

SELECT COMMITTEE TO INVESTIGATE THE
JANUARY 6TH ATTACK ON THE U.S. CAPITOL,
U.S. HOUSE OF REPRESENTATIVES,
WASHINGTON, D.C.

INTERVIEW OF: JEFFREY A. ROSEN

Wednesday, October 13, 2021

Washington, D.C.

The interview in the above matter was held in Room 4480, O'Neill House Office Building, commencing at 10:00 a.m.

Present: Representatives Murphy, Luria, and Cheney.

Appearances:

For the SELECT COMMITTEE TO INVESTIGATE
THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

- ██████████, CHIEF INVESTIGATIVE COUNSEL
- ████████████████████, SENIOR INVESTIGATIVE COUNSEL
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For the DEPARTMENT OF JUSTICE:

- KIRA ANTELL
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For JEFFREY A. ROSEN:

MEREDITH POHL

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██████████ Good morning --

Mr. Rosen. Good morning.

██████████ -- Mr. Rosen.

My name is ██████████. I'm the chief investigative counsel of the House of Representatives Select Committee to Investigate the January 6th Attack on the U.S. Capitol.

We're here today for a transcribed interview of Jeffrey A. Rosen.

Let me start with some introductions. I know we have one member of the select committee here. Vice Chairman Liz Cheney is present. I believe we also have Representative Murphy who has joined remotely. And I think we expect at least one additional member of the select committee to join, also remotely.

We're here in a conference room in the House of Representatives' offices, but some members of the committee and other lawyers are joining remotely.

With me from the select committee, I have ██████████, who is a senior investigative counsel --

██████████ Good morning.

██████████ -- ██████████, who is a senior investigative counsel --

██████████ Good morning.

██████████ -- ██████████, who is a senior investigative counsel; ██████████, also a senior investigative counsel; ██████████, who is an investigative counsel; and ██████████, who is a senior investigative counsel. A lot of lawyers from the select committee that are here to participate -- potentially participate in the questions.

We also have a couple of lawyers from the Department of Justice. Kira Antell and Brad Weinsheimer are here, and I think Emily Loeb has joined as well from the

Department of Justice remotely.

A court reporter -- there are actually several court reporters who will be taking down a verbatim transcript of the proceedings.

Let me start, Mr. Rosen, by asking you to introduce yourself. State and spell your name for us.

Mr. Rosen. My name is Jeffrey A. Rosen, J-e-f-f-r-e-y, A as in Adam, Rosen, R-o-s-e-n.

██████████ Welcome, Mr. Rosen.

And I know you're here attended by Reg Brown and some lawyers from Kirkland & Ellis.

Reg, could you introduce yourself and your team?

Mr. Byrnes. Reginald Brown, Kirkland & Ellis. Introduce yourselves.

Mr. Byrnes. John Byrnes, Kirkland & Ellis.

Ms. Pohl. Meredith Pohl, Kirkland & Ellis.

██████████ Great. As I said, there is a court reporter here making a verbatim record of the proceedings. After the proceedings are over with, we will send you a draft of the transcript. You'll have an opportunity to review it, make any changes or corrections and ensure its accuracy.

I'd ask you just to make sure that you give audible answers, not head shakes, so that the court reporter can take everything down.

And, the court reporter, please free to --

The Reporter. I will.

██████████ -- slow us down or --

The Reporter. Thank you.

██████████ -- step in if you need something spelled or repeated.

You're not under oath today. This is a transcribed interview, not a deposition. But you still have the same legal obligation to tell the truth. I say this to every witness, not you in particular. I know that you understand that a false statement could be in violation of 18 U.S.C. 1001.

If you don't recall the answer to a question, just say so. That's to be expected given the passage of time.

Ask me to repeat a question if it's not clear. I'll try not to put you in that position.

If you need to consult at any time with your lawyers, that's fine. Just say so, and we'll give you time to consult with Reg or the team.

Obviously, if you need a break at any point, just say so, and we'll take a break. We have to stop at a little before 12:00 to accommodate a scheduling issue, which we'll do, and we'll take a short -- an earlier -- longer break around the lunch hour. I don't know how long we'll be here, but we'll definitely break for lunch.

Mr. Rosen. Okay.

██████████ There are two broad areas that we're going to cover during the transcribed interview. The first is the White House pressure on you and others at the Department of Justice regarding alleged election fraud.

You testified about this previously. We're not going to go over everything you testified before but try to isolate some things that the select committee thinks, you know, we want some clarification on or context. I will essentially be handling that with breaks to stop to see if members of the committee or other counsel have questions.

Then we'll stop, and we'll focus on preparations for management of the January 6th events. ██████████ will essentially lead that portion of the testimony. And, similarly, we'll stop periodically and give others a chance to ask questions.

So those are kind of the two paths that -- do you have any questions for me or for us before we get started?

Mr. Rosen. I don't think so.

██████████ Okay. Okay. Thank you.

EXAMINATION

BY ██████████

Q So let me start just by clarifying that you have testified a couple of times previously about these issues. Is that right?

A Yes.

Q I believe the first time was the House Oversight Committee, May the 12th of 2000 -- of 2021?

A Taking the words right out of my preliminary remarks here.

Q If you have a preliminary statement, then why don't you go ahead and start that.

A It will take a few minutes, but, as you'll recall in the Senate interview, I also did that, and just think it helps offer some preliminary observations and help frame, then, the conversation later, so that you've heard my overview and bottom line on a couple of things. So --

Q Yeah.

A -- if you'd give me the opportunity, I don't mean to disrupt how you'd like to proceed but --

Q Please do.

A -- some minutes to do that.

So -- well, thank you for the opportunity to share some preliminary observations. As you just alluded to, I did previously testify at the Senate Judiciary Committee in August

of this year regarding the President's interactions with the Department of Justice during the time I was the Acting Attorney General, and I also previously testified before the House Oversight Committee in May of 2021 regarding DOJ's role in the response to the January 6th attack on the Capitol and DOJ's subsequent prosecution of wrongdoers.

And I have understood that the House select committee, led by Chair Thompson and Vice Chair Cheney, had questions as to these topics as well, and, you know, so I'm here today to answer those.

So I wanted to reaffirm at the outset that, during my tenure at the Department of Justice, my priority was to ensure is that the Department would proceed on the basis of the facts and the legal merits to enforce the Constitution and preserve the role -- rule of law, and we did that. And I was honored to have led and served alongside an extraordinary team of public servants who always put the best interests of our country first.

So, during my tenure as the Acting Attorney General, which began on December 24th of last year, the Department maintained the position that the Department of Justice had been presented with no evidence of widespread voter fraud at a scale sufficient to change the outcome of the 2020 elections.

We thus held firm the position that the Department would not participate in any campaigns or political parties' legal challenges to the certification of the electoral college votes and that there must be an orderly and peaceful transfer of power under the Constitution.

In particular, during my tenure, we appointed no special prosecutors; we sent no letters to States or State legislators disputing the election outcome; we made no public statements suggesting the election was corrupt and should be overturned; we initiated no Supreme Court actions, nor filed or joined any other lawsuits calling into question the

legitimacy of our election and institutions.

To the contrary, the only time the Department filed a brief in court, it was to say that a Congress Member's lawsuit seeking to overturn the election should be dismissed, and it was.

So let me comment quickly on President Trump's interactions with the Justice Department during the time I was Acting Attorney General.

President Trump's unwillingness to accept the results of the election is public and well-known. I thought that was misguided, and I disagreed with things that President Trump suggested the Department could do with regard to the election. So we did not do them.

When I or others told him he was misinformed or wrong or that we would not take various actions to discredit the election's validity, he did acquiesce to the Department's position. It was unfortunate that I ultimately had to seek a meeting with the President on the evening of January 3rd, 2021, to persuade the President not to pursue a different path endorsed by Jeffrey Clark, which would have ended my tenure. I was gratified that my approach had the support of the entire DOJ senior leadership team and the White House counsel.

Now, with regard to the other topic for today, the violence at the Capitol on January 6, let me say what I said publicly that day and also when I testified in May.

It was an intolerable attack on the fundamental institution of our democracy and a national travesty and an intolerable attack on our democratic values. I took solace in the fact that our Republic never faltered. The buildings were breached, but the Constitution and our shared values were a bulwark against the violent mob.

As I explained in the May hearing, while the police handled the security and crowd control for protests and demonstrations, the Department of Justice did prepare

extensively in advance of January 6 to play a supportive role. And, when the Capitol was breached, the DOJ urgently deployed more than 500 agents and officers from the FBI, the ATF, and the U.S. Marshals to assist in restoring order to the Capitol, and then, that evening and the next day, turned swiftly to investigating and prosecuting those responsible for this disgraceful attack.

My written statement from that hearing is available to you. So I won't repeat all of that. But I do think it's important to recognize, with regard to protests and demonstrations in the national capital region, it's the police organizations -- the MPD, the Park Police, and the Capitol Police -- who are responsible for the frontline security and crowd control in their respective jurisdictions.

Other Federal agencies, including DOJ and the FBI, DHS, DOD and their components, can and sometimes must play a supportive role. For our part at the Department of Justice, primarily through the FBI, we assisted by gathering crime intelligence about potential threats of violence and sharing information with police and Federal partner agencies about those threats, crime intelligence information sharing.

Although neither the District of Columbia nor the Capitol Police had requested DOJ or -- personnel or resources before January 6, various DOJ entities took precautionary steps to alert or preposition tactical teams if they were needed for support on January 6.

And I know it was in the written testimony. So I won't walk through them unless you want to get into that in questioning.

On the morning of January 6th, I met with the FBI leadership -- I believe it was at 9:30 in the morning -- for the latest updates and preparation. During the events as they were unfolding at the Ellipse, I spoke with the acting U.S. attorney for the District of Columbia, Michael Sherwin, for additional updates.

And then, as the day unfolded, as events turned for the worst, my staff and I sought to make sure that the Department of Justice and its -- the FBI and other components were doing everything we could do to help. So sizeable numbers of ATF personnel arrived on the site. It was reported to me -- I wasn't at the site, but it was reported to me -- by 2:40 p.m., which is roughly 10 minutes after the House officially recessed. FBI teams began arriving a little bit later, although the -- some of them before 3 p.m. and continued after that.

I was in constant communication with our staff to coordinate the Department's response, spoke throughout the day with White House staff, multiple Members of Congress and the staff, Federal agency counterparts, and with Vice President Pence.

As the attack continued, we had the number two officials from both the FBI and DOJ, Rich Donoghue and David Bowdich, personally go to the Capitol Building inside the rotunda, and they provided leadership and ongoing situation reports from inside the building as efforts to restore order were underway.

Ultimately, thanks to the collective efforts at the Capitol, the Capitol Building had largely been cleared of attackers late in the afternoon. There were still tasks to be done to see if explosives had been left behind and things like that.

But we had a 7 p.m. conference call with the congressional leadership, the Vice President, with some White House staff, and with representatives from DHS, Interior, Defense, and me, as well as my deputy, Rich Donoghue, and Mr. Donoghue, who was still at the Capitol, was able to report from inside the building that we expected Congress could return by 8 p.m., which is what happened.

Accordingly, Congress returned and completed its constitutional role in certifying the votes of the electoral college the evening of that very same day.

The Department of Justice work had only begun at that point. Acting U.S.

Attorney Sherwin and the prosecutors from his office, along with FBI and police counterparts, began charging participants in the violence the next day. That's one of those statements that I've given you that I put out.

And, within the first week after the attack, more than 70 individuals had been criminally charged and DOJ had opened more than 170 investigations. I had issued a statement condemning the attack on the Capitol on the afternoon of January 6th, and I continued to issue public statements about the progress of charges and arrests, as well as our efforts to avoid any further violence as the inauguration of President-elect Biden approached.

And I've provided you with the eight public statements that the Department of Justice issued on my behalf during that time.

It is a matter of public record that the work of investigating and prosecuting those who attacked the Capitol continues to this day, and my perspective that I suspect we all share is that the actions of the rioters who entered the Capitol that day must never be repeated.

So I'll do my best to answer your questions today. The passage of time probably is -- my memory isn't perfect, and, you know, the events have occurred some months ago, and my access to information is somewhat limited from not being at the Department. But you do have my earlier transcripts, which I hope will be something you can rely on.

But the one thing I clearly remember and want to underscore is that, during my time as the Acting Attorney General, I feel very strongly that the Department maintained its integrity and maintained the rule of law with regard to last year's election, and we also did our part in restoring order after the intolerable attack on the Capitol, and then we moved promptly to hold wrongdoers criminally accountable.

So I hope these initial observations will prove helpful as we proceed with your questions to it. I just framed a little bit of my perspective on these things.

Q Yep. Thank you, Mr. Rosen. They are very helpful. I appreciate that. And we'll go back over some, but, trust me, not all --

A Okay.

Q -- of those facts.

Just at the very end, you indicated again that you sort of stand by your prior testimony. Let me just make sure I'm clear. You testified in front of the House Oversight Committee on May the 12th of 2021?

A Yes.

Q Did you have a chance thereafter to review that transcript and ensure its accuracy?

A I don't think so.

Q You did not? Okay.

Have you had a chance to review it since then?

A Yeah. In preparing for today, I've looked at it.

Q Okay.

A And I -- I did not take the exercise of seeing if there were word errors or something like that, but, in the big picture, I thought it captured the gist of what I said.

Q Okay. And all we're really interested in is the big picture. Anything in there that you, at this point, need to clarify or correct?

A Not that -- not that I recall. As I say, I -- I didn't -- I didn't focus on it as in did they capture this word in the transcript right or wrong or something like that. I just said, are the concepts consistent with what I said and --

Q Yeah.

A -- I think they were.

Q Okay. Similarly, you testified, you indicated here in your opening statement, before the Senate Judiciary Committee on August the 7th. Did you have an opportunity with that transcript to review it and ensure its accuracy?

A On that one, yes.

Q Okay. And is it accurate?

A It -- in the broad thrust, I think, it accurately captured -- it certainly captures both what I said and to my best recollection on the day in which I said it. A few small caveats, just for technical accuracy.

Q Uh-huh.

A I think there is a lot of places there are quotation marks and things that I gave in my answers, and I just would want to be clear that I -- in giving those answers, I was describing the substance of what was said. I don't have a transcript or --

Q Yeah.

A -- transcript in my head. So I'm -- although there are quotation marks, they're more capturing the substance of how I remember what was being said as opposed to necessarily being actual quotes --

Q I see.

A -- in quotes marks.

And the other -- two other modest caveats. I did see one place, maybe more than one -- there is one that's stuck in my head -- where there was a typo. Again, I don't think it's a huge thing, but there was a page -- I think it's page 104 -- that used the phrase "change of command." I think it was "chain" rather than "change." It was "chain." I referenced a chain of command. I don't think -- I think, if you read it, you probably got the correct -- the gist of it, but -- so I did see that.

And I think there is maybe one other typo that -- and then there were a couple of places where I acknowledged that I didn't remember things, but I might be able to be refreshed on them. There is a place in -- at the -- there may be more than one of these, but one that stuck with me is I didn't remember what State Farm Arena was. I subsequently, afterwards, was refreshed that the State Farm Arena is the -- the location in Atlanta where ballots were being counted.

So I'm being a little bit technical here. I think, in the big picture, the transcript is an accurate recording of the things I remembered and said that day.

Q Okay. I appreciate that.

But for those spelling errors or the slight things that you didn't recall, sum and substance of it is accurate, and you stand by it today?

A That's right.

Q Okay. And we are going to -- the select committee is going to essentially incorporate those transcripts as part of our record and rely upon your testimony there for our purposes going forward, as long as you're comfortable with that?

A Yes.

Q Okay. You were authorized before the Senate Judiciary testimony by the Department of Justice to talk about certain subject matters. Is that right?

A That's correct.

Q Do you recall getting a letter from the Department essentially authorizing you to talk about the White House pressure on you and others in the Department with respect to election fraud?

A I remember both the letters from the Department of Justice in late July and from the former President's counsel as well expressing that they would not object to my responding to questions.

