences
13 and stuff like that.

14 So that is just -- that is what I am trying to be careful of. So I just -- I want you to know that I
15 am trying to be helpful.

16 I think a safe way to answer to just, like, get this behind us is I don't remember conversations
17 with AT&T.

18 Q Okay. Do you remember conversations with your fellow special counsel office
19 employees regarding AT&T raising the Speech or Debate Clause?

20 A I do not.

21 Q Do you remember any conversations with your colleagues at the special counsel's office
22 regarding whether or not to pursue records from AT&T further?

23 A I don't think I can answer that question, but I think the answer to the previous
24 question --

25 Q Okay. You don't have any --

1 A -- gets us through it.

2 Q Okay. What conversations did you have with your colleagues at the special counsel's
3 office regarding 2 U.S.C. Section 6628, which is a statute that says, you know, if it is a Senate phone
4 line -- are you familiar with the statute, first of all?

5 A I am generally familiar with the statute.

6 Q Okay. So what conversations did you have about that statute with your colleagues and
7 how it would apply to seeking records from Members of Congress, specifically Senators?

8 A I don't remember having conversations about the statute.

9

10 Q Were you aware of the statute at the time?

11 A I believe I was generally aware of the statute.

12 Q So the office was aware of the statute?

13 A I believe I was aware of the statute.

14 Q Okay. And so if you're aware of the statute, it says some of these documents or some
15 of these records cannot be produced, what's the thinking? You're just hoping the judge won't know
16 about it and hoping the carrier doesn't bring it up? What's the thinking there?

17 A I did not think that the steps that I was contemplating implicated the statute.

18 Q How come?

19 A My memory of what I understood about the statute was that it applied to Senate phone
20 lines.

21 Q One of the lines -- like, one of Senator Cruz' lines was his landline to his office. Did you
22 know that?

23 A I did not think I was contemplating subpoenas for a landline.

24 Q Okay. But one of the landlines was included, and so it was subpoenaed.

25 [REDACTED]. Do you know who -- who all was involved in the contemplation of the

1 subpoenas for Members of Congress? Was it just Ray Hulser and J.P. Cooney, or were there other
2 individuals involved as well?

3 Ms. Gaston. I think it's the folks on the emails.

4 [REDACTED]. Okay. And when the -- you obviously have to contemplate which numbers to
5 include in a subpoena. Is that correct? And so who was in charge of finding the numbers and
6 deciding which numbers should be included?

7 Ms. Gaston. I think the numbers were gathered by the FBI.

8 [REDACTED]:

9 Q Nobody told the judge that any of these numbers were for Senators, right?

10 So you're just submitting the toll records subpoena request and accompanying NDOs, just
11 "These are the numbers." And so there's no reason a judge would know that they were Senators or
12 Senate landline numbers, correct?

13 A I'm sorry. What is the question?

14 Q You didn't tell the judge that the numbers you were seeking belonged to United States
15 Senators, their staff, including potentially landlines.

16 A Tell the judge in what context?

17 Q In seeking the NDO.

18 A So I don't -- I don't remember matters related to NDOs.

19 Q Okay. So is there any way for the court to know that these numbers were from United
20 States Senators?

21 A So stepping back from specifics here, one issue that is a little bit of a catch-22 in this
22 context is that when the government seeks a subpoena for a toll record, it is not -- I think it is fair to
23 say it is usually and almost always not certain about the association between the number and
24 the -- and the owner of the number.

25 Q Uh-huh.

1 A Often, a toll record subpoena includes a request for the name of the owner of the
2 number.

3 Q Uh-huh.

4 A And so, when seeking the subpoena, the government can't be sure of who the owner of
5 the number is. And so --

6 Q They can't be sure but, like, your memo is pretty clear that you're seeking these
7 Senators' toll records, correct?

8 A It was contemplated to get those records. But that is my attempt to explain why I did
9 not think we were contemplating a landline record.

10 Q Okay. But I guess my question is whether there was any way for Judge Boasberg -- I
11 think he was the judge that okayed this one -- to know that the numbers related to -- the intent of
12 the Justice Department was to get toll records for Senators Blackburn, Graham, Hagerty, Hawley,
13 Lummis, Johnson, Kennedy, Sullivan, Tuberville, Scott.

14 A So, sorry. This is part of what I was trying to express. So at the time when the
15 subpoena is issued, the government might think that it is going to get numbers associated with a
16 particular person, and that is the point at which the government might seek an NDO. But it doesn't
17 know until the provider --

18 Q Right.

19 A -- responds. And so --

20 Q But you had a good idea -- I mean, this was a pretty unusual set of circumstances,
21 correct?

22 Ms. Duval. I think it's -- I think Ms. Gaston can talk about the contemplation, whether
23 contemplating getting toll records that are potentially related to a Member of Congress is unusual in
24 her experience.

25 Ms. Gaston. So toll record subpoenas are very common. They are a frequently used

1 investigative tool. It is less common to get records associated with Members of Congress.

2 [REDACTED]:

3 Q Was there any thinking among you or your colleagues at the Department about whether
4 to alert Judge Boasberg that some of these numbers here were related to United States Senators?

5 A I don't remember discussions of an NDO.

6 Q Okay. But an NDO was sought, and there's no -- there's no mention that these are
7 Senators that you're seeking.

8 I only ask because, I mean, a lot of United States Senators are calling for the impeachment of
9 Judge Boasberg for okaying this. And so we're just trying to figure out, you know, if the Department
10 didn't tell Judge Boasberg, it gets a little tricky to impeach him on that ground.

11 A I will just say, I don't think -- I don't think Judge Boasberg did anything wrong. I also
12 think, if you look at the language of 18 U.S.C. Section 2705, which I think is the nondisclosure
13 provision, I think the language is that the judge shall approve it. And so I would just -- I think that
14 language gives you an idea of the limited discretion of a judge in that context.

15 Q But I guess one of the concerns that the Senate and the House Members have here is
16 that, you know, if nobody flagged this issue, then there was no opportunity to -- no opportunity to
17 litigate it, no opportunity for the judge to have, you know, oral argument on it. There was just no
18 real opportunity to consider the unique issues here.

19 A In my experience at the Justice Department, I can say I am not sure that a nondisclosure
20 order -- a nondisclosure order application would necessarily describe the individuals suspected to be
21 associated with the phone number.

22 Q Okay.

23 [REDACTED]:

24 Q And in total, how many Members of Congress had their toll records swept up in the
25 special counsel's investigation?

1 A So I know that we contemplated subpoenas for the Members listed in the documents
2 that we just described. I don't remember contemplating others.

3 Q So that was the only time that you contemplated subpoenaing a Member of Congress'
4 toll records?

5 A In the special counsel's office.

6 Q Okay.

7 [REDACTED]

8 Q So the other Members that had their toll records captured, you were not involved with?

9 A So I don't remember contemplating subpoenas to -- to Members of Congress outside of
10 the context of these communications --

11 Q Okay.

12 A -- in the special counsel's office.

13 Q I mean, it's been publicly -- you know, Senator Grassley published information related to
14 Congressman Fitzgerald, Wisconsin. It's been publicly disclosed that Congressman Chip Roy of
15 Texas -- you know, those two Members had their phone records acquired.