Q Got it. And you're here today under those same terms, with that permission from the Department of Justice?

A That's my understanding. Yes.

Q Okay.

Mr. Rosen. Unless the Department of Justice tells me otherwise.

██████████ Department of Justice is here and can step in if you cross that line.

Mr. Rosen. Okay.

BY ██████████:

Q All right. Again, thank you for the opening statement. We'll go back to a few of those things.

But, before that, I just wanted to get a little bit about your background -- your professional background --

A Sure.

Q -- so we --

A Sure.

Q You started your career in private practice at the Kirkland & Ellis law firm.

Is that right?

A Yes. In 19 --

Q How long --

A 1982 is when I joined the firm.

Q And how long were you at Kirkland before you began your public service career?

A A little under 22 years before I went into the Bush administration.

Q What was your first job in public service?

A I was the general counsel at the Department of Transportation.

Q 2003 to 2006, is that right, you served in that capacity?

A Yes. Secretary Mineta was the Cabinet officer.

Q All right. What did you do after you were GC at the Department of Transportation?

A I had been asked to go be the general counsel and senior policy adviser at the Office of Management and Budget at the White House.

Q How long did you serve in that capacity?

A A little -- just under 3 years.

Q Okay. That takes us to the end of the Bush administration. Is that right?

A Yes.

Q When --

A Correct.

Q When Bush administration ended in early 2009, did you return to Kirkland?

A I did.

Q How long did you stay at the law firm?

A Just under 8 years. I basically was there -- I rejoined Kirkland in April or May of 2009, and I -- I departed in February or March of 2017.

Q To return to government service?

A Yes.

Q Yeah. And in what capacity did you join -- rejoin the government in 2017?

A I had been nominated to be the Deputy Secretary of Transportation. While awaiting confirmation, I think I initially joined the Department in -- I forget the exact title -- senior adviser or something like that, but I was only in that role for about a month until I got confirmed.

Q Okay.

A And then was Deputy Secretary.

Q Until 2019, when you moved over to Justice?

A Correct.

Q Okay. And tell me what capacity you served at the Department of Justice starting in 2019.

A Well, I was the Deputy Attorney General. I was confirmed on May 16th of 2019, and I think I started a few days later. And then, when Attorney General Barr departed -- I'm sorry -- December 23rd of 2020, the next day, or at midnight, however you want to think of that, on his departure, I became the Acting Attorney General through the end, until January 20th of 2021.

Q So you served as Acting Attorney General December 23rd of 2020 to January 20th, 2021, a little under a month?

A I think that's right.

Q Okay. Have you also taught at Georgetown, professional responsibility, ethics?

A Yes. Yes.

Q Okay.

A In the late 1990s, early 2000 --

Q Okay.

A -- time period.

Q There are two summaries that you just quoted in your statement that you had similarly indicated before the Senate Judiciary Committee, and I've just given you a folder with the prior testimony with two highlights, and I wanted you to start with the first one and just read it again for us.

A "During my tenure as the Acting Attorney General, which began on

December 24 of last year, the Department of Justice maintained the position, publicly announced by former Attorney General William Barr, that the Department had been presented with no evidence of widespread voter fraud in a scale sufficient to change the outcome of the 2020 election."

Q Okay. And, again, you reiterated that in your opening statement here today?

A Yes.

Q All right. So it indicates, just to break that down a little bit, Mr. Rosen, that the Department had been presented with no evidence of widespread voter fraud. Had the Department evaluated allegations of voter fraud over the course of your time in -- either as the Deputy Attorney General or as the Acting Attorney General?

A Yes.

Q And did any of those claims result in any findings of credible evidence of voter fraud?

A So I -- I only -- the only reason I want to be cautious about that --

Q Yeah.

A -- is sometimes there is a preliminary inquiry, but then additional evidence is developed. And, after I left, you know, there could be some investigations in theory -- I don't know of this, but, in theory, could be still pending. So I don't want to infringe on any DOJ equities.

Q And, to be clear, I'm not looking for the details of the investigations.

A Yeah.

Q I'm just looking --

A But what I think what I'd say is consistent with here, that there was nothing that we assessed that involved a major, widespread, substantial fraud.

Q Okay. And that was true throughout the period of December -- post-election of 2020 all the way through the end of your tenure?

A That's right.

Q Okay. Who specifically was involved in evaluating those allegations?

A Well, in the initial period after the election, Attorney General Barr was very hands-on about this and had, you know, people reporting up to and through and including him. But I think, in general, the U.S. attorneys are the first line on that. That -- the FBI actually does the investigatory work, but the assessments, if you will, because I don't even want to characterize everything as an investigation. There is different levels that things graduate to. But the initial assessments were done by -- I guess I'd say a combination of the FBI and the U.S. attorneys, but they were reporting in to Main Justice.

Q I see. So FBI agents in the field, U.S. Attorney's Offices in the field were involved in evaluating these claims --

A Yes.

Q -- passing information up to the Department of Justice?

A That's the way I understood it. You know, I -- obviously I wasn't out in the field myself, but, yes, that's the way I understood it.

Q Yeah. Okay. And it sounds like your conclusion was that President Biden was legitimately elected, that there was --

A Yes.

Q -- nothing in those allegations that gave you any pause about the accuracy of the overall result?

A Correct. My -- my understanding is President Biden was properly and legitimately elected.

Q The next highlighted portion of your transcript I wanted to ask you about, could you just read that for us again.

A "During my tenure, we appointed no Special Prosecutors, we sent no letters to States or State legislators disputing the election outcome; we made no public comments saying the election was corrupt and should be overturned; we initiated no Supreme Court actions nor filed or joined any other lawsuits calling into question the legitimacy of the election and our institutions."

Q Now, that's a list of possible things that the Department could have done, and your testimony is that the Department did none of them. Is that right?

A Correct.

Q Were each of them proposed at some point or discussed?

A At different junctures, suggestions or, as you put it, at least discussions of them were raised, yes.

Q So there was a time when there was discussion about the appointment of a Special Prosecutor to investigate these allegations --

A Well --

Q -- but the Department never took that step?

A The key thing is the latter part. The Department did not do these things. When I say there was discussion, I don't mean that a bunch of us at the Department of Justice said, "Hey, this is an idea. Let's --

Q Yeah.

A -- let's pursue this," and then walked it back or something. I mean, we received external suggestions of this, and -- and we decided not to do them.

Q Does that go for all of them? I appreciate that distinction. All of these were external suggestions about things the Department may -- should consider, and the

Department rejected them. Is that right?

A Yes.

Q Same goes for the letter to State legislatures? There was an external proposal that that's something that the Department might do, and you rejected that?

A Yes, with -- forgive me if I sometimes just get a little bit technical. That's the only one, when I say "external," I don't know the source of that proposed letter, but Jeff Clark was the one who presented it to me and Rich Donoghue. So, if it was his, then it would -- that one, unlike all the others that I was just alluding to, in some manner would be internal but not in an authorized or directed way.

Q I see.

A We didn't ask him to do that or suggest it.

Q Yeah.

A That was, from what I said, not Department activity, but it wouldn't fit the description I previously gave of being external.

Q That's the one of these possible steps that there was an internal proposal to potentially undertake?

A That's right.

Q Okay. How about the press conference regarding election fraud or the filing of this potential claim in Supreme Court?

A Yeah, those were not internal at the Department. Those came from elsewhere and were things we declined to do.

Q Okay. The reason for the declination of those things, was it factual, legal, or both?

A Both.

Q Factually, why would it have been inappropriate to do any of those things?

A Because we proceed -- I've said this so many times -- that our job is to proceed on the basis of the facts and the law, and there was no factual foundation that there was widespread fraud. So, in the absence of there being a basis to suggest there is fraud, we had no -- it would be -- not be proper for us to say there was. It's -- it's pretty straightforward. So -- so that would be factually unfounded.

There were also legal. I mean, an example was a proposal to file a Supreme Court case against Pennsylvania, and that was not well grounded in either of the facts or the law. The facts -- because, again, there was no factual predicate that there was some kind of widespread impropriety. And, legally, there were multiple problems but, as an example, no standing.

Q So, even if there had been factual irregularities, the Department of Justice would not have had --

A Right.

Q -- legal standing to bring that?

A Right.

Q Okay.

A And -- and so, I mean, you know, we can talk about any of these individually, but -- but there were factual and legal problems, and on at least some of them were -- there were also what I would call institutional problems as in it's not the Department of Justice's role, you know, that -- in addition to it not being factually and legally well grounded, there are certain things that it's just not the Department's role.

Q So, ultimately, the Department took none of those actions?

A That's right.

Q And upheld the rule of law?

A That's correct.

Q Okay. I want to ask you about something that you just mentioned.

Actually, I don't believe you did yet mention the White House contacts policy. In front of you, you should have exhibit 1 which is an --

A Yes.

Q -- email that Mr. Donoghue sent out to all of the assistant attorneys general on November the 11th, copying you. At this time, Mr. Rosen, am I correct that you were still the Deputy Attorney General, and Attorney General Barr was still in, correct?

A That's correct.

Q Okay. In this email, there is attached the White House contacts policy --

A Yes.

Q -- as promulgated by Attorney General Holder in May of 2009.

A Yes. That's correct. That's the one that was operative at the time.

Q Yeah. Do you recall why it was that Mr. Donoghue sent out this email a few days or a week or so after the election?

A I do, because we discussed this. So, first, I should just say as background, we periodically -- not monthly, but from time to time, did remind people of this, that this is good practice. But, this particular time, I remember Mr. Donoghue told me that Attorney General Barr's chief of staff had raised that you guys, in the deputy's office, which is my staff and me, ought to recirculate that because it's -- it's just a timely thing to do. We're -- this is, what, November 11th, so it's a few days after the election, and that we need to remind people this is a responsibility that people have.

So I -- I think I thought it was a good idea. It wasn't triggered by, you know, some violation that I recall, but I think we thought it was a good idea.

Q Okay. And you say "we." You indicated Attorney General Barr himself suggested that the deputy's office should distribute them?

A His chief of staff.

Q His chief of staff?

A His chief of staff had suggested it, and -- and Rich Donoghue and I thought that was a good idea --

Q Yeah.

A -- so we did.

Q Mr. Donoghue's message says: Many thanks to you and your teams for the tremendous job you all continue to do in difficult circumstances. While we are living in distracting times, it is imperative that we ignore the noise and remain focused on responsibilities in our respective lanes and that we keep our teams doing the same.

Do you have any idea what the difficult circumstances and distracting times were specifically that prompted Mr. Donoghue to say that in his email?

A I can't speak for him on this. I don't -- I don't remember talking with him about the word choice. I think, you know, it's somewhat obvious that the -- the circumstances were we are now in an administration that's looking at the end of the term, you know, that -- I think, at this point, the President was still contesting things, but I think the, you know, public realm, the AP and others, had called the election for President-elect Biden.

Q Yeah. So, at this time, there was -- the current President was saying, It's not over, but the news outlets had called the election for President Biden?

A That's consistent with how I remember it.

Q Okay. The basic terms of the White House Contact Policy, I don't need you to read it, but basically what does it provide?

A Well, it's meant to channel, for different types of activities, that the right levels of seniority are either involved or have approved the participants. So some things

are less sensitive. Let's say legislation. We're working on legislation. You don't need -- that doesn't necessarily have to start at the top, right, that the policy part of the White House can talk to the policy office and DOJ.

But, the closer you get to adjudicatory things and especially to criminal investigations and prosecutions, the sensitivity that there not be White House contacts on those goes up. So -- so it routes at the more sensitive things that the attorney -- the DOJ side of the street, the Attorney General, the Deputy Attorney General, and, for some matters, the Associate Attorney General, have to either be the participants or have authorized someone else, and at the White House and the President's or the White House counsel, or someone they've authorized.

So it's a channeling thing to ensure that the leadership is either the only ones discussing or at least is aware of what conversations are taking place.

Q Yeah. So why is that important as a matter of practice and policy, that only the top levels of the Department communicate with the White House, as opposed to everyone down the line?

A Well, you know, Attorney General Holder actually did this memo, but it had a tradition. Attorney General Mukasey had done one like it before, and I think some past Attorney General. So there was a convention -- and I'll speak more of the convention than, let's say, the terms of the particular memo. I think the convention is to try to, on the one hand, ensure -- well, we should always ensure that things are done on their factual and legal merits and without extraneous or even improper influences.

And those can come from the White House. They could come from Congress, right, that -- if they're improper extraneous influences. So it's to -- it's to try to say, if something's got sensitivity, what can we do to minimize the possibility of extraneous influences?

Q Do you recall any specific feedback when this was sent out? Did anything reach you, reactions for some of these?

A Not that I recall.

I do remember when it went out, but I don't -- I don't have any recollection. I mean, as I say, people should have already been familiar with it. It's a reminder.

Q Yeah. To be clear, this was not a new policy. This was just reminding everyone about --

A That's right.

Q -- hey, there is a White House contacts policy. Be aware?

A Correct.

Q Okay.

Exhibit 2, the next one, Mr. Rosen, which is another -- it's a memo to the field that went out around this time. If you could take a look at -- it's a memo to all the United States attorneys, the assistant attorneys general in the Criminal Division, Civil Rights Division, and National Security Division, and FBI Director, from Attorney General Barr about post-voting election irregularity --

A Yeah.

Q -- inquiries.

Do you recall when this memo was composed and sent to the field by Attorney General Barr?

A Well, I -- I recall becoming aware that it went out, and I think I did talk some about this in the Senate interview, so --

Q Yeah.

A -- I guess the answer is yes.

Q Do you recall the genesis of it or what gave rise to it? Were you involved in

any of those discussions with Attorney General Barr or others?

A Well, there is really two parts to that. I had been aware at an earlier juncture that Attorney General Barr was very interested in trying to do things to ensure there would be public confidence in the election. As to the actual text of this memo, I think I learned about it when it went out. But -- but it didn't surprise me as -- I never heard this was even a possibility or something like that.

Q I see. Why, if you know, was Attorney General Barr concerned about public confidence in the results of the election?

A You'd probably have to ask him that.

Q Yeah.

A I don't -- I don't remember anything substantive that I -- that I have to say about that.

Q In the memo, he says, and I'm reading in the second paragraph: Although the States have primary responsibility to conduct and supervise elections under our Constitution and the laws enacted by Congress, U.S. Department of Justice has an obligation to ensure that Federal elections are conducted in such a way that the American people can have full confidence in their electoral process and their government.

What is your understanding, or was at the time, what the States are responsible for versus what the Department of Justice is responsible for with respect to the supervision -- the conduct and supervision of elections?

A Well, just, you know, in a big picture kind of way, the States, under our Constitution, have the frontline responsibility to conduct elections, including Federal elections. And -- but the -- but there are a number of Federal statutes that address elections in some way: In the criminal side, the election fraud statutes to just categorize them that way. There are also civil rights laws that -- Federal civil rights laws that

impact elections.

So there is a Federal overlay, if I could put it that way, on the activities that the States are responsible for. And so, with regard to the electoral processes, the Criminal Division, the Justice Department, and the FBI and the U.S. attorneys have the responsibility for enforcing the election integrity laws.

Q I see. So States generally have responsibility to conduct elections, but the Department of Justice enforces those statutes that govern fraud or irregularities in that process?

A That's right.

Q Okay. A little further down in the memo, this presents a change in Department policy in which Mr. Barr -- Attorney General Barr says, and I'm at the very last paragraph: I authorize you -- meaning the recipients of the memo and the U.S. attorneys -- to pursue substantial allegations of voting and vote tabulation irregularities prior to the certification of elections in your jurisdictions in certain cases, as I have already done in specific instances. Such inquiries and reviews may be conducted if there are clear and apparently credible allegations of irregularities that, if true, could potentially impact the outcome of a Federal election in an individual State.

Did that, Mr. Rosen, represent a change in policy about who within the Department could pursue those irregularities?

A My recollection is that it -- that it was a change. You could -- you could argue whether it was a -- an interpretation or adding -- adding things to it -- to the earlier policy, but it was always perceived within the Department as a change -- the reason I'm pausing here is just, by the time I became the Acting Attorney General, this was somewhat moot because the certification of the State elections had already occurred.

Q Uh-huh.

A So, whether it was the old or this modified wasn't a very joining issue for me, and the activity that had occurred under this had provided -- if you want to think of it as a data resource of what we already knew about what I'll call the absence of election fraud. So this particular memo, I don't think I gave it the kind of consideration we're talking about right here.

Q Yeah. Well, it's a month before -- more than a month before you became Acting --

A Yeah.

Q -- Attorney General.

Was the perception before the dissemination of this that the Criminal Division, the Public Integrity Section, or the Elections Crimes Branch were sort of the gatekeepers or the ones that needed to approve or supervise these kinds of investigations?

A So the way these work is Department's -- has this very decentralized structure. There is 94 U.S. attorneys, and there is 55 FBI field offices. So they are the -- in many instances, the first line to be looking at allegations of improprieties, or people present them with evidence or, you know, can arise in different manners, but there is a need to have some coordination and consistency --

Q Uh-huh.

A -- so that like cases are treated alike and that the law is applied in an even manner.

So the Public Integrity Section is -- has got the responsibility to do that. In addition, they can also bring -- do their own investigation, bring their own cases. But they -- they are to provide the consistency. And I -- as I sit here, I don't remember, in the Justice manual, which levels of approvals are needed, because there is different -- in the Justice manual -- and I apologize if this is really getting in the weeds for you.

Sometimes there is consultation requirements. Sometimes there is approval requirements. Sometimes there is notice, but it can be rejected. So what -- what type of coordination, I'd have to refresh myself on.

Q Okay. But the explicit message of this memo is that U.S. attorney's offices are authorized to go ahead and pursue when there is apparently credible allegations of irregularities?

A And it says what it says.

Q Yeah. And there is also a timing issue, is that right, that it -- Attorney General Barr's memo indicates, prior to the certification of elections, those investigations --

A That --

Q Again, predicated upon credible allegations?

A Yeah. That's the issue that I think I --

Q Yeah.

A -- previously said I have a general recollection of having produced some friction, that the time change there was perceived as a change.

Q Do you know why it was that Attorney General Barr put forth this memo shortly after the election?

A I think -- I think that's one you'd have to ask him.

Q Uh-huh. The memo says: So that the American people can have full confidence in the electoral process and their government.

In your discussions with him, was that something that he was concerned about in your --

A I did hear him say that, yes.

Q Okay. What, if any, role did the deputy's office, the Deputy Attorney

General's have -- office have with respect to these ongoing investigations of alleged irregularities in the election process?

A So -- so the -- the Deputy Attorney General's Office at the Department is, at least in my experience, relative to other departments, fairly large. And there were a number of lawyers who coordinate with different parts of DOJ.

So I'm trying -- I've been trying to remember who -- who interfaced with the Criminal Division, but Rich Donoghue, as my principal deputy at that time, I believe was helping AG Barr, and there were probably some others on our staff, but I don't have a real clear recollection of who was doing what at that time.

Q Yeah. Does the DAG's Office typically serve a deconfliction role --

A Yes.

Q -- to ensure that --

A Yes.

Q -- the U.S. attorney's offices are not working across purposes?

A Yes.

Q Do they also coordinate between the Criminal Division and the U.S. attorney's offices --

A Yes.

Q -- again, to -- okay.

And you mentioned Attorney General Barr. Was he personally involved in or getting briefed on these investigations as they --

A Yes.

Q -- went forward?

A Yes.

Q Okay. And Rich Donoghue, was he the person on your staff who was

most -- within the DAG's Office, primarily responsible for monitoring these investigations?

A I think so. I was going to say I'm trying to remember if there was someone else on our staff that would -- or if -- to the extent they were, they were working with Rich Donoghue.

Q Uh-huh.

A And I'm a little vague on that, but I think -- I think Rich Donoghue would be the right person.

Q Got it. And he was your principal deputy at that time. Is that right?

A That's right.

Q That was his job?

A That's right. And he had also previously been a U.S. attorney. And, during the course of his career, he had also been very experienced assistant U.S. attorney.

Q Yeah. Now, about a month after the issuance of this memo, Attorney General Barr makes a public statement that the Department had found no evidence of systemic election fraud sufficient to undermine the outcome.

Do you recall when he made that public statement on December the 1st?

A Yes. I -- I recall two very public statements.

Q Uh-huh.

A I'm not certain if there were more, but I remember December 1st, he gave an interview to the Associated Press where he said that. And then, on December 21st, he had a press conference about the extradition of someone connected with the Lockerbie plane bombing from the late 1980s, and the question came up, and he gave a very full response on December 21st as well.

Those are the two I remember very distinctly. It's possible there were others, but those are the two I remember very clearly.

Q Prior to the first one on December 1st, was there any internal discussion about whether there was a sufficient basis to make that statement, whether he shouldn't make that statement? Do you recall any discussion with Attorney General Barr about that public statement?

A I can't say there -- that there was none, but I don't recall.

Q Uh-huh. When he made that statement on December 1st, was that a surprise to you, or was that consistent with what you had heard internally?

A It was consistent with what I had been hearing internally. So it was not a surprise in that sense. I don't -- as I sit here, I just don't remember how I learned of its being made public is what I'm saying. But, no, a fact of that being the conclusion was not a surprise. That is what I had understood.

Q Okay. Did Attorney General Barr, to your knowledge, make that statement to the President at the time before he made it publicly?

A I -- I don't think that I knew the answer to that. In -- in my dealings with Attorney General Barr, he did not automatically, if I can put it that way, debrief me on his conversations with the President.

Q Uh-huh.

A But it wasn't that they were some secret. He might anecdotally have mentioned things, so -- so I don't remember him telling me about a discussion with the President on that.

Q Did he at any time give you any information about conversations he had with the President on this issue, on the Department's lack of finding of any evidence of systemic election fraud, not tied to the public statements but at any time?

A As I sit here today, I don't recall him telling me about conversations with the President about that. I -- it's -- you know, it's been many months, so I can only, you

know, recall what I recall, but I -- I don't have a recollection on that.

Q Okay. On December the 14th, the President announced that Attorney General Barr was going to be resigning.

A Yes.

Q Did you know that that was coming before it was publicly announced, that Barr was going to resign?

A So -- so he had told me -- we had had a discussion some period before about how long each of us would stay and would we stay to the end of the term. So I was aware that he was thinking about that, and -- and I think he had suggested to me that I ought to plan to stay until that was resolved.

I think I felt obliged to do that, but -- but I did not know that December 14th was going to be the day --

Q I understand.

A -- that he was making that decision.

Q Yeah. Was he frustrated with, you know, his role as Attorney General or his relationship with the President?

A I think it -- again, I'd probably have to defer to him on that.

Q Did he ever express frustration?

A I think that, as I sit here, I cannot remember, you know, us sitting face to face and him commenting on that in a specific way we're talking about. At the same time, I think I had a general awareness from him or from his chief of staff that was consistent with that he wasn't sure that he would stay to the end.

Q Uh-huh. And, again, what do you -- on what basis? What was the source of that frustration of which you had a general sense?

A That's what I'm -- that's actually -- that's part of why I'm saying to you I think

I -- I would defer to him on that because I don't have a good recollection of some statement or something I would tie any of this to.

Q Okay. Was there tension between the Attorney General and the President even predating the election, going back, for instance, to the summer of 2020 and the public protests in D.C.?

A I don't -- again, I don't know that I recall specifics that would really shed light on that. There was -- there was a time that I remember he was frustrated about some tweets in the earlier part of the year, and he was public about that.

Q So --

A About that.

Q -- what specifically do you recall?

A I just -- I remember he gave an interview. I can't remember -- one of the TV networks, where he expressed frustration with some of the President's tweets about the Department.

Q Making it harder for the Department to do its job?

A Yeah.

Q Uh-huh.

A Yeah. But, if I try to think about something analogous to that, again, I'm not saying there weren't. I'm saying, as I sit here today, I'm -- I don't have a clear recollection of those things. You'd probably do better to ask him.

Q Yeah. And I fully appreciate that. I guess I'm looking for whether he, to you, expressed any frustration over any issue prior to his resignation.

A I'm sorry that I'm not more helpful with this, but the trouble is, you know, when you work with people, at any given time, I'm sure he, I, and everyone I've worked with has had frustration at one kind or another, so -- and it -- you know, it can come and

go. So I just don't have an episode or like a recollection that I could help with that.

Q Yeah. Was there any discussion with Attorney General Barr or others about the prospect that he might be fired if he didn't resign prior to the end of the administration?

A Not that I recall.

Q When he told you that he was resigning, did he encourage you to stay despite the fact that he was leaving?

A Say that again.

Q When Attorney General Barr -- when you learned that he was actually resigning prior to the end of the administration, did he encourage you, Mr. Rosen, to stay on in the Department even after his departure?

A I don't -- I don't recall anything as specific as what you just said. I do -- I do remember that he was generally supportive of my being the acting after he left.

Q Yeah.

A But I don't remember with the level of specificity of what you just said.

Q Yeah. Did you have a conversation about you stepping into the role as Acting Attorney General upon his departure?

A Yes.

Q Okay. Tell us more about that conversation. What, if anything, did he advise you or suggest to you about your possible assumption of that responsibility?

A I think that unfolded in different steps. You know, there was -- the day he resigned, I got a call from the President saying that I would become the Acting Attorney General, and I had a conversation with AG Barr about that.

I -- I don't remember a lot about it other than that we just -- that I shared that I had received a call with the President, that he was generally supportive.

Q And, to be clear --

A I think about in the --

Q Sorry.

A He was there -- I think that was December 14th. He there until the 23rd, so I'm confident we talked some more after that, but the -- the details, I don't have a clear --

Q Yeah.

A Clear recollection.

Q Any advice that he gave you or guidance that he gave you that you recall?

A Nothing specific that I recall.

Q Okay. You mentioned a couple with President Trump. That was on the 14th, the day that --

A Yes.

Q -- Attorney General Barr announced that he would be resigning sometime later?

A Correct.

Q Right. And what, if anything, do you recall about that conversation?

A I had a weekly meeting with my own staff that was scheduled for that afternoon, and I was pulled out of it. My assistant had identified that there was a call from the White House. So I went from my conference room back into my office, took the call.

I think it was relatively brief. I think the President told me that AG Barr had resigned, that they had a positive meeting, and that he would like for me to stay on as Acting Attorney General.

And I think I said I would be pleased to do that, and I think that was the gist of it. I -- I can't remember if there was anything else, but there was nothing else that stayed

with me.

Q Yeah. Did he put any conditions on --

A No.

Q On your service?

A No.

Q And did he say --

A It was very much in the nature of a "This is -- this is what's happening, and I wanted just to check in with you that this is what's happening."

Q I see. And did he say during that conversation that the two of you would be talking, that you would have ongoing contact with him?

A I think -- I think he made some kind of -- "I'll look forward to talking with you" or, you know, something in that -- of that type. I don't remember, again, the exact words.

Q Okay. Did you also that day, Mr. Rosen, speak to White House counsel, Pat Cipollone?

[11:00 a.m.]

Mr. Rosen. Yes.

BY [REDACTED]

Q Tell us what you recall about that conversation.

A I think he called because they were going to put out an announcement that I would become Acting Attorney General and Rich Donoghue would become, functionally, my deputy, would backfill my role.

And, if I recall correctly, I think he was focused a little on how they articulate that, because he knew enough about the Vacancies Act that you don't actually -- when you backfill somebody -- when I became Acting Attorney General, under the Vacancies Act, they don't actually depart the Deputy Attorney General role. So Rich Donoghue, although he would perform the functions of the deputy, wasn't technically the Deputy Attorney General.

And so I think Pat was asking about what are the correct terminologies, you know, what do we say about this. So I think we had some back-and-forth about, here is what I think you can appropriately say. It was more along those lines.

Q I see. Okay.

[REDACTED] Let me stop there and turn first, Ms. Cheney, to you, to see if you have any followup questions.

Ms. Cheney. I don't at this time. Thanks, [REDACTED]

[REDACTED] Yeah. Actually, let me --

[REDACTED] Why don't we go with the Members first?

[REDACTED] Let me start with Mrs. Luria or Mrs. Murphy, if you have -- we can see your names on the screen and hear you if you unmute and have a question.

Mrs. Luria. I don't.

Mrs. Murphy. I'll wait.

██████████ Okay. Okay. Then let me turn -- yes? ██████████ a member of our staff, has a question.

██████████, go ahead.

EXAMINATION

BY ██████████

Q Mr. Rosen, if you could turn your attention back to exhibit 2 --

A Okay.

Q -- which, again, is the November 9th memorandum from Attorney General Barr.

Is it fair to say that the Justice Department's policy regarding election irregularity inquiries is focused primarily on DOJ avoiding pre-election-day overt investigation activity that could affect the outcome of the election?

A So let me say it this way and see if I'm getting at your question.

The Department, over a long period of time -- and continued to be the case under AG Barr -- does not want to be taking steps that could or could be perceived to be influencing the election. You know, the classic thing is indicting a politician a week before the election. Something like that is a very sensitive thing if there isn't an exigency or some reason for there to be an exception. But, in general, the Department doesn't want to be a participant in the political process. That's not its role. So I think there are policies that are focused on that.

I think, if I understood your question, what you're getting at is that the highest level of concern is before votes are cast --

Q Sure.

A -- up until election day.

Q That is what I was asking about. And the Department's policy regarding pre-election-day overt investigative activity remained unchanged by Attorney General Barr's memo, correct?

A I believe that is correct.

Q And is it fair to say that the risk of the Department affecting the outcome of an election through overt investigative activity significantly declines after all of the votes have been cast?

A Seems logical.

Q So, if Attorney General Barr had not changed the policy through this November 9th memorandum to allow precertification investigative activity, do you think Attorney General Barr would've still been able to make his statement regarding "no evidence of widespread fraud sufficient to change the outcome of the 2020 election" with the same degree of confidence?

A No.

Q And why is that?

A Because after November 9th, the FBI and U.S. attorneys were able to do assessments and look at evidence and deal with State counterparts who may have explored some of those issues, so there was a larger body of information that was available.

I suppose you could say it's a little bit like a head start versus where it would've been if they had waited till the certifications, which did not all occur on the same day. They were staggered. But they were completed, as I recall at least -- they had to be completed by the electoral college.

Q And you testified to the Senate Judiciary Committee that President Trump,

on several occasions, asked you and Mr. Donoghue about what the President believed were election irregularities in several States.

Do you think you would've been able to answer the President's questions regarding those irregularities had Attorney General Barr not issued this memorandum on November 9th that allowed investigative activity?

A Well, rather than try to address a counterfactual or a hypothetical, let me just say, there were instances where the President would say, people are telling me this, or I heard this, or I saw on television, you know, this impropriety in Atlanta or Pennsylvania or something. And we were in a position to say, our people have already looked at that, and we know that you're getting bad information, that that's not correct. It's been demonstrated to be, you know, incorrect and, from our point of view, had been debunked.

So, without trying to say what would've happened, what did happen is there were instances where the President said, I've heard this, people have told me this, and we were in a position to say, you're getting bad information, it's not accurate, it's not right.

Q So, based on everything that you just described, do you believe that Attorney General Barr's November 9th memo actually increased confidence in the 2020 election results in the period between election day and January 6th?

A I'm pausing just because a little bit of -- what my role here is as a factual witness is to explain what I saw, what I heard, what I did, and I know I'm going to want to be consistent and not just try and offer opinions or things like that. So I'm trying to be a little cautious about when I can say, here's what actually happened. Could --

Q I can rephrase the question if that helps.

A Could I -- yeah, because I understand sometimes there are different points of view on something, but what did happen here -- and you and I have just discussed

this -- we were in a position where we knew some things were factually incorrect and we could say so.

Q Okay.

Would you say that Attorney General Barr's November 9th memorandum allowed the Justice Department to engage in some investigative activity that increased your confidence in the results of the 2020 election during the period between election day and January 6th?