16 So you don't have any recollection of contemplating?

17 A I don't remember contemplating subpoenas outside of those described in those
18 communications with PIN.

19 Q Okay. Does the same go for Speaker McCarthy?

20 A Outside of the context of this email chain.

21 Q Okay. So that was perhaps a different AUSA or a different Justice Department
22 prosecutor?

23 A I don't think that I was in the office at the time that I have heard that happened.

24 Q Okay.

25 [REDACTED]

1 Q What can you tell us about discussions related to interviewing Members of Congress
2 related to the January 6th investigations?

3 A I don't remember discussing interviewing Members of Congress.

4 Q Okay. I have a -- some messages between you and Mr. Cooney. Would that be
5 helpful if --

6 A Yes.

7 Q Okay. And it's a long packet. Feel free to -- it's not long, long. But just feel free -- it
8 doesn't take long to read.

9 A Oh. You mean outside of the context of the special counsel's office.

10 Q Yes. In relation to the January 6th investigation.

11 A Okay.

12 Q Is that helpful? Sorry.

13 A Got it.

14 [REDACTED]. This will be 9. I apologize.

15 [Gaston Majority Exhibit No. 9

16 was marked for identification.]

17 Ms. Duval. So these are 2021. Have you seen them since 2021? Five years ago. Almost
18 exactly 5 years ago.

19 This seems to be from several -- from different days, but I can't tell -- or is it all somehow --

20 [REDACTED]. On the date, it says -- at the top it says February 14th, 2021.

21 Ms. Duval. Okay. But then it runs through to 7:16 p.m., and then it starts at 11:47 a.m.

22 [REDACTED]. Uh-huh.

23 Ms. Duval. Is that --

24 [REDACTED]. So it could very well be two different days.

25 Ms. Duval. Or does the 11:47 a.m. predate the 2:08 on February 14th?

1 [REDACTED]: It could very well include more than one day. I'm not sure. I'm not going to
2 ask her specifically about is it February 14th that she said this, but --

3 Ms. Duval. Just trying to understand what we've got here. I think it's got to be two
4 different days.

5 Ms. Gaston. Do you have a sense of what days these things are happening?

6 [REDACTED]:
7 Q All we have at the top is February 14th, 2021. So this was happening in the February
8 2021 timeframe.

9 A Okay.

10 Q I'm not going to ask you about the specific dates because it's unclear from the messages
11 because we just have the time --

12 A Okay.

13 Q -- so I'll -- February 2021 timeframe.

14 A Okay.

15 Q If you go -- it's five pages from the back page. I think it's the --

16 A From the back.

17 Ms. Duval. And it's a nine-page packet?

18 [REDACTED]: Yes.

19 [REDACTED]:

20 Q And the very top message says, "also, sorry to bug you on this," at the very top --

21 A Very top message. Okay.

22 Q And at the end of the page before, it says Joseph Cooney, 11:50 a.m. So this is a
23 message from Mr. Cooney. It says, "also, sorry to bug you on this, but am I correct to say that the
24 timing of rep interviews, Cohen, Yarmouth, Gosar, Boebert, are all day-to-day evaluations. I agree
25 with" -- this is in the context of a different message, but "I agree with you. You could just omit the

1 DMV stuff altogether."

2 And a couple of messages down, at 11:51 Cooney writes back, "for weekly -- I'm including:
3 Stone, Mastriano/Straka; deconfliction of Ali and Hostetter; Boebert allegation on mileage; how we
4 backed into Taylor Greene. Anything else I should include?"

5 Then you respond, "Yarmouth, Boebert, then Gosar, Biggs, Brooks. Sorry, I'll send you a
6 weekly now."

7 Did you ever interview Mr. Gosar or Ms. Boebert?

8 A I don't think so.

9 Q Do you remember the context in which this was coming up? Why were you
10 contemplating, it appears from the messages, interviewing Members of Congress?

11 A As best I can remember, there was an allegation that Representative Boebert had
12 brought individuals into the Capitol complex in advance of January 6th.

13 Q Uh-huh.

14 A And my memory of that, by the way, is that we investigated it and pretty quickly
15 determined that she -- she brought, like, family and friends to see the Capitol, and it had no
16 connection to January 6th.

17 Q Did you ever interview Members of Congress in relation to January 6th investigations at
18 large, whether it be at the U.S. Attorney's Office or with the special counsel?

19 A I don't think that I personally did.

20 Q Okay. Are you aware of others interviewing Members of Congress?

21 A I remember that -- I think an AUSA who I supervised was assigned to try to interview a
22 Member of Congress related to the allegations about Representative Boebert.

23 Q Okay. And that's the only context in which you remember a Member of Congress
24 being interviewed or that coming up in a discussion?

25 A I think so.

1 Q Okay. And on the page before that, there's a message from you to Mr. Cooney at 7:16
2 p.m. It's kind of in the middle, and it says, "well, I'm very much looking forward to finding out who
3 the "eight Members of Congress" "fighting all the BS" and being guarded by the Oath Keepers were."

4 Did you ever investigate whether Members were guarded by Oath Keepers?

5 A So I think -- and I could be very wrong about this -- that that was a reaction to
6 messages -- at this time, I was working on what ultimately became the Oath Keepers investigation.

7 Q Uh-huh.

8 A I think that that might have been quoting things that the Oath Keepers were
9 communicating to one another.

10 Q And did you ever investigate eight Members of Congress who were being guarded by
11 the Oath Keepers, or did that just get chocked up to something that the Oath Keepers were saying
12 that was untrue?

13 A I didn't work on that through trial, but I don't remember -- I don't remember that
14 panning out.

1 [1:19 p.m.]

2 [REDACTED]
3 Q And we'll go back to the Ms. Boebert allegations, but I wanted to stick with this packet
4 here.

5 If you flip one page over from the "also sorry to bug you" page --

6 A Back or forward.

7 Q Forward. Go towards the back of the packet.

8 A Okay. So the also sorry to bug you, or the following?

9 Q The following. Flip one over.

10 A Losing track of time?

11 Q Yes.

12 A Okay.

13 Q At the very end there's a discussion about nuns who were photographed next to oath
14 keepers. Did you ever run this allegation down, or any connection between the nuns and -- you
15 know, the nuns are seen with the stand with Trump photo, and I think the Oath Keepers -- alleged
16 members of the Oath Keepers are in the background. Did you ever discover a connection between
17 the nuns and the Oath Keepers?

18 A I don't remember that.

19 Q Okay. And then a little bit further down you said I would like to take a special
20 assignment of finding and prosecuting them. Was there any investigative effort put forward on this
21 specific angle?

22 A I don't. And I think that that is sort of an attempt to joke, and I did not take a special
23 assignment to find and prosecute them.

24 Q Okay. And then going to the Ms. Boebert allegation, what can you tell us about what
25 investigative steps were taken to determine whether she was leading a tour of individuals who were

1 seeking to come in to the Capitol rather than just view it as a tourist?

2 A So my general recollection is that the primary step we took was to review a lot of video
3 footage, and that the video footage reflected that she -- she took a small group of, what looked to be
4 like family and friends, around the Capitol.