A Well, again, just saying what we did, because various components of DOJ had had an opportunity to look at the facts in a number of circumstances, I think Rich Donoghue and I, in particular, were in a position to be able to say both that some individual incidents were not true and that, in the aggregate, we had done enough to say that we aren't seeing indicia of widespread fraud.

Q And do you think it would've been harder for you to say that had the Justice Department not been able to engage in post-election investigative activity pursuant to this memo?

A So, again, I don't mean to be difficult, but that presents the counterfactual, and I'm not trying to be argumentative or something, but somebody -- if we get into hypotheticals, then someone will say, well, what if you hadn't done it but someone else had done it and delivered it to you on a platter or something. In other words, that isn't what happened.

Q Okay.

A So I'm not trying to be argumentative. I'm just saying I think it's better to stick with what actually did happen, because those are things, as a factual witness, I can just say, here's what I saw, here's what I observed, here's what I did, here's what other people said that I was present for, and I can say it on a factual basis.

There may be a time or a place where, you know, opinions and things are appropriate, but at least the way I perceive my role here today is to try to stay very factual.

██████████ I don't have anything else right now.

██████████. Anyone else?

All right. Are you okay to proceed? Do you need a break now? We are going to break at 11:50/11:55 to accommodate a call.

Mr. Rosen. Do you want to just take 2 minutes?

██████████. Sure.

Mr. Rosen. I'd like to stretch my legs.

██████████ No problem.

We'll go off the record.

[Recess.]

██████████ All right. We're going to go back on the record.

BY ██████████:

Q I am now going to talk just a little bit about some of, but not all of, the White House contacts. You were very thorough in your prior testimony about each of the phone calls, each of the meetings, and our job now is to just circle back to a couple of them for some points of clarification.

A Okay.

Q But let me start and ask if you and Mr. Donoghue ever sort of generally strategized or talked about how you should approach communications with the President or others in the White House. Did you have sort of an overall strategy?

A Yes. I mean, "strategy" might not be the word, but we thought about, you know, what's the right way to deal with some of this.

So, as you may recall from my earlier testimony, at the very beginning, the first time we were asked to go over to the White House, I had thought, well, let's just urge the President, don't focus on the election, get on something more positive. Talk about the accomplishments of the last 4 years, you know, of the tax reform or energy independence or vaccines. Just, you know, talk about positive things, and leave the election alone. Because the electoral college had just reported -- I think it was either the day before or that day.

That turned out to, you know, not be a very effective message. So, over time, we sorted out that -- there were different kinds of issues that came up, okay?

At one end, let's say, with the special counsels, on that, there was really no reason to have conversation. So the approach that I took was to say, "Sir, that's the Department of Justice's responsibility. You're going to have to leave that to me. I don't want to talk about that." And that's what we did. You know, when it came up, we said, "We're not going to talk about that." And, I mean, you know, the ultimate answer is we didn't do any special counsels.

But we also -- we didn't engage on that, as in, "Oh, well, you got any candidates in mind?" We did not do that. We just said that's an area -- there were things that we would just say, "We don't want to talk about that."

There were other things that -- if any President of the United States is saying things you know are untrue and he's hearing them from people and he's repeating them, I felt -- and I think Rich Donoghue, you know, was of the same view -- we should tell him those are false, you know, as opposed to just say, "Yeah, you keep saying it. We're going to be silent about that." So, on something like that, our approach was we should tell him that's not accurate and then hope for the best, right?

But then other things would come up and we would have to sort out how to

handle it consistent with the way we saw our obligations, which, you know, as I said before, I think I've said multiple times over the course of these conversations, we want to do the right things for the right reasons.

So it can be a complicated question. Well, what about if there's a factual thing that we don't know the answer to? Well, the Department of Justice proceeds based on the facts and the law. So maybe there are some factual things that's okay but not without precautions, as in, we don't want to do things that are outside the government that might be misused to suggest through overt steps that we're corroborating assertions or something.

So, if we did look at something factual -- and an example of that would be this suggestion that the Pennsylvania voter registration website shows there's fraud because there's more votes than voters or something like that. We thought we should look at that, but not in an external way that would be public. Because we just want to know what the facts are. So we'd take that approach.

But we also said, what we don't want to do is, we don't want to deal with the campaign. That's not our purview. And that, again, would inherently be overt, in some sense. And so, on more than one occasion, I was asked to meet with Mr. Giuliani and just flat refused to do that, because we thought that's not consistent with what we're trying to accomplish here.

So Rich Donoghue and I, we did periodically, and especially at the beginning, try to sort out how are we doing some of those things. And we felt -- I don't mean to be dramatic, but we felt we had an obligation to be faithful to the Constitution and the rule of law, so we were doing our very best on that. And, you know, we hoped that it would work, that it would be consistent with what we perceived was the right way to do things.

Q Yeah. You talked about both fact and law in that answer. Is it fair to say

that part of your strategy or your approach was to ensure factual accuracy, that you would push back if there were misconceptions --

A Yes.

Q -- or factual inaccuracy that you heard from the President?

A Yes. I agree with that.

Q And law. You were trying to ensure that the Department of Justice was staying in its lane or only doing things that were legally and institutionally appropriate.

A Yes.

Q And were there times when you had to tell the President, "That's outside of our lane," or, "That would not be legally proper"?

A That's right.

Q Okay.

And no contact at all, explicitly, with the campaign. That was something, in your view, that was --

A That's right.

Q -- beyond the scope of your responsibilities as Acting Attorney General.

A That's right. Did not want to do that. There's a reality that the President of the United States is affiliated with his own campaign, but I can't do anything about that. But I can do something about the lawyers for his campaign and the campaign officials, and we didn't talk to any of them.

Q Yeah. Were there others within --

A Well, I have to qualify with this one -- I don't know that it was for his campaign, but there was that odd episode with Kurt Olsen that you presumably saw in the Senate interview.

Q Where you actually did have an inadvertent --

A Yeah.

Q -- conversation with him even though he was a lawyer for the campaign.

A Right. But we wound up saying to him, you're out of this conversation.

Q Right. That's an example of you making clear what the Department's role is and what it's not.

A Yes.

Q Were there others within the White House who similarly would push back against factual inaccuracy or the President's misconception as to what was appropriate for the Department of Justice?

A Well, I perceived the White House Counsel -- they had a different job than the Department of Justice, but I perceived them as being very much supportive of where the Department of Justice was.

Q You're anticipating my question precisely. Is it fair to say that you saw Mr. Cipollone as someone who shared your view and was another voice in those conversations about correcting factual inaccuracy or ensuring that the Department stayed in its lane?

A I perceived him that way, yes. And, in general, when I would get a call from the President, I would afterwards call and debrief Mr. Cipollone. I can't say if that was 100 percent of the time, but it was a very high percentage.

Q Yeah. I was going to ask you about that exactly. Why did you decide you needed to debrief Mr. Cipollone after those conversations?

A I think there were multiple reasons. One was I thought it was important that he know what his client, the President of the United States, was doing or saying.

Second, I thought because I did perceive him as supportive or, even if he had not been supportive, as just an intelligent, sensible person, as someone who might have

insights or suggestions that I could consider.

And I think that I wanted to have the continued support, you know, that it was just -- it was good, maintaining the relationship, that I'm sharing information with him so that he can do his job better.

Q So it sounds like those conversations were not simply you reporting to him the conversation but actually getting his feedback or his advice about how to handle certain things?

A Sometimes. I mean, as I sit here, I don't remember a specific, you know, you should do X or you should do Y. But I just remember, I would tell him, I got a call from the President, here's the gist of it or the substance.

Q Yeah.

A I think sometimes he would react by saying, "I didn't know about that. Thanks for letting me know."

Q Yeah.

A But in the big picture of the sum of those, I'm confident that somewhere along the way we had some discussion back and forth about, well, maybe here's an idea, or, you know, here's something that could be done.

But I understood he had a different job, a different role, and it was certainly possible he would say, you know, "Sorry, I just don't agree with you," but --

Q Yeah.

A -- the way it played out, he was supportive.

Q Did that ever happen, a disagreement between you and Mr. Cipollone about any of the specific issues you discussed when you were Acting Attorney General?

A Not that I recall. I mean, I think we were of very similar outlooks on these issues.

Q Okay.

How about Mr. Philbin, Pat Philbin, who worked with Mr. Cipollone?

A Yeah.

Q Was he, in terms of a comparison to Mr. Cipollone, similar, shared your view, and --

A Didn't talk to him as much, but I did perceive him as similar outlook.

Q And he was present for some meetings where you did push back --

A Yes.

Q -- on things that the President raised?

A Yes.

Q Okay.

I've not seen any notes that you took about any of these meetings. Just tell me why you called Mr. Cipollone. You did not make any contemporaneous or after-the-fact notes. If you could just tell me about your decision not to do that.

A It's kind of that the -- I didn't take notes because that was my basic practice on that. But, also, if I needed notes, I often had someone available with me, you know, that --

Q Uh-huh.

A When I was Deputy Attorney General, I pretty infrequently took them. I sometimes took them -- I mentioned that monthly meeting with my own staff. I sometimes took notes as reminders to myself to do something.

But in most meetings that I attended, it was not my practice. It would be more -- how do I say this? You know, one of the luxuries in a large organization is you're not the only person available to help with things. So --

Q Yeah.

A So other folks sometimes took notes that I could access if I needed them. But not on the calls with the President, obviously. But I'm just saying, if I thought I needed notes, I could've made some, I guess, but I didn't.

Q Yeah. Did the President himself or anybody who worked with him ever tell you about a policy against taking notes --

A Oh, no.

Q -- in Oval Office meetings or meetings with him?

A No.

Q That's not something that was conveyed to you?

A No one said that to me.

Q Yeah.

A I just generally didn't take them when I went to those meetings.

Q Okay.

Now, the first interaction with him about which I want to ask you -- again, not the first one you had -- was a Christmas Eve call where he for the first time mentions Jeff Clark. Do you remember that conversation?

A Oh, yes. Yes. Yes. I was -- when you said "the first time," I was thinking the first call was actually on the 23rd, but the one about Jeff Clark was on the 24th.

Q That's the one I want to ask you about, is the one where he mentions Jeff Clark.

First of all, who is Jeff Clark?

A Jeff Clark was the Assistant Attorney General for the Environment and Natural Resources Division who had been, I think around Labor Day, made into the acting head of the Civil Division of the Justice Department.

Q So, at this time in December, he's the Senate-confirmed head of the

Environment and Natural Resources Division and the acting head of the Department's Civil Division, right?

A Yes. And in a functional way, because the Civil Division is actually bigger than the Environment and Natural Resources Division, Jon Brightbill, who had been the principal deputy, was actually running the Environment section and Jeff Clark was running the Civil Division. But Jeff's title was exactly as you set out.

Q Got it. And does the Civil Division have any role in investigating -- typically -- investigating allegations of alleged election improprieties?

A No.

Q You had a professional relationship with Mr. Clark that dated back some years?

A Yes.

Q Tell us a little bit more about how you had become acquainted with him and when you had worked with him.

A So he's a good bit younger than me, but he worked at my old law firm. And then he and I each were in the Bush administration, different agencies, but, you know, we were in government. And then he went back to the law firm while I was still in the Bush administration, and then I went back to the law firm later.

And then we both wound up going into the Trump administration. As you know, I first went to the Department of Transportation, and he went to the Environment Division of Justice.

Q Yeah. Friendly with him?

A Yeah, in a professional colleague kind of way.

Q Yeah.

A Yes.

Q When the President raised his name on that December 24th call, were you surprised?

A Yes. Quizzical, I guess, is the way I'd put it.

Q Yeah.

A It surprised me that the President of the United States would know, perhaps, any of the Assistant Attorney Generals, but there might've been -- I mean, he did know Steve Engel, who headed OLC. So there were some that perhaps he might think he would know, but it surprised me that he knew Jeff Clark.

Q Yeah. What did he say about Jeff Clark in that first conversation, first mention?

A You know, I've tried to remember it in greater detail, the -- as best I can recall, it was just a passing thing where he almost asked me if I knew Jeff Clark. And, in hindsight, I don't know why I didn't ask, "Why are you asking that?" or something. But, at the time, it just kind of went by, and I tucked it away after the call and thought, "That's odd. How does the President know Jeff Clark?"

So, as I say, I was quizzical about it. I thought it was curious, in a way that it wasn't impossible but it just seemed unlikely.

Q Yeah.

After the call with the President on the 24th, did you follow up with Mr. Clark?

A Yes.

Q Tell us about that. Was that a meeting or a phone call?

A A phone call.

Q Okay.

A I believe that I called him. I think the President referenced it the day before Christmas sometime. I think that call was in the afternoon, if I'm remembering

right. And so I didn't call on Christmas day, but I think the next day, Saturday the 26th, I called Jeff Clark.

And I didn't directly confront him at first. I think I asked him -- and, again, this is in substance, because I don't have a transcript in my head of the exact words, but the gist being, "Jeff, anything going on that you think I should know about?", something like that.

And we had some back-and-forth, where he didn't immediately volunteer. But after some to-and-fro, he acknowledged that he had been at a meeting with the President in the Oval Office, not alone, with other people. And I just remember being extremely surprised at that, like, "What?" And --

Q Did he say who else was in the meeting or how it came about?

A How it came about, yes. The who, it seems that he would've told me that, but I don't remember who they were, with one exception, that he -- and I remember that because of the how.

He was kind of defensive about this, and so he was casting it as that he had had a meeting with Congressman Perry from Pennsylvania and that, to his surprise, or, you know, he hadn't anticipated it, that they somehow wound up at a meeting in the Oval Office. And I think there were other people there. If he told me who they were, I don't remember.

But they had this meeting. And he was very, very -- as I say, minimized it a bit. There was this, "It just kind of happened." And I challenged him as to, "Well, why didn't you tell me about it?"

Q Before you go there, did he say what he was talking to Congressman Perry about or what, again, the subject matter was that led to this?

A I just can't remember if he did or didn't. Because, initially, he put this very benign perspective on it, and he was somewhat apologetic. He was assuring me that it

hadn't been something he had anticipated and it wasn't going to happen again. And I had told him, you certainly should've told me after the fact, but you should tell me if you're even invited to such a meeting.

Q Yeah.

A And, as I say, he was, at this juncture -- you know, it's a little different later -- but, at this juncture, he was apologetic. You know, "It won't happen again. I agree with you. If I get a request, I'll let you or Rich Donoghue know."

And so I was, you know, perhaps too accepting of that, in the sense that I now don't remember more of that conversation, because he was casting it as sort of a fluky thing.

Q Yeah.

Did he mention whether or not the White House chief of staff, Mark Meadows, had any role in brokering this or connecting him to Scott Perry or anyone?

A I don't remember. I was curious after that as to how he and Congressman Perry knew each other.

Q Yeah.

A But if I got answers to that, I don't remember what they were. And I think those would've stayed with me --

Q Yeah.

A -- and they don't. So I must not -- you know, that makes me infer that I didn't get the answers to that.

Q You must've asked him about what was discussed. "What did you and the President and Representative Perry talk about?" What did he say about that?

A Unfortunately, as I sit here, I just don't remember what he said about that. I suspect, in light of later developments, that it must have been about the election issues,

but I can't sit here and say I remember that that's exactly what he said. I just really don't remember --

Q Okay.

A -- at that level of specificity.

Q Right. So he didn't describe for you who said what or what the subject matter was of the meeting, that you recall.

A If he did, unfortunately, I have lost the details in my recollection.

Q Okay.

And your reaction was to scold him, was to say, "Don't do that again"?

A Yes, that this can't happen, you know, this is not okay, that it's not okay at multiple levels, right? He's having a meeting with the President of the United States that he hasn't told any of his superiors in the Department. It's not okay that he failed to tell us after the fact.

It's -- well, I don't know if I knew the content or not. And I don't know if I knew, did I look carefully at the contacts policy, but the contacts policy, of course, does address Congress as well as the White House.