5 Q Okay. And in this context, we can enter it as an exhibit, or I can just read it to you, it's
6 one message, if it's helpful, Mr. Cooney wrote to you on January 16th, 2021, this is in the Boebert
7 context, I'm telling you, though, this two-way map thing has legs, this makes perfect sense to me.
8 Proving members' intent might be impossible, but I am fairly confident that we are going to put a
9 map, or some other information relevant to coordinated activity in the hands of an extremist group
10 and trace it back to a congressional office. And then you responded, Yep. But did you investigate
11 other Members of Congress in this similar vein, or was it just Ms. Boebert?

12 A Could I see the messages?

13 Q Yes, you totally can. This is number 35.

14 [REDACTED]: This is a different exhibit?

15 [REDACTED]: Yes.

16 [Gaston Exhibit No. 10

17 was marked for identification.]

18 [REDACTED]: Our hour is up, so we're going to go off the record, and then we'll have to come
19 back to this in our next round.

20 Ms. Gaston. Okay.

21 [Discussion off the record.]

1 [2:05 p.m.]

2
3 [REDACTED] We'll go back on the record.

4 [REDACTED]
5 Q Ms. Gaston, I would like now to return to what has been marked exhibit 9 by the
6 majority. And the same page, which I believe is five from the back, discussing interviews with
7 Cohen, Yarmouth, Boebert --

8 A And actually, one thing that I would just like to note that I noticed when I was reading
9 through this earlier is that there are things in here that refresh my memory of some things. Like, for
10 instance, I think at one point I used the acronym ISF in here, and I remember that stood for
11 insurrection strike force, which was what we used to describe that group of trying to figure out like
12 how to organize. So I said before I didn't remember using the term, "strike force." We did use the
13 term, "strike force," so --

14 Q Okay. And that's actually very helpful because I think if we're looking at one of the
15 pages where ISF is mentioned, and, again, that's exhibit 9, and it's five from the back.

16 A Five from the back.

17 Q And the top of the page says "also, sorry to bug you."

18 A Okay.

19 Q So, I just want to ask a couple of questions and sort of clarify what's going on here.
20 Obviously, these are fairly out of context in terms of just sort of your conversations over the course
21 of the day. But it states that there are potential rep interviews with Cohen, Yarmouth, Gosar,
22 Boebert. Are those related to the January 6th investigation broadly? Were they separate
23 investigative matters? Were they, you know, something else altogether?

24 A I think that is in the context of the investigation into whether people let folks into the
25 Capitol complex.

1 Q Okay. So I'm going to go a little further down the page, and Joseph Cooney's message
2 at 11:51 a.m., and it states that there's a Boebert allegation on mileage. Was that also in relation to
3 that same January 6th investigation, or is that a separate investigation?

4 A I think that is not within the authorization from the Justice Department.

5 Q And it's not within the authorization from the Justice Department authorizing you to
6 speak on matters related to the January 6th investigations. Is that right?

7 A Yes.

8 Q Okay. And then a little further down the page, Joseph Cooney sends a message at
9 11:58 a.m., and I will just read a portion of this. It says, quote, "SARS obtained from FinCEN led us
10 to issue process that backed into a PAC and a campaign account of Greene. An examination of
11 those accounts revealed a common signatory, which suggests electioneering coordination in violation
12 of FECA," which is F-E-C-A. "In consultation with PIN, as required by the USAM, we have opened a
13 FECA investigation that will be handled by Liz Aloï and Molly Gaston. This investigation is separate
14 from ISF, and there's some other information in there as well. And you stated earlier that ISF refers
15 to insurrection strike force. Is that right?

16 A That is my memory, yes.

17 Q Was this investigation -- and I should ask, when Joseph Cooney was referring to a
18 campaign account of Greene, was he referring to Marjorie Taylor Greene?

19 A I don't remember what this was. I don't remember what this was.

20 Q Okay. Was there a separate investigation into campaign money being related to
21 January 6th?

22 A I don't remember there being a separate investigation into campaign money.

23 Q Okay. I think we'll leave that document there for now. In the meantime, I would like
24 to introduce what will be marked as exhibit 11, which is a CBS news article concerning Jack Smith
25 Attorney's reaction to the Republican investigation.

1 [Gaston Exhibit No. 11

2 was marked for identification.]

3 [REDACTED]:

4 Q So in this news article -- and just a preview, we're returning to the discussion
5 surrounding member toll records, and any investigation of the same. On page 4, it states the
6 reaction of certain Senators who had their toll records searched at some point by DOJ, and their
7 reaction is the second paragraph down on page 4, and it says, quote, "without any sufficient
8 rationale or cause, Jack Smith's team used a Federal grand jury subpoena to obtain the phone
9 records of sitting United States Senators and Member of the House of Representatives," and it says
10 Senators continued. Do you see that statement?

11 A I see that statement.

12 Q And do you agree with that statement, and specifically the idea that there wasn't any
13 sufficient rationale or cause to at least consider a subpoena of these Senators' toll records?

14 A I think that the memorandum that was part of exhibit 6 describes some of the reasons
15 we contemplated issuing subpoenas.

16 Q So in your mind, there was a sufficient rationale to consider issuing those subpoenas?

17 A I think that the rationale is described in the memo.

18 Q Okay. The article also repeats criticism that the special counsel's office spied on these
19 lawmakers, and tapped the lawmakers' phones. Is it accurate to say that these law -- that the
20 special counsel's office tapped the lawmakers' phones?

21 A A subpoena is not the same as a Title 3. And I think [REDACTED] recognized that before.
22 I don't think [REDACTED] is suggesting that there was a wiretap.

23 Q Sure. And just specifically regarding this article, and claims that have been made,
24 would you characterize your subpoena, or consider your subpoena for toll records to be an attempt
25 to spy on U.S. Senators, or tap their phones?

1 A A subpoena is not a wiretap.

2 Q Okay. And just speaking in general terms, when you or another prosecutor issues a
3 grand jury subpoena for toll records, I believe you stated earlier that a nondisclosure order is
4 common in that circumstance. Is that right?

5 A Nondisclosure orders are an investigative tool used frequently with many different kinds
6 of subpoenas.

7 Q Okay. And specifically, when a nondisclosure order is issued, what are the grounds
8 that a judge grants a nondisclosure order? What has to be found?

9 A So the statute providing for nondisclosure orders is 18 U.S.C. 2705, and I believe the
10 bases set forth in the law, and I'm probably going to get these wrong, and/or out of order. The first
11 one is physical harm to an individual, tampering with evidence, flight from prosecution, general harm
12 to the investigation. I think I'm probably missing one. But the statute sets forth the various bases.

13 Q Would you agree that intimidation of potential witnesses could also be a grounds?

14 A I think when I said -- I think when I said tampering with evidence I was sort of sweeping
15 in intimidation of witnesses.

16 Q Okay. So it would be fair to say that NDO, under 18 U.S.C. 2705 could be issued if the
17 court finds any one of the following, destruction of or tampering with evidence, intimidation of
18 potential witnesses, and/or serious jeopardy to the investigation?

19 A I think those are three of the five bases stated in the statute.

20 Q And in this case, the case against Donald Trump, and, you know, in the D.C. District
21 Court, did you ever encounter the intimidation of potential witnesses?

22 A So if I can look at the indictment again.

23 [REDACTED]. Just to save you, that's exhibit 7, just for the record, the superseding
24 indictment.

25 [REDACTED]

1 Q And if helpful, we can also introduce the government's motion that raises these same
2 issues. And we can do that now, if helpful.

3 A We can start with the indictment. If you look at page 12 of the indictment, or
4 paragraph 31, that describes death threats that election workers received. There may be other
5 examples in the indictment, for instance.

6 Q Okay. We'll introduce as exhibit 11 the government's motion to ensure that extra
7 judicial statements do not prejudice these proceedings.

8 [REDACTED]. Exhibit 12.

9 [REDACTED] Is it 12? Exhibit 12. My apologies.

10 [Gaston Exhibit No. 12

11 was marked for identification.]

12 Ms. DuVal. And this is a motion regarding a grand jury subpoena?

13 [REDACTED] It is not solely a motion regarding a grand jury subpoena. I actually don't
14 believe it has much grand jury material in it. It's all very public. But I will give you a second to
15 review.

16 [REDACTED]. We'll try to keep our questions anchored to the public filing, which is exhibit
17 12.

18 [REDACTED]

19 Q Do you recognize this document?

20 A Yes.

21 Q And how do you recognize this document?

22 A This was a filing in the course of litigation.

23 Q Okay. And that litigation specifically being U.S. versus Donald Trump. Is that correct?

24 A Yes.

25 Q And so I'll direct your attention to the second sentence on the first page, which is,

1 "Through his statements, the defendant threatens to undermine the integrity of these proceedings
2 and prejudice the jury pool." What does it mean to undermine the integrity of the proceedings?
3 Just as a general matter, not in any specific relation to this case.

4 A Well, I think it's difficult for me to answer as a general matter.

5 Q Okay.

6 A With reference to this filing, this was -- this litigation was about restricting the
7 statements of parties to the litigation, you know, in the outside world that might, for instance,
8 intimidate witnesses.

9 Q Okay. And were these statements made by any particular individual, or a set of
10 individuals?

11 A I think many of the statements in this filing were made by President Trump.

12 Q And what actions or statements had Donald Trump undertaken that in the government's
13 view here threatened to undermine the integrity of these proceedings?

14 A Well, the -- on page 3 and page -- on pages 3 to 5, there are some examples. And then
15 on page 6, there is a Truth Social post that President Trump made, if you go after me, I'm coming
16 after you. He also made some posts about the judge in the case, and promptly the judge received
17 racist death threats.

18 Q Okay. And so on page 2 here it says that there are disparaging and inflammatory
19 attacks on the citizens of the district, the court prosecutors, and prospective witnesses. Is that
20 what this motion was sort of raising for the court's consideration?

21 A Those are kinds of statements that are discussed in the motion.

22 Q Okay. And we'll take them one at a time. What inflammatory and intimidating
23 statements had Donald Trump made about witnesses in this case?

24 A So there are examples from the course of the investigation that are on the first couple
25 of pages. I also recall from the litigation that there was concerning statements about General Mark

1 Milley, who was a potential witness, and suggesting that he should be executed. And statements
2 about Vice-President Pence and Chief of Staff Meadows, both of whom were potential witnesses.

3 Q And to clarify, Chief of Staff Meadows and Vice-President Pence were prospective
4 witnesses. Was General Milley, was he also a potential witness?

5 A Yes.

6 Q Okay. So with regard to those specific statements, how were they harmful to the
7 proceedings? In what manner?

8 A Well, it is harmful with respect to the individual witness, it has the potential to
9 intimidate a potential witness, but it is also potentially intimidating for witnesses who do not have as
10 high a profile as those individuals basically to see, see those kinds of posts being public.

11 Q And were there witnesses that were not named in this motion that had been subject to
12 intimidation by -- or I will say those comments, similar comments by Donald Trump?

13 A There are redactions on pages 3 to 5, redactions of identifying information.

14 Q And in your view, was there actual harm that came from this? Obviously you're filing a
15 motion to stop, you know, these intimidating statements from being issued. Was there actual harm
16 to your investigation based off of Donald Trump's statements?

17 A Well, the case law says that the court should act at the earliest point possible to prevent
18 harm to the integrity of the judicial process. So that is -- that is why we sought the motion.

19 Q Okay. So on page -- we'll go to page 15. And the first full paragraph on that page
20 begins, quote, "The government seeks a narrow well-defined restriction that is targeted at
21 extrajudicial statements that present a serious and substantial danger of materially prejudicing this
22 case," end quote. So what does a narrow, well-defined restriction mean in this case?

23 A Well, I think probably the narrow, well-defined restrictions is what the D.C. Circuit
24 ultimately issued. So this litigation proceeded, and ultimately the D.C. Circuit narrowed an order
25 that the district court judge had issued. And so, that would be the narrowly-tailored order that sort

1 of was in effect in the course of litigation.

2 [REDACTED]. When you were litigating this, what was the balance that you were trying to
3 strike in protecting the integrity of the ongoing proceedings, as well as, you know, possible First
4 Amendment considerations?

5 Ms. Gaston. So -- and I think the D.C. Circuit discussed this as a balancing. Obviously,
6 President Trump had a First Amendment right. He had a First Amendment right to make political
7 speech, and we were not seeking to restrict his political speech. But at the same time there was an
8 ongoing court case, and the judge has an obligation to preserve the integrity of the judicial
9 proceeding. And so, that was the balancing that we were seeking, and that the D.C. Circuit sought
10 as well.

11 [REDACTED]. Just to be clear, you all as a team, from your recollection, did consider
12 President Trump's First Amendment Constitutional Rights when seeking this order?

13 Ms. Gaston. Yes.

14 [REDACTED]. And you also considered the integrity of the ongoing proceedings and
15 tampering the witnesses, threats to judges, threats to prosecutors, you all considered that as well?

16 Ms. Gaston. Yes.

17 [REDACTED]. Thanks.

18 [REDACTED]:

19 Q So with regard to this, the D.C. Circuit litigation obviously set the actual extent of the
20 order, but the government also submitted what it thought to be the order, and that's also on page
21 15. Is that correct?

22 A I think these were the things that the proposed order was trying to get at.

23 Q Okay. And so the government, it says here, the government's proposed order specifies
24 that such statements would include statements regarding the identity, testimony, or credibility of
25 prospective witnesses, and statements about any party witness, attorney, court personnel, or

1 potential jurors that are disparaging, inflammatory and intimidating. Is that right?

2 A Yes.

3 Q And in specifically asking for those two categories of communications to be prohibited
4 by the order, and to my colleagues' question, how are you trying to balance Donald Trump's concern
5 of First Amendment Rights with the integrity of the proceedings?

6 A Well, I think, you know, these two provisions are focused on the court proceedings.
7 They're focused on witnesses and, you know, parties to the litigation.

8 Q So under your proposed order, Donald Trump would have been free to speak on issues
9 falling outside of the court proceedings, or not directed at the court proceedings?