Q So was this in direct violation of the White House contacts policy that we discussed an hour or so ago?

A It may be. I think that's a question that needs to be assessed, because it does depend on what was discussed. As I alluded to, if you have a meeting with the White House staff about legislative proposals, that may be permitted. I would say it's still good practice to tell your bosses that you're participating in that. I think that's what we would normally expect of people. But, depending on the content of the meeting, it might have been inconsistent.

Q Okay.

You indicated, Mr. Rosen, that Mr. Clark was apologetic or was, essentially, not pushing back when you --

A That's right.

Q -- scolded him for having a meeting and not telling you about it.

A That's right. He was apologetic, yes.

Q Okay.

A He was indicating, "It won't happen again."

Q So, coming out of it, was it your impression that that was the end of it, that this was a one-time thing that would not resurface?

A That was my hope.

Q Yeah. Okay.

All right. Let me move on to the next day, December 27th. And there's a lot of testimony in the Senate Judiciary Committee about a phone call that you had with the President in which Mr. Donoghue was joined and there were some notes.

I'm not going to go through it all again, but I did want to go to one specific thing that's reflected in Mr. Donoghue's notes in quotes. Mr. Donoghue reports that the President said, "I don't expect you to do that. Just say that the election was corrupt, and leave the rest to me and Republican Congressmen."

Do you remember the President saying that during the phone call?

A So I don't have any reason to challenge Rich Donoghue's notes --

Q Uh-huh.

A -- but there -- there are places in it that I do remember concretely. I'd say, "Oh, I remember that." On that particular one, I don't remember it in the sense of a quote that I could say, oh, yes, I remember that just like that.

I remember the general concept, that he said repeatedly to us: How has the

Department of Justice not found the fraud? The fraud's everywhere. People are telling me that it's in Pennsylvania. I've heard this incident and that incident. You know, you guys need to get out there and find it, and you should be saying so.

So I do remember the -- what I'll call "the concept" that you're alluding to, which is he wanted us to say things about that. But, of course, we didn't have the factual foundation to do that.

Q Right.

A It wouldn't have been the right thing to do.

Q So there are two separate things here. There's what the Department's going to do and what the Department's going to say it's doing.

A Yes.

Q And that quote suggests that the President was very focused on the latter, on the Department saying that the election was corrupt or announcing that it was doing certain things, much more so than the actual investigation of the fraud.

Tell us more about the distinction that the President drew, if he did, between the public statement versus the underlying investigation.

A So, you know, again, those are Rich's notes, and I don't dispute or challenge them. But, in terms of the degree of emphasis, sometimes with the President, you know, what people have seen on TV is also what you see in private. He gets on a little bit of a roll where he's just talking, you know, where he's laying out, there's all this -- people told me there's all this fraud and this, and you guys aren't doing anything, and no one is saying anything about this, and you should be out saying what's going on with this.

So trying to create a proportion of what's what, I don't have good ability to do that, because it's a -- if there was a transcript, there might be sections where there are

whole pages of the President speaking.

But, as I say, I remember things that are consistent with Rich's notes, and that is part of why I take no exception that, if that's what he wrote, that's what he wrote.

Q You indicated earlier that one of the things that the Department did not do was to hold a press conference.

A That's right.

Q And there was suggestion that you do that, and you --

A Yes.

Q -- appropriately did not.

So, again, what did the President say about why it was important to hold a press conference or to publicly make certain statements about the election?

A Well, I'll give you an example. I don't know if it's on this call or another one, because some of these blur a little bit, but at one point he was saying: Many people are saying the Department of Justice is missing in action. You know, you're not doing anything. No one sees you doing anything. No one sees you having any press conferences. No one sees you denouncing the fraud that I'm hearing is all over the place.

So that would be an illustration where -- again, that's not an exact quote, but that's the way I remember him. He would say, you know, "People are telling me the Justice Department is missing in action." And then we would say, "Mr. President, that's just wrong. The Department of Justice has done its job. Just let us do our job." And he would say, "Well, if you're doing your job, why haven't you found the fraud that everyone tells me is out there?" And we'd say, "Well, some people are giving you bad information. You're listening to the wrong people." And, you know, it would go back and forth like that.

But I guess I've given kind of a long answer, but to get to your point, it wasn't so much that he would say, "Please schedule a press conference for 9:00 a.m. tomorrow, and here's what you should say." He wasn't as direct like that. It was more, "Oh, lots of people have said you're not doing anything. Why aren't you doing it? Why aren't you out there talking about this? Why aren't you? You know, people say this. You know, what's your response to what they say?"

Q The notes reflect a reference to the Republican Congressmen, that there is some sort of role for the Republican Congress to play upon the heels of a press conference.

Tell me more of what you recall, Mr. Rosen, about any discussion in that call or other calls about the political strategy of the Republican Congress's role, anything at all along those lines.

A Same thing with the notes. I don't have a distinct recollection, on that particular call, of that exact phrase in Rich's notes, although I do not dispute it.

Q Uh-huh.

A I actually have a recollection of a different discussion on Congress, which is, I think at one point I suggested to him, this is really not a productive course, to expect the Justice Department to change its position, because we function on the facts and the law. That's what we do, okay? And you've heard our view of the facts.

And I said, "If you're hearing that there's something wrong with the elections, why don't you just leave that to Congress?", meaning legislation. And he was negative about that. He said, "I don't think that's a solution. I think the Justice Department should do its job," or something like that.

So that's really more of the context. I don't think it was this December 27th call, but it might've been, because I don't actually remember when it was.

Q Uh-huh.

A So that's a little different angle, but I do remember that he wasn't enamored of, in essence, leave Justice alone and let the legislative process, you know, worry about the future of elections.

Q Did he say anything in this call or others about what Congress, then Republicans in Congress, could or couldn't do with respect to elections?

A No, I don't -- as I say -- and that's the thing. I really don't remember much reference to Congress. The one that stuck with me was more that "I don't want Congress." But it was somewhat because he was suggesting, why doesn't the Justice Department, quote, "do its job."

Ms. Cheney. [REDACTED], could I just --

[REDACTED] Please.

Ms. Cheney. -- clarify on that, when he was saying, "I don't want Congress," you said earlier that that -- just a minute ago that that was a reference to legislation --

Mr. Rosen. Yes.

Ms. Cheney. -- not necessarily a reference to January 6th --

Mr. Rosen. Correct.

Ms. Cheney. -- or --

Mr. Rosen. Correct. No. Because I think I was raising it more that, if your concern is about how elections are conducted -- we can't change the last one, but if your concern is in the future, then we'll just, you know, let Congress worry about that. And he wasn't interested in that.

[REDACTED] But with respect to this particular --

Mr. Rosen. He wasn't interested at least as to stopping to say, the Justice Department should look at this.

Ms. Cheney. Yeah. Yeah.

██████████ But just to follow up on that, with respect to this election, do you remember him saying anything about what Congress or the Vice President could or couldn't do with respect to certifying the results of the 2020 election?

Mr. Rosen. I don't remember that. Again, I'm not challenging Rich's notes, but I don't remember that.

██████████ Okay.

I think we're going to take a break, because you have a call at noon and it's about 5 of. Do you want to break for lunch now? Is that --

Mr. Brown. I think that would be great. Thanks.

██████████ How long do you need?

Mr. Brown. Like, 45 minutes?

██████████ So maybe --

Mr. Brown. We can get back to the room at 12:45.

██████████ 12:45. We'll be back at 12:45. And we're going to get you a conference room where you all can huddle up.

Mr. Brown. Great. Thanks.

██████████ Thank you, Mr. Rosen. We'll break and be back at 12:45.

Mr. Rosen. Thanks.

[Recess.]

[12:47 p.m.]

██████████. Back on the record. Resuming after lunch.

BY ██████████:

Q Mr. Rosen, we were just, when we left off, talking a little bit about Jeffrey Clark and the December 27th call that you had with the President and Mr. Donoghue --

A Yeah.

Q -- immediately the next day, I want to now turn to December 28th, when you got a phone call -- excuse me -- email --

A Yeah.

Q -- from Mr. Clark that had two specific requests. And what you've got in front of you is marked as exhibit 5. I'd like you to turn to that email and the document that's attached. Do you have that in front of you?

A I do.

Q All right. So it looks like Monday, December 28th, at 4:40, Jeff Clark sends you and Rich Donoghue an email asking -- there were two urgent action items. Do you remember receiving this email?

A I do.

Q Okay. You covered the ODNI request in Senate Judiciary testimony. But I want to specifically call your attention to the attachment, the letter that Mr. Clark attached that he's asking essentially for you and Mr. Donoghue to sign. Do you remember getting and reviewing that draft letter?

A Yes.

Q Do you have any idea who drafted it or sort of how it came about that Mr. Clark sent it to you?

A No. I -- I tried to draw him out a little bit about that the evening of this. This is, I think, Monday the 28th.

Q Yes.

A So we had a meeting at my conference room with him and me and Rich Donoghue. And this seemed in many ways very strange. So I was -- I was asking him -- well, I mean, there's a long conversation that some of which we've already talked about in the Senate, but I had -- I had challenged him on this isn't even the Department of Justice's role. Okay? So where's this coming from? What's this about? And he just wasn't very forthcoming. You know, he's: I think these are good ideas.

So Rich Donoghue and I told him we didn't think they were good ideas, but I had somewhat the same question you're posing and didn't really get answers.

Q Okay. So he didn't give you any information as to whether he'd been in discussions with others about this or who may have been involved in the theories proposed or the letter itself.

A No.

Q Okay. On page 3 of the letter, right in sort of the middle of the page, there's a section of it about the power of State legislatures to appoint electors. Very specifically, in the middle of that first paragraph, the letter says Congress also explicitly recognizes the power that State legislatures have to appoint electors, providing in 3 U.S.C., section 2, that -- and he's quoting the statute -- whenever any State has held an election for the purpose of choosing electors and has failed to make a choice on the day prescribed by 3 U.S.C. section 1, the electors may be appointed on subsequent day in such a manner as the legislature of such State may direct.

And then, based on that statutory provision, he then -- the letter then specifically raises the prospect of encouraging the Georgia legislature to hold a special session. And

it says that the purposes of such special session would be to evaluate irregularities in the election, determine whether there's violations, show which candidate for President won the most legal votes, and then, three, whether the election failed to make a proper and valid choice between candidates such that the General Assembly could take whatever action is necessary to ensure that one of the slates of electors cast on December 14th will be accepted by Congress on January 6th.

So the theory essentially is that, hey, Georgia, you should hold a special session to essentially reassess whether or not the slate of electors is valid or not.

Do you recall any discussion of Mr. Clark or others within the Department about that independent legislature theory, the power of the State legislature to consider alternate slates of electors, anything along those lines?

A No. No. When -- when -- when Jeff Clark sent us this, both Rich Donoghue and I thought this was nonsensical -- nonsensical in multiple ways. It was quite obvious we didn't have a natural foundation that there was, in fact, fraud in Georgia, number one. And, number two, that's not the role of the Justice Department to tell State legislatures what to do. Even if somebody agreed with the constitutional arguments, it wouldn't be the Justice Department's role to go tell them to do that. So I think we just thought this was -- was nonsensical.

Q Okay. So, when this came up from Mr. Clark, my question is: This had not been something that had been vetted, considered --

A No, no.

Q -- discussed within the Department.

A No. This was not something that was commissioned by Rich Donoghue or me or, to my knowledge, anybody of authority in the Department. This was not something that Jeff Clark had previewed and said, "Hey, I'm working on this great idea."

This thing popped up in the emails in the afternoon. And Rich Donoghue and I both instantly said, what -- what is this?

Q Yeah.

A We -- I was -- we were already, you know, what I've characterized as quizzical, at least I was, but I think Rich was, too, as to, what's going on with Jeff Clark?

Q Yeah.

A This is odd, and we don't think this makes any sense. He sent -- I just flipped away from the email. But if you look at the email, look at this: White hat hackers have evidence in the public domain.

White hat hackers? That's -- that's not an evidentiary phrase that I have familiarity with. That is not something we would rely on.

And then, you know, a Dominion machine accessed the internet through a smart thermostat with a net connection trail leading back to China.

He said he got that off the internet. So this was peculiar.

Q And the point I want to make sure I'm clear on is that none of this, the ODNI briefing or the allegations of the thermostats nor the independent legislature theory, had been the product of ongoing work by the Department.

A Absolutely not.

Q Yeah. And Clark didn't give you any indication as to, other than what he says in the email about the internet, about where he had come up with these ideas?

A He didn't. And as I was alluding to earlier, I challenged him. This is not the Department's role. So, you know, why are you saying this? Where, you know, where's this coming from?

Q Yeah.

A Trying to see if he would -- he would say whatever. You know, "The

smartest person in the world gave this to me," or --

Q Yeah.

A -- or whatever. Congress, a Member of Congress or I don't know why.

You know, but he -- he wasn't forthcoming on that.

Q Got it.

A He was just, "It's a good idea."

No, Jeff, we don't think so.

Q Yeah. Well, Mr. Donoghue actually puts pen to paper about an hour later.

A Uh-huh.

Q And, if you turn to the next exhibit, it's No. 6, with a very thorough and critical response --

A Yes.

Q -- to Mr. Clark, which you -- on which you are copied. It's an email from Monday the 28th at 5:50 p.m.

A Yeah.

Q And the very first paragraph about the -- about Mr. Clark's proposals, he says: I am unaware of -- the investigations that I am aware of relate to suspicions of misconduct that are of such small scale that they simply would not impact the outcome of the Presidential election. AG Barr made that clear to the public only last week, and I'm not aware of intervening developments that would change the conclusion.

Is that Mr. Donoghue essentially saying, Mr. Rosen, what you just said that, hey, there's no factual basis here on which we should encourage --

A Yes.

Q -- anything?

A Yes. And keep in mind Rich Donoghue, who's a very experienced

prosecutor and is the I think the acronym is PADAG, P-A-D-A-G, who interfaces with the U.S. Attorneys, he -- and with the FBI -- he has -- he has been following this for weeks. And Jeff Clark has no responsibility for any of this. So I think Rich, even though he's quite pointed in the email, he's actually a little bit understated.

Q If anyone in the Department would have reason to know about investigations related to suspicions, it would be Rich Donoghue?

A Yes.

Q Not Mr. Clark.

A Correct.

Q Okay. He then in the second paragraph goes to your second point which is, hey, this isn't legally appropriate for the Department of Justice. He specifically about midway down says: I cannot imagine a scenario in which the Department would recommend that a State assemble its legislature to determine whether already-certified election results should somehow be overridden by legislative action.

And then a little bit later: This would be a grave step for the Department to take.

And it could have tremendous constitutional, political, and social ramifications for the country.

Again, fair to say your view collectively, you and Mr. Donoghue, was that this is way outside of the department's lane, telling the state legislature that it ought to convene a special session.

A Absolutely. You're absolutely right.

Q Yeah. And, when Mr. Donoghue says, "This would be a grave step for the Department," did you agree with that?

A I did.

Q And tell us why.

A Well, because, at the time, we have this situation where the election results have come in certified from the States. The electoral college has voted. The Department of Justice has seen no widespread fraud. But the political process, if I can put it that way, is continuing to debate the legitimacy of the election.

And so I would say that it was never actually the Department of Justice's proper role to do this. But the point Rich is making, it's especially not a role to do that when there's a roiling controversy out there that we would create misperceptions about.

Q Yeah. When you met with Mr. Clark, it was right after -- I believe you said it was around 6 o'clock. So it was right after Mr. Donoghue sent this response? Was it before or after the email response was sent?

A So let me think about that. I remember Rich Donoghue, and I discussed this. And the meeting, I think, was at 6.

Q Yeah.

A So, so, yeah, there's --

Q The email states 5:50.

A Yeah, about 10 minutes. So it's about 10 minutes later that Jeff Clark comes to in my conference room.

Q Beyond what you've already said confronting Mr. Clark about where this comes from and not really providing information, tell me more about that. Is there anything else he said about this specific request.