10 A So, I think it's -- I think in order to answer that question, I would have to like know what
11 the statement is and we would have to go through sort of an analysis of it. So I'm hesitant to make
12 a broad statement about what would or would not be covered.

13 [REDACTED]. We understand this is a case-by-case determination on each given statement
14 at any given time. Is that correct? Your analysis, at least, would have to be on a case-by-case
15 determination of each individual statement?

16 Ms. Gaston. I think so. Yes.

17 [REDACTED]:

18 Q So, for example, on page 12 there's a Truth Social post that states, quote, "Wow, it's
19 finally happened. Little Mike Pence, a man who was about to be ousted as Governor Indiana until I
20 came along and made him VP has gone to the dark side." Would that, for instance, be the type of
21 comment that would be prohibited by the court's order if it was found that the dark side was in
22 reference to cooperating with the prosecution?

23 A So, I think there are a lot of considerations about this. So Vice-President Pence was a
24 potential witness in litigation, and I think those words, too honest, I think, but I would have to spend
25 time looking, I think that is from the indictments, and so, I remember being concerned about this

1 social media post.

2 Q Okay. But otherwise, criticism of Mike Pence as a Vice-President, or as a, you know,
3 runner, really anything else, would that have been covered by the proposed order that the
4 government submitted?

5 A That was not the intent.

6 Q Okay. So what happened, and you referenced this a little bit already, within the court
7 proceedings when the government submitted its motion?

8 A So we resubmitted the motion, the defense responded, we had a hearing, and the
9 district court judge issued an order under Rule 57.7 in D.C., which is a local rule for the district court.

10 Q And in broad terms, what does 57.7 hold?

11 A It is the local rule that allows a judge to issue an order pertaining to extrajudicial
12 statements.

13 Q And what did the district court find in regard to the government's submission of specific
14 statements, and whether that had constituted threats or harassment in this case?

15 A I don't remember the details of the court's opinion. I remember that the court issued
16 an order restricting some statements.

17 Q So the court, it's fair to say, found that there was a risk of harm to the proceedings
18 based off these statements?

19 A The court found that there was a basis to issue an order.

20 Q Okay. And we'll introduce exhibit 13, which is the D.C. Circuit Court opinion from this
21 matter as well.

22 [Gaston Exhibit No. 13
23 was marked for identification.]

24 [REDACTED]:

25 Q And obviously, this is a very long document, so I won't ask you to read the whole thing.

1 But you mentioned that the district court opinion was narrowed by the circuit court ruling.

2 A Yes.

3 Q And do you remember how it was narrowed?

4 [REDACTED] And you might want to direct her to page 55.

5 Ms. Gaston. Thank you. So I think, although I have not taken time to read the entire
6 document, the circuit narrowed the provision related to witnesses because the district court had
7 used the word "target," and there was concern that that word could be broad, and so it added that it
8 needed to involve the witness' potential participation in the investigation or criminal proceeding?

9 [REDACTED]:

10 Q Okay. And would it be correct, then, that the appellate court here, the district -- the
11 D.C. Circuit did not fully overturn the district court's order?

12 A It did not overturn the order. It narrowed it.

13 Q Okay. And I'll direct you to page 31. And on that page it says, The record shows that
14 Mr. Trump has repeatedly attacked those involved in his case through threatening public statements,
15 as well as messaging daggered at likely witnesses and their testimony. For example, the day after
16 his initial appearance in court, Trump issued a warning, quote, If you're coming after me, I'm coming
17 after you.

18 So is it fair to say that the D.C. Circuit adopted the district court's factual rulings regarding the
19 fact that Donald Trump had repeatedly attacked witnesses in this case?

20 A I think that the circuit relied on the record in the district court.

21 Q Did it question the, to your recollection, the record in the district court?

22 [REDACTED]. If you turn to page 35, and I'll direct you to the last paragraph on page 35, the
23 court says, Based on the record, the district court made a factual finding that, quote, when
24 defendant, Donald Trump, has publicly attacked individuals, including on matters related to this case,
25 those individuals are consequently threatened and harassed. Mr. Trump has not shown that factual

1 finding to be clearly erroneous, and we hold that the record amply supports it.

2 So I'll go back to the question that my colleague asked, does it appear that the circuit court
3 relied on the factual record adopted by the lower court?

4 Ms. Gaston. It appears that way.

5 [REDACTED]: Thank you.

6 [REDACTED]:

7 Q Okay. And so based on that statement, and the circuit court opinions, did the circuit
8 court agree that Donald Trump was issuing statements that were intimidating witnesses?

9 A I think the circuit court agreed that there should be an order in place limiting the
10 extrajudicial statements in the case.

11 Q And did it agree that these extrajudicial statements had real-world consequences, or
12 had the potential to have negative real-world consequences? And I'll just direct you to page 36,
13 which is the very next page.

14 A I see here the court wrote, Mr. Trump's documented pattern of speech and it's
15 demonstrated real-time, real-world consequences pose a significant and imminent threat to the
16 functioning of the criminal trial process in this case in two respects.

17 Q Okay. And just to go all the way back to the question relating to the standard and
18 nondisclosure order, based off the record established by the district court, and then adopted by the
19 circuit court, is it fair to say that there's a record of intimidation of witnesses in this case?

20 A I think -- I'm not trying to be too technical.

21 Q Sure.

22 A But I think it's important to specify that in this order, the circuit court found that
23 statement that we just read, and still thought it was appropriate to issue an order for the litigation.
24 And separately, the indictment lists some instances in which individuals were threatened or
25 intimidated in the course of events leading up to January 6th. I think that's how I would put it.

1 [REDACTED]: We'll go off the record.

2 [Discussion off the record.]

3 [REDACTED]:

4 Q We'll go back on the record. The time is now 2:43. Ms. Gaston, at the end of our last
5 hour we were talking about, you know, an allegation that the Justice Department was looking at in
6 regards to Representative Boebert and a tour that she had provided in proximity to January 6th.
7 And I wanted to draw your attention to one of the text exchanges that I read previously, or message
8 exchanges, excuse me, from Mr. Cooney at 10:59, "I'm telling you, though, this tour/map thing has
9 legs. This makes perfect sense to me. Proving the member's intent might be impossible. But I
10 am fairly confident that we are going to put a map or some other information relevant to
11 coordinated activity in the hands of an extremist group, and trace it back to a congressional office."
12 And you then responded, "yep."

13 What investigative activity was conducted to run this allegation down?

14 A So my recollection of it is that we reviewed voluminous video footage, and did not find
15 evidence in the video footage. And then in investigations of groups that had reached the Capitol, I
16 don't think we found a connection to a congressional office in that direction either.

17 Q And were there other congressional offices that you investigated in this context?

18 A The allegations that I remember -- the primary allegations that I remember was
19 Representative Boebert.

20 Q Okay.

21 A And we pretty quickly determined that -- because it was a specific allegation related to
22 her taking a group through the Capitol, and so the footage ruled that out pretty quickly, as I
23 remember. I think there was also an allegation we received about Representative Gosar, and I
24 don't think that that bore out either, and I think that that was resolved pretty quickly as well.