A So a couple of things that stand out is I had already spoken to Jeff Clark on the phone about it's not okay to meet with the President without telling us and it's not okay to be, you know, freelancing where I have to pull this out of you.

But Rich Donoghue reinforced that at the Monday evening meeting in extremely appropriate but very blunt terms as in: You are way out of line. You know, this

is -- this is way outside your role. You have -- you have no responsibility in this area.

He was very, very direct. And I reinforced it, too. But I -- what really stuck with me is Rich's verbal tone matches this email.

Q Yeah.

A It was quite forceful and appropriate.

Q Uh-huh.

A And but after he sort of walked through that aspect of it, we told him that we didn't agree. I told him I didn't see any basis for him to have a DNI briefing. It wasn't that he didn't have clearances. It's that he didn't have need to know. So -- so -- but then the conversation more turned to "this is not the sort of" -- it's -- see if I can say this more succinctly.

Somewhat like the second paragraph of Rich's email, the conversation turned to: This is not appropriate for us. So why -- where did -- where did this come from? You know, why do you want to do this? Because this, from our vantage point, or at least mine, came unexpected in the sense.

And, you know, I don't remember, you know, his words or the, you know, the back and forth in particular sentences. But I remember the gist of it was he just kept saying: Because I think it's a good idea.

I was, like: Well, that doesn't really answer. Like, why do you think this is a good? You know, where is this coming from?

Q Yeah.

A And he just stuck with, you know: Sorry you guys don't agree.

He did seem, I should -- I should probably clarify. He did seem to accept that, well, I tried, but they don't want to do it, so okay.

You know, he didn't -- he didn't come off at that point as insubordinate or, you

know: You guys better do this while you have the chance because I'll show you or something.

He wasn't -- he wasn't pushing back but he was -- he was being guarded. He didn't -- he didn't seem to want to tell us much about just where -- the where and why.

It was just: I thought it was a good idea.

Q Uh-huh.

A Sorry you guys don't agree.

Q When Mr. Donoghue confronted him with the violation of the White House contact policy, do you remember him saying, "There's a lot more at stake here than a policy"?

A Is that -- is that this Monday night, or is that later in the week?

Q Do you ever remember him saying something like, "Oh, not that I don't care about, but there's a lot more at stake here than a policy"?

A Not -- not -- not the exact phrase, although I think the phrase comes out of our -- I recently learned that Rich took some notes of a January 2 meeting. So I'd say what I've said before. I mean, Rich is a very reliable and sensible person. So I don't quarrel with his notes.

Q Yeah.

A But what you're asking me, I don't -- I don't remember him fighting back at this Monday night meeting in any way, you know, that there's something more important than what you guys think.

As the week progressed, initially I thought that he was chastised, and, you know, he had raised these things that we didn't agree with, but that would be that. Later in the week got more concerning because he raised -- I haven't been able to establish was it a meeting, a call. But sometime on, either Thursday night of that week or on Friday, he

told me that he had had another meeting or phone call with the President in which the President had -- had asked him if he would be willing to take my job if the President wanted to make a change. And they were going to resolve that by Monday.

So there was this shift that happened I'll call it Thursday. It might be Friday. But in the earlier part --

Q Yeah.

A -- he wasn't resistant. And so -- so the point you were just asking about I don't think came up on the contacts policy in that period. I think, in the later period, after he had -- he had shared that he was going to do some due diligence to decide if he wanted my job, he -- he had asked for a couple of things.

You may remember, again, the DNI briefing he wanted again. And that was a difficult question because, if he's going to brief the President, I reluctantly think it's probably better that he's heard from Director Ratcliffe than that he not, even if -- I don't think he should brief the President. But, at this point, he's telling me that this is happening whether I agree with it or not. So, so I let him have that briefing.

So we have that followup meeting on Saturday, January 2nd, of Rich Donoghue and I, and I think, in that one, Rich Donoghue really berated him about the contacts policy, among other things.

Q Yeah. Just -- we're going to get to the end of the week. But also that meeting with Clark the night of this email exchange when -- is there a suggestion to Clark that what you're suggesting would constitute the Department of Justice meddling in this election? And Mr. Clark responds: I think a lot of people have meddled in this election.

Do you remember an exchange along those lines either at that Monday night meeting or subsequently?

A Not at the Monday night meeting. At the subsequent one, I don't have enough granularity as to the, you know, the exact phrases that you're reading. I just remember it was a very contentious session. He was -- he was no longer in the apologetic or explain or whatever. He had moved to more contentious debating with us. And, as I said, Rich took some notes. So, if those are in the notes --

Q Yeah.

A -- I'm not disputing them.

Q I understand.

A I just don't have enough granular memory.

Q Okay. Let me stop, because I'm going to get to the end game, so to speak.

But let me ask, see.

Ms. Cheney. I don't have any.

██████████ Mrs. Luria, do you have any questions?

Mrs. Luria. Not right now. Thank you.

██████████ Okay. How about -- yeah, ██████ and ██████

Go ahead.

BY ██████████:

Q Couple of questions. Mr. Rosen, if you could turn your attention to exhibit 5, the first page is the cover email that we were talking about recently.

A Yeah.

Q And that's the December 28th, 2020, email from Jeff Clark to you and Mr. Donoghue. So, in the paragraph that starts with number one, where he asks for the classified briefing from DNI Ratcliffe, he writes in the second sentence of that paragraph that, quote: I could then assess how that relates to activating the IEEPA -- that's I-E-E-P-A --

A Right.

Q -- and 2018 EO powers on such matters now twice removed -- renewed by the President.

What is your understanding of what Mr. Clark meant by activating the IEEPA and 2018 EO powers?

A I don't know. I'm not sure -- I mean, I know what IEEPA is. It's, you know, international sanctions authorities. I don't know what the 2018 EO is that he's referencing. As I sit here, I don't know exactly what his theory was on that.

Q Did Mr. Clark ever mention to you the idea of having the Federal Government seize voting machines?

A Can't rule it out. But I don't specifically, you know, recall a proposal on that.

Q So then on that -- on the next page, which would be page 1 of the draft letter --

A Yes. I'm there.

Q -- where he writes in the second sentence: We have identified significant concerns that may have impacted the outcome of the election in multiple States, does that accurately reflect what the Department of Justice's position was at the time?

A No. It's actually the opposite.

Q On the next page, so this is page 2 of the draft letter, toward the end of the first paragraph on that page, he writes: Time is of the essence as the U.S. Constitution tasks Congress with convening a joint session to count electoral college certificates.

Then he cites the U.S. Constitution.

Consider objections to any of those certificates and decide between any competing slates of elector certificates.

And then he continues on. When he referred there to decide between any competing slates of elector certificates, at that point in time to your knowledge were there any competing slates of elector certificates?

A Not that I was aware of.

Q Do you understand Mr. Clark there to be suggesting that the State of Georgia submit a competing slate of elector certificates?

A Boy, that's maybe a question for him.

Q And we definitely would love the opportunity to ask him that. But, if you have any thoughts, we'd love to hear it.

A I just remember that when Rich Donoghue and I received this, we were scratching our heads. You know, what in the world is this? And we -- we rejected it, and we were puzzled. You know, what's going on with Jeff Clark?

Q Going back to the cover email, so that's again the first page of exhibit 5, in the paragraph that starts with number two, he writes towards the end of that paragraph: Personally, I see no valid downsides to sending out the letter.

Is it safe to say that you saw downsides to sending out the letter?

A It is safe to say that.

Q What would be the downsides?

A Well, all the things we've been talking about, that we don't have a factual basis for asserting that there's fraud occurring or has occurred in Georgia and, for that matter, any of the other States this might go to, that we don't have a legal support in the sense that I don't think we carefully vetted his constitutional theory, but we do -- this is unusual to say the least. And we definitely thought, no matter what comes out of that, the -- the -- institutionally this is not the Department of Justice's role.

So those were three downsides. There would also be the risk we spoke about

earlier of stepping into controversies that it's not our place to step into.

Q And I know you're reluctant to speculate on hypotheticals. But, at the time that you got this letter and reviewed it and decided you did not want to send it, did you think about what the possible consequences could be if you sent a letter like that?

A I don't want to sound cavalier. But I don't think we thought this was something that needs, you know, hours and hours of careful study. I think it was pretty clear to us that this was not a good idea. So --

Q Did you and Mr. Donoghue have any discussions where you sort of played out what the scenarios could be if you sent something like this?

A No. I don't think so because, as I said, I think it was pretty straightforward that this is not a sensible thing to do.

Q Would you be willing to speculate on what could have happened if he'd sent a letter like this?

A I think it was just obvious to us that this was not a proper thing for the Justice Department to be doing. I mean, if you look at Rich's email, what did -- what did he say back here?

There is no chance I would sign this letter or anything remotely like this.

Okay. That's how I think he and I both reacted to this. So, while there's multiple categories of defectiveness, it wasn't one that needed, you know, a 20-page memo to set that out. It was -- it was -- it was plain. This is not a good idea, and we don't want to do it. So we had that conversation in kind of short order.

██████████ Okay.

Mr. Rosen. Initially thought that would be the end of it, but I was too hopeful.

██████████ ██████████, go ahead.

[Discussion off the record.]

Mr. Rosen. So where -- we're just checking on what the executive order in 2018 was, which was sanctions in the event of foreign interference in United States election. That's probably the reference.

BY [REDACTED]:

Q Mr. Rosen, just to put a finer point maybe on what [REDACTED] just asked you, in your view, would sending Mr. Clark's draft letter harm the Department as an institution?

A Well, I think when you -- when you do things that are not your proper institutional role, that's harmful.

Q Okay. And I want to go back to something you spoke about earlier and see if this jogs your memory a bit, but I believe you said you had a call with the President on the 23rd or 24th when he mentioned Mr. Clark's name for the first time.

A Yes. The 24th.

Q And was that the first time you heard the President talk about Mr. Clark?

A I believe so, yes.

Q Okay. And I believe that you mentioned, after Christmas on the 26th, you spoke to Mr. Clark about why the President mentioned his name.

A That was the purpose of my call, as I alluded to. I didn't immediately confront him. I didn't say, in effect: I spoke to the President. He mentioned your name. How does he know who you are?

Q Okay.

A I wasn't as blunt about that. I was -- I was more seeing if he was going to volunteer. But, eventually, after some back and forth, he revealed the meeting he had attended.

Q Okay. And that meeting involved Representative Perry. Is that right?

A Yes.

Q Okay. Now there has been some public reporting that there was a meeting with multiple Members of Congress at the White House on the 21st about election-related issues. And I think Mark Meadows, the chief of staff, confirmed that via a tweet ultimately. Does that jog your memory at all about your conversation with Mr. Clark and why he had been at the White House, were other Members involved?

A Not specifically. But I know -- I know what you're referencing because I remember there were multiple media account of things going on at the White House that, while I didn't have personal knowledge of, Axios and others were reporting on Mike Lindell and these other people being at the White House and Sidney Powell and people with various theories. It wouldn't surprise me if that's some of the people who were giving the President what I regarded as the wrong information, but I don't actually know that for a fact.

So, in terms of Jeff Clark, I'd say something similar. Maybe one of those meetings was the one he went to. But I -- I don't have a recollection of him spelling that out to me.

Q Okay.

A Unfortunately, I just -- I just don't remember well enough.

Q Okay. And I want to talk to you also about the December 27th call where I believe you conferenced in Mr. Donoghue. And that involved the President as well. In Mr. Donoghue's notes, he references John Eastman and Mark Martin and has a note that says: P trusts him.

What do you remember about that aspect of the conversation?

A So I think that day someone had sent over to us a draft Supreme Court brief modeled on the Texas v. Pennsylvania case that the Supreme Court had rejected. And I was -- I think Rich Donoghue and Steve Engel and I had a meeting that we were there for

to address an oversight set of issues that had produced some controversy that Members of Congress who -- I won't get into all that, other than that Mr. Meadows had asserted to me that the thing had -- that he and AG Barr had resolved it. But now AG Barr was gone, and it wasn't resolved, and he wanted to talk to me about getting it resolved.

But at that discussion Mr. Meadows raised with us: Did you guys see the Supreme Court brief that was sent over?

And I think we said: Haven't read it carefully, but it doesn't look viable.

And he responded in some sense -- and, again, I'm paraphrasing, because I don't -- I'm repeating the substance rather than the words -- was: Well, Mark Martin and John Eastman, who are, you know, these great legal scholars, think it's a great idea.

And we said: Well, you know, we'll get back to you. But preliminary take is it has problems, that it doesn't look like a good idea to us. But we've only had it 2 hours or something like that, you know, whatever the timeframe was, which it was relatively brief.

Q And at that time did you know who John Eastman or Mark Martin was?

A By reputation of sorts, I knew that they had each been deans at law schools. And they were not personal friends or anything like that. But I knew what I just said, that they were law deans.

Q Okay. Nothing related to your official business at the Department.

A No. No.

Q Okay. And just to go --

A And I can say that I did not meet with either of them while I was at the Justice Department.

Q So, just to go back now to exhibit 5 and the letter that Mr. Clark drafted, at the beginning of today you had mentioned there being internal and external suggestions

of what the Department should do or certain actions it should take. And I think you mentioned Jeff Clark's letter as something that may have come up through DOJ but certainly wasn't Department activity.

A That's right.

Q Okay. So is it fair then to say that this was not part of the Department's official business at the time?

A Yes.

Q And, to your knowledge, can Jeff Clark as the assistant -- Acting Assistant Attorney General for the Civil Division, can he represent the President in a personal capacity while also maintaining his role at the Department of Justice?

A Let me just make sure I understand the question. You're saying, can he outside of his DOJ role represent the President in a personal capacity? And I'm trying -- what I'm trying to distinguish is sometimes the President or others get sued in their individual capacity. But they have some form of governmental immunity or the like. And so the government can represent them as individuals. That's not what you're getting at. You're talking about, can a -- can someone who's a government employee, you know, have like a side gig representing a private person?

Q Correct. Outside of that kind of tort context that you just mentioned, could Jeff Clark represent the President or the President's campaign in a personal capacity, to your knowledge?

A So I haven't -- I haven't done a thorough or careful legal evaluation of that. It seems -- it seems unlikely. But I would -- you know, when you ask me for a legal conclusion, probably I should be cautious because I don't -- I don't really want to -- I'm here, as I alluded to earlier, to say what I saw and what I heard and what I did and so forth. I haven't done a careful legal assessment is there any scenario where that's

allowed. I would say in general that's not allowed.

Q And, to your knowledge, in the positions reflected in Mr. Clark's draft letter, including asking a State to convene a special legislative session to review an election outcome, is that a position, to your knowledge, that the Department has ever taken in the past?

A I'm sorry. I missed part of the question. Could you say that again?

Q Sure. So one of the things that Mr. Clark's letter suggests is that the State of Georgia convene a special session of its legislature to review the election. Is that -- that type of suggestion ever something that the Department has done in the past, to your knowledge?

A I am not aware of that having been done in the past, and no one has called any instance of it to my attention.

██████████ Okay.

Mrs. Luria, I understand you might have a question, a couple questions.

Mrs. Luria. Yes. Thank you.

And I just wanted to follow up on the discussion that we've been having about this letter from Mr. Clark.

You know, I wanted to ask, first, was this an anomaly while you were in this capacity as Acting Attorney General? Were there other times that people approached you with material that you thought was completely superfluous, not based on fact, and this is, you know, using your description from earlier that you wouldn't even consider acting on, did that happen at other times, or was this really the one time that you can recall this happened during your tenure?

Mr. Rosen. This was anomalous.

Mrs. Luria. Okay. So, you know, I was going to ask you, when this happened on

other occasions, what action did you take? I mean, what action would or could you take in your capacity, you know, against another employee at the Department of Justice, you know, who was not acting in what you may have deemed the best professional capacity, you know, bringing things forward and suggested that they be acted on that has no legal basis?

Mr. Rosen. So I'm glad you raised that. With officials who are presidentially appointed with Senate confirmation, which is a very small subset of the Department, the only ones who can remove them are the President of the United States. So the discipline that might exist with some others is not available with regard to a Senate-confirmed Presidential appointee.