25 Q There were also, in this time period there were also allegations that Barry Loudermilk, a

1 Representative from Georgia, led a tour, and the Democrats with the Select January 6th Committee
2 were calling it a recognizance tour. Did you ever investigate any allegations surrounding that?

3 A I don't remember hearing that allegation.

4 Q So to the extent that the allegation had come to the Justice Department that Mr.
5 Loudermilk was leading a recognizance tour in advance of January 6th, that didn't rise to your level at
6 the Justice Department?

7 A I don't remember receiving that allegation.

8 Q Okay. I want to turn back to your time on Jack Smith's team, and you were just putting
9 everything in context. You had had a discussion with my colleagues in one of their previous hours
10 about comments about politics of the investigation. And, you know, at the time, Jack Smith is
11 appointed, you know, November 15th, 2022, President Trump announced his campaign for
12 re-election November 18th, Jack Smith is appointed, and so at that time, you know, Jack Smith is
13 investigating President Biden, who's in charge of the Justice Department, you know, his top political
14 opponent. So how did the Smith team insulate itself from attorneys that were politically aligned
15 with the Democratic Party?

16 A Just to go back, I think -- when you say that there was an investigation of President
17 Biden, do you mean by Mr. Hur?

18 Q No. I'm sorry.

19 A Sorry.

20 Q I must have misspoke. But if, you know, the team, the Jack Smith team was under
21 Merrick Garland's Justice Department that's led by President Biden, and, you know, Jack Smith's
22 team is investigating his top political opponent, Donald Trump, so how did the Smith team insulate
23 itself from attorneys that were politically aligned with Democrats?

24 A So I think the first, the first step is that in appointing a special counsel, the Attorney
25 General was attempting to do something about the fact that the Justice Department was part of the

1 executive branch under the direction of President Biden, and the special counsel process is the way
2 that is provided in the code to give some independence to a prosecutor, and then there was
3 no -- there were no political considerations, in my experience, in the special counsel's office.

4 Q And were there -- was there any efforts to insulate from just all having attorneys with
5 one point of view on the team?

6 A I don't know what the political views of the attorneys on the team were.

7 Q Because, you know, Jack Smith says, I'm a registered independent, a typical prosecutor,
8 but that's not the case with his number two, J.P. Cooney. Is that correct?

9 A What is not the case?

10 Q J.P. Cooney was President of College Democrats at Notre Dame, he's now running for
11 Congress as a Democrat. Is that correct, is he running for Congress as a Democrat?

12 A He is running for Congress.

13 Q Okay. So he would be aligned with the Democrat party. Is that correct?

14 A So he is now running as a Democrat. In the special counsel's office, I don't know what
15 his -- I don't know what his political views were, and political views were not something that we
16 discussed. And I think, I am familiar with situations, for instance, Representative Gowdy was,
17 before he was a Representative, he was a prosecutor. I believe Representative Fitzpatrick was a
18 prosecutor and an FBI agent. Individual's personal -- in my experience at the Justice Department
19 writ large, individuals' personal views don't come into it when we're doing our work.

20 Q But this is different because you're investigating the top political opponent of the Biden
21 administration, and, you know, it's one thing if you have -- if your team is full of people who donate
22 to Democrats, and, you know, pretty similar if it's all people who align with the Democrat thinking.
23 You've got J.P. Cooney who's now running to be a Member of Congress under the Democrat Party,
24 and then, you know, I know you worked for a Democrat member of Congress, served Attorney
25 General Holder who was appointed by a Democrat, Lisa Monaco who was appointed by a Democrat.

1 So how did it insulate from just having attorneys that were aligned politically with Democrats?

2 A So in my time at the Justice Department, I worked for Attorney General Holder, and
3 Attorney General Sessions, and Attorney General Barr. I was hired into the D.C. U.S. Attorney's
4 Office by U.S. Attorney Jessie Liu who was an appointee of President Trump.

5 And so, in my experience at the Justice Department, I'm not familiar with what people's
6 political views are, and they don't enter into the equation.

7 Q And you were counselor to Attorney General Holder. Is that correct?

8 A Yes.

9 Q Were you similarly a counselor to Attorney General Sessions?

10 A I was a prosecutor for the Justice Department under Attorney General Sessions.

11 Q So you didn't work in the Office of the Attorney General for Attorney General Sessions?

12 A I did not.

13 Q Did you work in the Office of the Attorney General for Attorney General Barr?

14 A Neither of them asked me to work in their office.

15 Q So was it only Attorney General Holder that you were a counselor to?

16 A I was also a counselor to Attorney General Lynch when she took over for Attorney
17 General Holder.

18 Q Okay. And my questions may jump around a bit, but I'm just trying to be expedient
19 here. Prior to the indictment on August 1st, 2023, in the D.C. case, there's been reporting about a
20 prosecution memo that was given to Attorney General Garland in June 2023. Do you have any
21 knowledge about the prosecution memo?

22 A I worked on a prosecution memo.

23 Q Okay. And what can you tell us about the prosecution memo?

24 A So prosecution memos generally are something that, in my experience, I worked on for
25 every case that I sought to indict. It's sort of a recitation of the facts. It's a discussion of legal

1 issues. And in my experience, it's just sort of making sure that you have really weighed all of the
2 considerations before considering seeking an indictment.

3 Q And did you ever have any conversations with Attorney General Garland regarding the
4 prosecution memo?

5 A I do not remember.

6 Q Okay. Do you remember Attorney General Garland's reaction to the prosecution
7 memo?

8 A No.

9 Q It's been reported that the Attorney General had concerns about the First Amendment
10 implications of the case and wanted Mr. Smith to go back and work with Elizabeth Prelogar on the
11 prosecution memo to soften it a bit. Did you ever learn about this?

12 A I don't remember that specifically. I know that our office consulted the Solicitor
13 General's office, consulted the Office of Legal Counsel, obviously consulted PIN, consulted others in
14 the Justice Department as we were figuring this out because we were trying to take it very seriously.
15 But I don't know the details of those discussions.

16 Q And did anyone ever raise any First Amendment concerns with the indictment that
17 you're aware of?

18 A Well, I think we understood that the First -- that there were First Amendment
19 implications to this case, and took that very seriously and tried to think through the First Amendment
20 implications, and I think even tried to reflect that in the indictment.

21 Q Okay. And the gag order in the case on the President, I know you were discussing the
22 motions with my colleagues the last hour. What discussions can you tell us about were had at the
23 special counsel's office regarding restricting the political speech of a presidential candidate?

24 A So that is another circumstance in which we took it very seriously that there was a First
25 Amendment implication to it, and we were trying to find the balance between President Trump's

1 extremely valid First Amendment right to political speech, and also, protecting witnesses and the
2 integrity of the judicial proceeding.

3 Q Did the special counsel's office ever identify any violations of 18 U.S.C. Section 1512, the
4 witness tampering statute, by President Trump?

5 A I don't think that we ever alleged anything like that.

6 Q Did the special counsel's team ever allege that President Trump violated the terms of his
7 release?

8 A I don't think we alleged that either.

9 Q And did the special counsel's office ever identify specific witnesses who were
10 intimidated by President Trump, or failed to come forward because of his statements?