In Mr. Clark's case, he was Senate-confirmed in his environmental division position. So he was not removable, and even the acting assignment for the Civil Division was a Presidential designation. So it would have taken the President to change it.

Mrs. Luria. Okay. Well, I appreciate you clarifying that because that was actually going to be my next line of questioning. I mean, what recourse could you have taken in this case based off of his position? And, you know, and I really was thinking about, you know, the hearing and discussion that we might have during this hearing. I was thinking about checks and balances. And I think one of our most basic civics lessons is, you know, the three branches of government and checks and balances amongst those three branches of government.

And so, in this particular case, you know, as the head of the Department of Justice, you know, what seems to be some influence coming from the executive branch, did you question, like, what recourse could you take had this pressure not ended? I mean, obviously, you were in a position where the President could have potentially removed you and replaced you with someone else, and that is postulated that that could have

been Mr. Clark.

But what was going through your mind? Or what potential courses of action were you considering you could take, you know, had there been more pressure or had this not ended or had Mr. Clark continued to come to you with documents like this and request that you act on them?

Mr. Rosen. Yeah. So two different timeframes. In the timeframe of this Monday, December 28th meeting, Mr. Clark, as I alluded to, was not resisting his leadership's rejection of his proposal. So, when Rich Donoghue and I said, "We don't want to do this," he seemed to be accepting of that. So, at that point, while the idea seemed peculiar, sometimes, you know, people have a bad idea and you tell them it's a bad idea and they accept that and life moves on. So that's in the early phase.

In the later phase, when we get to the weekend, all these events wind up with a Sunday night Oval Office meeting on January 3rd. And, at the end, not the very end but deep into near the end of that meeting, the President did announce his conclusion that, you know, that he was not going to make a change of replacing me with Jeff Clark.

After that, he did say: I don't want any punishments or recriminations against Jeff Clark. And, again, that's a paraphrase. But that was the concept was he didn't want any -- any consequences to Jeff Clark.

So I think -- I can't remember exactly who. It could have been me. It could have been somebody else. But we pointed out that, with a resignation, that, well, the President is the only one who can remove Mr. Clark. And he indicated, the President indicated, he didn't want to do that.

Mrs. Luria. Okay. So, from my experience -- I don't have a legal background. But I do have a background of a couple of decades in the military. And, you know, kind of what you're explaining sounds like what we would consider, you know, in the military

and under the criminal history is something like undue command influence. You know, the President -- and I'm going back to the suppression of the three branches of government and kind of where these balances fall out.

So did you feel as though that was an inappropriate comment from the President to the Department of Justice which should be independent? And was it contrary to what you envisioned the checks and balances could be or should be, you know, between the executive branch and the judicial branch?

Mr. Rosen. Well, I guess let me address that two ways. As a practical matter, once the President had decided that he wasn't going to put Jeff Clark in charge, then the prospect that this letter or other steps were going to happen appeared to have passed. And it was only at that point, a little over 2 weeks, 15 days or something, 17 days until the end of the administration. So, as a practical matter, it seemed like there wasn't a lot of problem dealing with 17 days, that that would be in control.

At the constitutional question that you raised, there's just the practical reality that the President makes those appointments. So, even if he hadn't said what he did, I wouldn't have been able to fire him. I didn't have the authority over the Presidential appointees. Many other Department employees, most of the other Department employees, yes.

But so it -- so, independent of whether the President had said let this go or not, the constitutional role is that the President is the one who gets to hire and fire in those defined positions. And that's, you know, above my pay grade, if I can put it that way.

Mrs. Luria. So, as I'm thinking through this, you know, the -- I clearly understand the Presidential appointment, the Senate confirmation. And, you know, we've been talking about right now we've been isolated to two of the three branches of government. So is there any recourse in this situation or any similar situation in any governmental

department, for example, where there can be some level of recourse? Is there a place for Congress?

I mean, the Senate did have to confirm this individual. But the Senate can't remove this individual. Is there a process by which you at the time as Acting Attorney General, is there anything in the law that would allow you to then come say, because you're being pressured by the executive branch potentially with people acting on behalf of the executive branch, providing you superfluous ideas and documents that they want you to act on, that you have no one to turn to essentially, and was there any thought in your mind of, like, what could you do on in this circumstance?

And I know 17 days at the time probably didn't seem very long. But maybe in retrospect, looking back on it, maybe we could now see a lot could have happened in 17 days.

Mr. Rosen. Well, you raise an interesting point.

I really don't have an immediate thought about that because really talking about constitutional law in terms of what steps could be done to alter the appointments process, and I think it's an interesting question. But I, as I sit here, I think it's just one that deserves and need more thought than I can give it at this time.

Mrs. Luria. I understand. I completely understand that aspect.

And so, you know, did you at any point think of making any of these conversations public in the sense that, you know, did you feel that this information was something that needed to be known, you know, outside of the Department of Justice?

Mr. Rosen. So, and I appreciate that. I've thought that could be an area of interest. So let's remember the comments that the President is making are very similar to what he's saying publicly. He's -- and there -- the stories or incidents that he's repeating are ones that people are telling him and/or he's seeing on TV or whatever. So

there's not new information there of, you know, news flash, President Trump doesn't accept the election result. That's in the public domain, as are, as was alluded to earlier, these meetings that Sidney Powell and Mike Lindell and whoever. Those are in the press.

So it didn't seem to me that this was one of these situations where disclosure changes the situation. The information there was out there. The challenge, well, the obligation, for the Department of Justice is to do the right thing. And so that's -- that's where we had our focus is, okay, how do we handle these different kinds of situations? And, as we said at the outset, we didn't appoint any Special Counsels. We didn't have any press conferences. We didn't send these letters to legislatures and the like.

And I think that -- that proved to be a good course of action. The most serious moment, I suppose, was that Sunday night meeting, if it had -- if it had gone differently. But as to that, there were a whole series of arguments that were presented that Sunday night. But one of the consequences was that, if I was removed or resigned, then a whole lot of other people were coming with me.

Mrs. Luria. And so --

Mr. Rosen. And resigned.

Mrs. Luria. Right. I understand. I was a little bit curious about that particular comment because to me it seems like, you know, that perhaps would have led the people who wanted to ultimately achieve this goal of overturning the election, it could have given them more of a free path because, as you mentioned just now in your opening statement, the whole list of things you didn't do was based really on your good judgment, Mr. Donoghue's good judgment. Like, we're not going to take these spurious things and try to give them credence and pursue them.

But, once you were gone, say Mr. Donoghue was gone, a whole bunch of other

people who had said, you know, would that circumstance have happened where you were removed, that they would have resigned as well, you know, is the thought in that group that just enough public attention could have been brought, enough light brought on what was happening, that it could have actually changed or stopped something?

Mr. Rosen. Well, you know, we're dealing there in the -- in the world of hypotheticals. Right? That we don't -- we don't exactly know what would have happened. So we just --

Mrs. Luria. None of your colleagues who said that they would have resigned under that circumstance told you they were thinking about why they would have resigned?

Mr. Rosen. So remember the way that played out, I wasn't on the call that my colleagues had. That Sunday afternoon, Rich Donoghue and Pat Hovakimian, who was my senior counselor at the time, convened a senior leadership call. I wasn't actually on it. I just got the afterwards report that all these folks are going to resign if you're not still the Acting Attorney General tomorrow morning.

And I think the best I can really say about these things is that people were using their best judgment about how to proceed. It's hard to know what the hypothetical alternative would have been, I mean, because that isn't what happened. But what happened is the way we did proceed.

Mrs. Luria. So I guess overarchingly, you know, sort of takeaway from our exchange here is that -- and I would just ask if you could confirm that my thought process is correct that there really doesn't seem to be any measure by which, if the Department of Justice is, in fact, not acting in accordance with the law or if someone within the Department of Justice is trying to act, it was an appointed or confirmed official with the Department of Justice, not in accordance with the law, there's not anything in place that

there's any recourse against, if the President doesn't hence, you know, agree that that person should be removed and is acting out of bounds, there's nothing in place that can hold that person accountable or potentially stop them from taking future action? Is that -- am I correct in saying that?

Mr. Rosen. I think you're correct if we mean on an urgent basis. Obviously, there's congressional oversight. There's an inspector general. There are things that take time.

Mrs. Luria. Okay. So congressional oversight and inspector general, like in the case of what was going on, did it ever cross your mind, with congressional oversight, did it ever cross your mind in any way, shape, or form that, like, you have a problem, an imbalance of power, the checks and balances is kind of failing between two branches of government, that the third branch of government had any role or that anyone potentially needed to be notified or made aware, not of the fact that these things are somewhat mirroring what's happening in public comment, but of the fact you have a senior individual acting in a more senior role within the Department, heading the Civil Division, bringing you superfluous information and pressuring you to take action on it, like you said in our first question, that that was not normal? Like did you feel like you wanted to do something more? Was that a concern?

Mr. Rosen. Well, I'm going to say a couple of things. One is we had to make assessments along the way. And at least my judgment is that the assessments we made did, in fact, work out. I take your point that, what about some future occasion or whatever? And I think that's a different conversation. But the way it proceeded did work out.

And, in addition, there are a lot of complicated issues, you know, that I -- I don't -- I don't mean to be in a debate posture or something. But there are -- there are

things that, as we sit here today, have been sorted out but back then would not have been, which is the, for example, privilege questions. I have the luxury today of being able to share conversations with the President, with the President's counsel, because the Department of Justice on behalf of the current President and the counsel for the past President not objecting. But there are -- that didn't get resolved, I think, until late July.

So not trying to add complexity where it doesn't exist but what I'm trying to say there are a series of complexities that do exist. And the course we did chart did work out. I think the point you made that I would agree with is it is extremely important in the Senate confirmation process that, at the front end, for the Congress or in that case the Senate, I guess, to help ensure that the people that are appointed to responsible positions are people of principle and character.

And I think it's worth thinking about prospectively the things you're pointing to. But I think those need more thought than I've given instructively, that I can constructively address today.

Mrs. Luria. No. I understand that those are complex issues that are perhaps things we look at in the work of this committee and how we, you know, prevent something like this from happening in the future.

But did want to hear your personal perspective of having been the person in the role, if there were things that went through your mind and actions that you thought you would have liked to have been able to take or kind of what your feeling was as you found yourself in that situation. So I appreciate your feedback and your insight into that.

Ms. Luria. And I yield back.

I don't have any further questions, and thank you for appearing before the committee today?

Mr. Rosen. Thank you.

██████████ Thanks, Mrs. Luria.

How are you feeling? Do you need a break, or can you keep going?

Mr. Rosen. I think I can keep going. See if we can push through this topic.

BY ██████████:

Q I'm pretty close. Let me ask you to turn to exhibit 10, which are some handwritten notes that Mr. Donoghue took of a meeting that occurred at the White House on the 29th of December. This gets into a little bit of what my colleague ██████████ was asking you about.

A Right.

Q It looks like this is a meeting, Mr. Rosen, between -- that you attended with Rich. It says: C of S -- which I assume means the chief of staff -- Mr. Meadows, the White House counsel. And you have P.P. and P.C., Pat Cipollone and Pat Philbin, and Steve Engel is S.E. Do you remember this meeting?

A I do. These aren't my notes, but I agree with your construction of those.

Q Okay.

A Because I do remember this.

Q All right. And, again, I think you said the purpose of the meeting was some oversight matters but that the conversation strayed into some election-related things.

A That's how I remember it is that the reason we had the meeting and the reason Steve Engel is there is because his office assists with the principles of the congressional oversight issues, what things are appropriately have executive branch equities, which things, how to address those questions.

Q Yeah. So the first two names are there on the notes ██████████ had asked you about, Mark Martin and John Eastman. And you indicated, I think, you had familiarity with them but didn't have any personal contact with them.

A That's right.

Q Do you remember anything that Mr. Meadows or others in the meeting said about them, other than P trusts their view, which is indicated in Mr. Donoghue's notes?

A Just what I said before.

Q Yeah.

A I think this was in the context of that they had sent the White House someone -- I think it may have been President's assistant had sent over this draft brief to Jeff Wall, the solicitor general, and to me and I think to Rich Donoghue, too, and I think chief of staff was saying this thing is endorsed by these law school deans.

[1:45 p.m.]

BY [REDACTED]:

Q Okay.

And, in the notes, there's an arrow from point 4: "Original J case. U.S. does not have standing. DOJ should talk to the Olsons (attorneys who filed similar case)." And there's an arrow from that up to Martin and Eastman.

Does that also refer to the possibility of the filing of the Supreme Court case, the draft complaint of which had been emailed to you?

A Again, they're not my notes, but that is how I would construe it.

Q Okay. Do you remember in the meeting a discussion where you, Mr. Donoghue, or Mr. Engel put forth the view that there was no standing to bring this particular Supreme Court matter?

A Yes. I think it was pretty summary, but I think we just said, "We just got it. It doesn't look viable --

Q Yeah.

A -- but, you know, we'll get back to you shortly."

Q Got it.

And the notes reflect an arrow under the name John Eastman. "CP will call him." Do you have any recollection as to anyone agreeing to call Professor Eastman in the wake of this meeting?

A No. CP?

Q Unless I'm misreading Mr. Donoghue's notes, it looks like "CP will call him."

A No, I'm agreeing with you that's what it says, but I'm trying to think --

Q Yeah. Who is that?

A -- who is CP? I don't remember that. And, as I sit here, CP is not registering with me.

Q Okay.

All right. Also, in these notes, it reflects a discussion about Arturo D'Elio. Do you remember this allegation about an Italian source having some information about --

A Yeah.

Q -- a voting issue? Tell us what you recall about that.

A So, until I saw these notes, I didn't actually remember this coming up at that meeting that I remember as being about the oversight issues, which I think are the nonresponsive redactions here.

Q Yeah.

A But what I remember is, somebody sent over this letter or something claiming that this person -- I think it's -- well, I see the notes. I don't actually remember if the name was Arturo D'Elio or not, but the claim was that they were in "protective custody," was the term, in Italy because they knew about some foreign interference in our election. And that was one I was not as familiar with as, you know, Georgia, Pennsylvania, or things that the U.S. attorneys had debunked. So I didn't know what that was.

So I see on here, on the far left, it says, "J. Demers." I can't read what Rich's note is about, but John Demers was the head of the National Security Division.

And I think what happened after this -- I'm not sure -- I don't remember this coming up at the meeting -- was Rich and I said, "See if John Demers ever heard of this guy." This kind of fits in the approach I was telling you before. Where we don't know anything, we're certainly not going to do something overt, but we're -- can we figure out what this is? You know, can we quickly say it's false?

And I don't have any recollection of whether John Demers actually knew anything or not. But what I remember is, one way or another, Rich Donoghue got some information that the so-called "protective custody" was that the person had been convicted of a crime and was in prison in Italy, which doesn't actually fit my definition of "protective custody." Custody, yes, but protective, no.

And, you know, I don't want to make light of that, but it wasn't protective custody; it was prison.

Q Yeah.

So do you remember who brought that up, that whole line of facts about this witness who was locked up in Italy and a purported election connection?

A I'm sure there's some documents on that that would help me remember exactly. I see these notes, this meeting at the White House, so maybe it's there. I can't remember if we'd heard about it from someone else. You'd have to help me remember that.

Q Yeah. But the conclusion, it sounds like you're saying, is this is yet another theory debunked.

A Yes.

Q That, upon some research --

A Yes.

Q -- it was not something the Department pursued as a credible allegation of election fraud.

A That's right.

Q Yeah.

A At some point later, there's some suggestion that there's, you know, a YouTube link or something that's supposed to corroborate this. And that turned out to

be, you know, almost equally farfetched.

Q At some point, Mr. Meadows actually emailed you that YouTube link, and Mr. Donoghue's response, upon receipt: "Pure insanity." Is that the same --

A Yes. Yes. You've reminded me of that. That's right.

Q Yeah. And did that accurately characterize your reaction, as well, to this theory, that it just --

A Yes.