11 A So I think in our pleadings we identified individuals who might be intimidated based on
12 social media posts. I don't think we would know if somebody was chilled from coming forward.

13 Q Did you play any role in setting the trial date, or the proposed trial date for the D.C.
14 case?

15 A Yes.

16 Q What was your role there?

17 A I think I was involved in proposing a trial date.

18 Q Okay. And what was the first proposed trial date from the special counsel's office, if
19 you remember?

20 A I don't remember.

21 Q Would January 2024 surprise you?

22 A No. That sounds right.

23 Q And that was 5 months after the August indictment. Is that correct?

24 A Approximately, yes.

25 Q And were you aware of an order to get ready for a trial in January 2024, the indictment

1 happened in August 2023, how many pages of documents that President Trump's defense team
2 would have had to review in 5 months?

3 A I don't remember.

4 Q Would 13 million pages surprise you?

5 A So I think we had pleadings about whether that was the accurate number of pages,
6 whether there were duplicates, and that kind of thing, and how much of that material had come
7 from President Trump, or entities affiliated with him in the course of the investigation.

8 Q And how many pages of documents total did you -- you're taking issue with the 13
9 million number. What number did you think they would have to review?

10 A I would have to look at the pleadings in our hearing transcript.

11 Q So it says 13 million in the pleadings. But does the January 2024 trial date, did that
12 seem like a reasonable schedule?

13 A I think we thought it was reasonable.

14 Q And then Judge Chutkan initially ordered that the trial start in March 2024. Is that
15 correct?

16 A I think that's right.

17 Q Okay. And as you know, there's the whole immunity issues that goes up to the
18 Supreme Court, it comes back, there's a superseding indictment. And after the superseding
19 indictment is filed, there was a 165-page brief on immunity decisions. Are you familiar with that
20 brief?

21 A I remember that brief. I don't remember the exact number of pages.

22 Q Okay. What role did you play in drafting the brief?

23 A I helped draft it.

24 Q Okay. And do you know what the standard length of brief is for the D.C. District Court?

25 A There is a page limit for standard briefs. I can't remember anymore what it is.

1 Q It's 45 pages.

2 A Okay.

3 Q Do you remember having to ask for more pages, an extended brief?

4 A Yes.

5 Q Okay. And this was filed on August 2nd, 2024. Does that jive with your recollection?

6 A I don't remember specifically, but that would not surprise me.

7 Q And that was within 60 days of the November 2024 election. Is that correct?

8 A That sounds like within 90 -- August to September, September to October, October to
9 November. Yep. Is that 90 days?

1 [2:59 p.m.]

2 [REDACTED]:

3 Q Well, October -- the brief is filed October 2nd, 2024. The election is --

4 A Oh, okay. Yes, yes.

5 Q -- November 2024. Was there any consideration of the 60-day rule?

6 A We consulted with the Public Integrity Section.

7 Q And what did that consultation look like?

8 A We -- we consulted with them about our proposed -- sorry. I actually don't remember
9 the details of -- we consulted with the Public Integrity Section about the superseding indictment. I
10 don't remember the details of discussion of the brief with them.

11 Q Was there any discussion internally about the 60-day rule and filing the 165-page brief
12 so close to the election?

13 A We were conscious of -- I think at times it's been called the 60-day rule. At times it's
14 just been called the election sensitivities policy.

15 Q Uh-huh.

16 A We were aware of it and we were in consultation with the Public Integrity Section at the
17 time.

18 Q Because the brief was filed out of order, if you will, the typical order, because typically
19 you file the indictment, the defense responds, and then the prosecution may come back with
20 another motion. But in this case, the superseding indictment happened, and then the prosecution
21 filed the brief before the defense could respond. And it gives the appearance that the team was
22 attempting to influence the election, and then the Harris team capitalized on some of the
23 information.

24 Was there any concern with how this may influence the election?

25 A It was not an attempt to influence the election. And we were in consultation with the

1 Public Integrity Section.

2 Q On the brief.

3 A I don't remember specifically about the brief.

4 Q Okay. So what were you in consultation with the Public Integrity Section on?

5 A We were certainly in consultation with them about the superseding indictment.

6 Q Okay. But not the brief that was filed a month before the election?

7 A I don't remember.

8 Q Okay. And are you aware that Judge Chutkan called the brief atypical and procedurally
9 irregular?

10 A I'd be happy to look at the transcript if you have it.

11 Q I don't have the transcript, but she called it atypical and procedurally irregular. Does
12 that -- you just don't remember her doing that or --

13 A I don't remember her words. I remember generally the hearing in which we were
14 discussing it.

15 Q Does it concern you that the Harris campaign used parts of the brief to -- in their
16 campaign ads?

17 A I'm not aware of that happening, so I'm --

18 Q Okay. If they did, would that concern you?

19 A I'd have to see what you're talking about.

20 Q Okay. So there would be instances where you would be okay with the Harris team
21 using parts of a criminal brief?

22 A I just don't know what it is that you're talking about. If you have -- if you have the ad
23 or if you have how they used it, I'd be happy to look at it.

24 Q Okay. Because it just sounds like you're trying to distinguish that in some cases it may
25 be okay, other cases it may not be okay?

1 A I just am not familiar with them using it, and so I don't really know how to answer.

2 Q Got it. What kind of interactions did you have with the January 6 Select Committee
3 while you were at the Department of Justice?

4 A So while I was at the special counsel's office, I did not have contacts with the January 6
5 committee.

6 Q Uh-huh.

7 A When I was in the U.S. Attorney's Office, I worked on some cases in which staffers for
8 that committee were witnesses, and so I had interactions with the committee in that capacity.

9 Q So staffers for the committee were witnesses in what context? Sorry.

10 A So I prosecuted a contempt of Congress case coming from that committee, and so had
11 contacts with them in that capacity.

12 Q And was that the only interactions you had with the January 6th Select Committee?

13 A So there were two contempt of Congress cases flowing out of that committee, and some
14 other referrals, I believe, that were not -- not proceeded upon. I think that those are the instances
15 in which I had contacts with the select committee.

16 Q And was it Steve Bannon that the contempt of Congress was --

17 A That was the trial, yes.

18 Q Okay. And you ran that before you went to Jack Smith's team. Is that correct?

19 A I worked on that before I worked in the deputy attorney general's office.

20 Q Okay. Another individual was Peter Navarro.

21 A Yes.

22 Q Did you work on that case?

23 A I worked on the beginning of that case, but I -- I was on a detail when it -- when it went
24 to trial.

25 Q Detail to the special counsel's office or --

1 A I don't remember when it went to trial, so I don't know whether I was in the deputy
2 attorney general's office or the special counsel's office.

3 Q And while you were on the special counsel's team, did you review transcripts or
4 evidence that was collected by the January 6th Select Committee?

5 A Yes.

6 Q And what kind of evidence did you review that the January 6th committee sought?

7 A We received transcripts of their interviews, so I remember reviewing some of those.
8 That's primarily what I remember reviewing from them.

9 Q And did you rely upon those transcripts or did the Justice Department conduct its own
10 interviews?

11 A We conducted our own interviews.

12 Q Okay. Did you have any contact or communication with Fani Willis? She's the district
13 attorney for Fulton County.

14 A I do not think so.

15 Q And Nathan Wade was another prosecutor that worked with her. Did you ever have --

16 A No.

17 Q -- any communication?

18 Ms. Duval. Let her ask her full question before --

19 Ms. Gaston. I'm sorry. Please answer [sic] the full question and then I'll answer.

20 [REDACTED]:

21 Q Were you ever aware of any communications that occurred between the Justice
22 Department and Ms. Willis' team?

23 A I don't think so. Let me sort of give a broader answer, which is that we -- we made a
24 decision not to have substantive contacts with other prosecuting entities, and we did not reach out
25 to them. I can remember on one or two occasions some other prosecuting entity, like, called or

1 sent us a letter, and our contact with them was to basically say, like, no, thank you. I don't
2 remember what prosecuting entities those were, but I do not think they were Georgia or any New
3 York prosecution.

4 Q So no contact with DA Bragg, Alvin Bragg?

5 A Do not think so.

6 Q Did you ever have any conversations with Michael [sic] Colangelo, who was at the Biden
7 Justice Department and then went to Mr. Bragg's office?

8 A Not outside of the Justice Department.

9 Q Okay. Not after he left the Justice Department.

10 A Right.

11 Q Is that correct? Okay.

12 Did you ever have any communication with any state attorney generals -- attorneys general?

13 A I don't think so, unless it was a State attorneys general representative who placed a
14 phone call to us, to which we said, politely, like, No, thank you.

15 Q And we previously had former Assistant Attorney General Kenneth Polite in. He was
16 over the criminal division. And he talked about a couple of calls that he convened with state
17 attorneys general in relation to the 2020 election and investigations involving the 2020 election.
18 Were you aware of those calls?

19 A I don't think so. And I don't think so in that it sounds like that would have been before
20 the special counsel's office, but --

21 Q That's correct.

22 A Okay. I don't think --

23 Q Okay.

24 A -- I knew about that.

25 Q So you weren't on -- he said there were two calls. You weren't on any calls with state

1 attorneys general?

2 A I don't think so.

3 Q Okay. Did you ever interact with the Biden White House?

4 A Not when I was at the special counsel's office.

5 Q Okay. When did you have contact with the Biden White House?

6 A When I was in the office of the deputy attorney general.

7 Q Okay.

8 A I was consider -- DOJ has this thing called the contacts policy meant to sort of shield
9 litigators from political influence.

10 Q Okay.

11 A And so some leadership offices are sort of designated to have communications when
12 necessary with the White House. And so there were times when I had communications with the
13 White House.

14 Q Did any of those communications ever involve investigations into President Trump?

15 A So I can think of a couple occasions in which they related to the special counsel's office
16 when I was in ODAG, if that makes sense.

17 Q Okay. And what can you tell us about those contacts, if you will?

18 A So the special counsel's office wanted to have no contact with the White House.

19 Q Uh-huh.

20 A And so on one occasion, or a related cluster of communications, the classified
21 documents investigation needed to interview career officials stationed at the White House. And so
22 I facilitated those, setting up those interviews so that the special counsel's office was not contacting
23 the White House.

24 Q And were there any other communications on behalf of the special counsel's office to
25 the White House other than the setting up the interviews?

1 A Then for the election investigation --

2 Q Okay.

3 A -- when they were receiving records from the January 6th committee, there were a
4 handful of interviews that had been conducted under some agreement between the White House
5 and the January 6th committee, because I think that they were career people at the White House
6 who were interviewed. And so I needed to get the White House's -- the way I remember it is I
7 either needed the White House to tell the January 6th committee that it could release those
8 interviews or the White House was the holder of those interviews. I can't remember which it was, if
9 that makes sense.

10 Q Okay. So the White House needed to tell a congressional committee that they could
11 release their transcripts?

12 A There was some agreement -- like, there were conditions placed upon the interviews --

13 Q Okay.

14 A -- because of the -- I think because of the sensitivity of those folks' rules or something
15 like that.

16 Q Okay. Other than those two topics, we'll say, was there any other contact with the
17 White House in the context of the special counsel's office?

18 A There is possibly one more that I remember.

19 Q Okay.

20 A Which is, at some point, some Senators wanted some information about the documents
21 that were the subject of the classified documents investigation. And in an attempt to help provide
22 that, I may have spoken to someone at the National Security Council to try to facilitate providing that
23 information to the Senate.

24 Q Okay. And then you didn't have any more communications with the Biden White
25 House after you went to the special counsel's team?

1 A Not that I recall.

2 Q Okay. I want to talk to you a bit about the confidential human sources.

3 So the Department of Justice Inspector General released a report, I believe it was December
4 2024, about 26 confidential human sources from the FBI who were in the D.C. area on January 6th.
5 Did you see that report at all?

6 A I don't remember.

7 Q Okay. When you were at the D.C. U.S. Attorney's Office doing your January 6th-related
8 work, did you ever receive information that was from a confidential human source?

9 A I don't think so.

10 Q Okay. And there were four confidential human sources who were at the Capitol and
11 went inside of the Capitol on January 6th. Were you ever involved in the decision whether or not to
12 prosecute those CHSes for entering the Capitol?

13 A I don't think so.

14 Q Okay. There's also been some reporting there was an internal FBI document regarding
15 a payment to a confidential human source for \$20,000 in June 2023. Were you aware of this
16 payment?

17 A Do you have that document?

18 Q Yes, I do.

19 [Gaston Majority Exhibit No. 14

20 was marked for identification.]

21 [REDACTED]:

22 Q Okay. And the document is an electronic communication from the FBI's side of things
23 that kind of memorializes the special counsel office's concurrence and a payment for \$20,000 to a
24 confidential human source. Were you aware of this payment while you were at the special
25 counsel's office?

1 A I think I was generally aware.

2 Q Okay. And if it's helpful in testimony, Special Counsel Jack Smith, when he was at the
3 hearing, talked about how this specific confidential human source was -- reviewed video and
4 photographic evidence. Does that match your recollection?

5 A Yes.

6 Q Do you know if this was the only payment that was made to a confidential human
7 source in terms of the special counsel's investigation?

8 A I don't know.

9 Q Okay.

10 A But I think this is the only one I'm aware of.

11 Q This is the only one that you think you're aware of?

12 A Yes.

13 Q And it's been reported that this individual was part of the group Sedition Hunters.
14 Does that match your recollection at all?

15 A I have no idea. I mean, I remember -- my recollection of what this individual was doing
16 is consistent with Mr. Smith's. I don't know what they were affiliated with.

17 Q And does the FBI have the capability to review photographic and video evidence?

18 A I think that the FBI does review photo and video evidence.

19 Q I think the question is, is why did the special counsel's office and the FBI need a
20 confidential human source to review video and photographic evidence if the FBI had that capability.
21 Do you have any insight in that?

22 A I don't.

23 Q Okay.

24 [REDACTED]: We can go off the record.

25 [Whereupon, at 3:17 p.m., the interview was adjourned.]

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