Q -- was pure insanity, no basis whatsoever?

A I'm going to understate. It was not corroborated.

Q Yeah. Okay.

So, later that day, Mr. Rosen, after this meeting, the President called you directly. There was a phone conversation, and there's some discussion about the possibility of the Supreme Court -- this is not reflected in notes, but I believe you testified previously that there's a followup phone call with the President himself. Do you remember that?

A So I think Rich and I had a phone call with the President sometime on that Tuesday.

Q Uh-huh.

A I'm trying to remember if the brief came up in that one or not. It wouldn't surprise me if it did.

What I remember better was that, on Wednesday, after the Kurt Olsen incident, I spoke to the President. I think that was just me, or Rich may have been in my office, but I don't think it was on the speakerphone. Some of these were on speakerphone with me and Rich, and some, it was just me, but Rich could've been in my office.

And the way I remember it is, on Wednesday, I wound up telling the President, "This doesn't work. There's multiple problems with it. And the Department of Justice

is not going to be able to do it." And --

Q And what was his reaction?

A He was accepting of it. He didn't actually argue. I didn't know that going into the call --

Q Uh-huh.

A -- so I had prepared. You probably remember these notes that OLC, I guess Steve's office, had prepared for me.

Q Right.

A But the President just acquiesced.

Q Yeah. So you conveyed to him, "Hey, we don't have standing to file this," told him that explicitly, and he acquiesced.

A Yes.

Q Okay.

A And to my best recollection -- I've been asked this before, is, did it come back?

Q Yeah.

A I can't say definitively, but I don't think so. I think that was the end of it.

Q Now, there was one case in which the Department did intervene. Is that right? I think you mentioned --

A Yeah.

Q -- in opening statement there was only one matter in which --

A Yeah.

Q -- there was standing and Department did intervene. And can you tell us about that?

A Well, it didn't intervene. It was -- the Vice President was the defendant.

Q Yeah. It was Gohmert v. Pence.

A Yeah.

So Congressman Gohmert filed a lawsuit. I think that was filed early in the week between Christmas and New Year. And he claimed in the lawsuit that the Vice President had the authority -- I'm going to oversimplify here, but he claimed that the Vice President had the authority to overturn the election. And I can't remember if it was he should be directed to do so. I can't remember what the relief was. But the theory of the lawsuit was that the Vice President had that authority.

And we took the position that Congressman Gohmert had no standing to bring any such case and the case should be thrown out. And we filed that brief, and the case was thrown out.

Q Okay. And the reason that the Department of Justice was involved in that was because the defendant in the case was the Vice President.

A That's right.

Q So you're defending, appropriately, in your institutional role as the Department of Justice, the sitting Vice President, who'd been sued by a Member of Congress.

A That's right.

Q And the legal argument essentially was, there's no standing, right? There's no institutionally appropriate basis for you, Congressman Gohmert, to sue the Vice President, and it therefore should be dismissed?

A That's right.

Q And the judge agreed.

A He did.

Q And was that --

A And that was quickly, too, by the way. I think he ruled during that week.

Q Yeah. And that's the only case, the only election-related matter, actual pending litigation, in which the Department was engaged throughout this period of time.

A To the best of my knowledge, that's correct.

Q Right. Okay.

During this period of time, you receive a number of emails from the chief of staff to the President, Mr. Meadows. Do you remember those emails?

A Generally.

Q Yeah. And tell us, generally, was it your view that when Mr. Meadows passed along those emails that he was vouching for the credibility of the allegations, or, rather, "Hey, for what it's worth, here's something for you to look into"?

A Well, I think the way I can answer that is that, most of them, the email came across and that was the end of it. He didn't call me or raise it at a meeting or anything. So most of those were just, he sent an email, and that was the end of it.

There was that one that we were alluding to, the "pure insanity" thing. That was at the end of the week. I think it was Friday, which was also New Year's Day, but Rich Donoghue and I were working, so -- so a little bit of, perhaps, frustration had built up, just a little.

And that one he actually called me about. And so that was different than most of them. Most of them were just, "See attached," you know, "Take a look at this." But that one, he called.

And he claimed that the person that was in the YouTube video had more information and should be interviewed. And I said, "I don't think so." Don't want to do that. And he revealed that that person was working with Mr. Giuliani. And I said, "Well, now I'm definitely not meeting with him."

And he said, you know, "But what if he has evidence?" I said, "If he has" -- and this is, again, paraphrased, but the thrust of this was, "What if he has important evidence?" And I said, "If he has evidence, he can walk into any one of 55 FBI field offices or headquarters and ask to see an agent and present his evidence."

And the first call, Mr. Meadows said, "Okay, that's fine. Got it." But then he called back. And he said that he had relayed that answer to Mr. Giuliani, who was insulted or offended or something, and, you know, asked if I would meet with him. And I just reiterated, "No. Not happening," you know, "This is the end of that."

Q Because you had a policy that you weren't going to meet with him or anyone else who was associated with the President's --

A Right. That was the rule of thumb that --

Q Yeah.

A -- we were working under.

Q Yeah.

Tell me more about your relationship with Mr. Meadows. Did you have a good relationship with him?

A Generally, yes.

Q Uh-huh.

A When I was previously at Transportation, he was on the Transportation Committee --

Q Okay.

A -- the House Transportation Committee. So I had known him, not as a close friend or anything, but I knew most of the members of that committee.

Q Yeah. Could you compare his perspective on these election issues to Mr. Cipollone's? Was he more or less willing to entertain them, or gave them more or

less credibility than Mr. Cipollone?

A That's a hard one to answer, because I spoke more often with Mr. Cipollone and probably more openly.

Q Yeah.

A So I don't know if I can put a qualitative assessment on that.

Q Yeah.

The role that you paint of Mr. Cipollone is as more of a truth teller, that he's someone who's willing to tell the President, "Hey, no factual basis here, and that wouldn't be appropriate."

Would you say that Mr. Meadows was a truth teller or not, in your observation, in terms of discussions with or about the President?

A Right. Right. So, as I've said, I try to respond in terms of what I saw, heard, observed personally --

Q Yeah.

A -- and Mr. Cipollone was in all three of the Oval meetings that I attended when I was Acting Attorney General. Mr. Meadows, I think, was only in one of them, and I don't remember what he said. So, as I sit here right now, just trying to remember about that, I don't have an anecdote or something factual to share on that.

You know, when I, on Sunday, called and said I needed a meeting with the President about the Jeff Clark situation, he immediately responded. He set it up within minutes.

Q Uh-huh. It sounds like -- and correct me if I'm incorrectly characterizing -- that you didn't witness him, much like you did with Mr. Cipollone, pushing back, saying no, telling the President things that disagreed with what the President was --

A Well, what I'm saying is he wasn't even at the meetings.

Q Wasn't present.

A Yeah.

Q Okay. Fair enough. Yeah.

I just have a couple of things that I want to ask you about that final meeting, the January 3rd meeting. Again, you testified at length about it.

There was a man named Eric Herschmann present?

A Yes.

Q Tell me about him. What was his role, and what was your relationship with him?

A So he was someone I met when he joined the administration. He wasn't somebody that I'd known previously. But he was, you know, on the White House staff, and --

Q Is he an attorney?

A He is an attorney. He's a former prosecutor.

Q Uh-huh.

A But I forget what his title was.

Q Yeah. He was not in the White House Counsel's Office?

A He was not, but he had a title something like "Senior Advisor to the President" or --

Q Okay.

A That may not be exactly right, but it's in the neighborhood.

Q Uh-huh.

A And I dealt with him -- I've met him a small number of times, but he'd been, you know -- what's the word -- congenial to deal with.

Q Yeah.

A And so he was at the Sunday night meeting. I think he had called me, that he had heard, I'm assuming from either Mr. Cipollone or Mr. Meadows, that it was happening, and had called me and just told me he was going to come to it.

Q Yeah. Did he say why? It was the only meeting in which he shows up.

A Yeah.

Q Why was he there? Did he or others say?

A I don't remember exactly. But I know what he said at the meeting, and that makes me think that he had indicated something along -- you know, that he had previewed where he was coming from, which was that he thought the Department of Justice should be left to do its work in the way that it thinks is appropriate.

Q Yeah. He's actually quite directly critical of Mr. Clark and his credentials during the meeting with the President. Is that right?

A Absolutely correct.

Q Calls him out, saying, "No experience. You're not qualified for this job."

A Yes.

Q Said all that directly to Mr. Clark and to the President in that meeting?

A Yes.

Q Okay. So it sounds like in the meeting everyone agrees but Mr. Clark that it would be a terrible mistake for the President to make that change.

A That's how I remember it, yes.

Q Yeah.

The one quote that I wanted to ask you about is, at some point it's reported that the President says, "I know you, Jeff," pointing or gesturing toward you, "and you're not going to do anything. You don't even know or agree about the election. I don't know

Jeff Clark, but he'll do something about the election," essentially making this juxtaposition between you represent inaction and Clark represents action. So the discussion is not just who's going to serve, but is the Department going to take action?

Is that accurate? Sort of, you and your status is tied to action versus inaction?

A I would agree with that. I think the dialogue that you recited I think is, in substance, right. Again, I don't have a transcript, but it's consistent with how I remember that playing out.

Q Okay.

And, during the meeting, the lone voice for action or for change is Mr. Clark.

A Correct.

Q Do you remember any argument he put forth specifically as to why he could or should be installed and what action he would or should take as a result?

A Well, he made arguments about why the letter would be effective, that he thought it would -- he said that it would set off multiple reactions.

Q So this is the letter that we talked about a little before --

A Yes.

Q -- that you and Mr. Donoghue had clearly said no factual basis and --

A That's right.

Q -- clearly inappropriate for the Department?

A That's right.

Q The letter was back, and at the meeting it's discussed that he would send such a letter?

A Yes.

Q Okay.

A And so he advocated for that.

He also defended his own credentials against some of the attacks that were being made. He argued that the rest of the room were being self-defeating, you know, that, if you don't try it, you don't know what's going to happen, I think was the nature of that.

Let me think. This was a very, very long meeting.

Q Yeah.

A And everybody spoke at one time or another. Some people spoke repeatedly. The President interjected some places. There were a few places he spoke at greater length, but a lot of the meeting, he let other people talk.

Q Uh-huh.

A And so I'm trying to remember the different places that Jeff Clark spoke. Because he spoke more than once. And I have more the image, that he would get in a debate, you know, that Rich Donoghue and he would have back-and-forth, and Steve Engel and he would have back-and-forth, and Eric Herschmann and he would have back-and-forth --

Q Yeah.

A -- that that occurred numerous times.

But the overall substance was, different people in the room were saying, this is not legally well-founded, this is not the Department's role, this letter is inappropriate. They challenged Jeff Clark's qualifications to even be making these arguments. They challenged both whether he was qualified to be Attorney General but also is he even qualified to address election fraud, you know, even from his current position, let's say.

Q Uh-huh.

A And so there's this range of issues.

Now, at more than one juncture, a number of people do raise that, if this goes ahead, there are going to be resignations. And I think lots of people raised that. I let

other people speak to that, for obvious reasons, that they were speaking in support of me, so it wasn't my place to speak to. Jeff Clark didn't speak to that, but I think almost everybody else did. I remember Pat Cipollone spoke to it, Rich Donoghue.

There was one moment where I remember Steve Engel, and Steve was explaining why he thought it was inappropriate for the Department of Justice to be sending a letter to Georgia and that he had multiple reasons for that. And he commented that, if it went, that there would be resignations. And, again, this is in substance. I don't remember the exact words.

And then Steve Engel, when he was saying that, the President said to him, "Well, Steve, you've been at Justice the whole time. You wouldn't resign." And Steve -- I remember this because it was very vivid -- said, "No, Mr. President. If you replace Jeff Rosen with Jeff Clark and send this letter, I would have no choice. I would have to resign."

And the President looked to me, startled, and said, "Steve, you wouldn't resign." And Engel repeated it. He said, "Mr. President, I would have no choice. I would have to resign."

So that was highly corroborative of what had been said by other folks.

Q Uh-huh.

So the only substantive election-related action that was discussed was the sending of the letter? Was there also a discussion of the special counsel or the press conference or the Supreme Court brief, the litany of possible things that had been considered that you mentioned in your opening statement?

A I don't remember them being discussed in individual -- you know, what about the Supreme Court brief --

Q Yeah.

A -- or what about this? I remember at a higher level of generality, that there are more steps. The focus was on the letter --

Q Uh-huh.

A -- and that the letter would produce multiple steps and would, you know, be connected to some kinds of public statements. Because, by definition, the letter wasn't going to stay secret.

So I don't remember it in terms of going back to that Supreme Court brief or something. I remember it just more, there's this one approach that says, in effect, do nothing, and this other approach that says, start taking steps. And the debate was about that. And I think I agreed with your question earlier, that the approach and the people were effectively merged.

Q Yeah.

Well, I don't want to correct you, but when you say "do nothing," at this point the Department had done a great deal already with respect to evaluating claims of election fraud. That had already occurred --

A No, that's right. "Do nothing" is a shorthand for --

Q For prospectively do nothing?

A For prospectively taking steps that would be critical of the election and its validity.

Q I see.

All right. So the President makes a decision in the meeting, basically decides, I'm going to stay put, I'm not going to replace you, Acting Attorney General Rosen, with Mr. Clark.

Did he explain why? What was the reason, if any, he cited as to why he stayed put with you as the leader of the Department?

A He was very conclusory about that. He just made a declarative statement that, all right, we're just not going to do this, we're not going to make a change, something to that effect.

Q Did he cite the resignations or the damage it would do to make a change?

A No, it wasn't -- you know, in a room full of lawyers, you'll forgive me -- it wasn't like a judge that said, here's my opinion, here's where I come out --

Q And here's the reason?

A -- here's the four reasons. It was more declaratory. You know, we'd been there for a long time, I think 2, 2-1/2 hours at that point, something like that, and he just declared, okay, we're not going to make the change.

Q Without explanation? He doesn't tie it to any specific factor?

A No. As I said, he didn't tie it to a statement of reasons.

Q Yeah.

A As I alluded to, there had been a number of fairly memorable moments during the course of the discussion, so everybody there probably has their own perspectives on which one was the key.

Q Uh-huh.

A You know, there were several that I remember really well. Others, not so well, because it was a very long meeting.

Q Yeah.

A The Engel anecdote that I just mentioned. Eric Herschmann and -- he and others, but Eric Herschmann. It was a very vivid attack on Jeff Clark's qualifications.

Q So the reasons put forth were Mr. Clark's personal lack of qualifications or experience with elections; the letter to State officials, again, would not be appropriate institutionally; and the resignations. "Hey, the Department will empty out if this has

occurred."

Those are sort of the main arguments against a change, as you recall?

A Those, but there were a couple of others.

Q Uh-huh.

A Maybe they were slightly abstract, that this is not the right thing to do, this is not in the best interest of the country.

Q Uh-huh.

A I'm trying to remember some specifics.

I mean, there was some discussion, again, that you're getting bad information, that these episodes of alleged fraud, that people have said this, that, or the other incident, those aren't valid. That was repetitive, to some extent, but it did come up again.

Q Uh-huh. Yeah.

A But those are certainly some of the big ones.

Q I see.

After he announced his decision, did Mr. Clark continue to push, continue to argue his case, despite the fact that the President had announced he wouldn't make a change?

A Not when the President said, look, we're just going to -- we're not going to make the change, when he, in effect, announced a decision.

Earlier on, there were some moments where it wasn't clear if maybe we were done, and so Mr. Clark did make a push then.

But he also did the opposite one time, too. I think, you know, you may recall in the Senate hearing, I pointed out that, at one point, he actually said to the President, "I think it's time to call the question."

So there was some of both, you know, of --

Q And what did the President say when he said it was time to call the question? Did he say, "It's my decision as to when to call the question," or something like that?

A He had a facial expression that said that.

Q "Don't tell me when it's time --

A Yeah.

Q -- to decide"?

A Yeah. And the discussion wound up continuing quite a fair amount after that, too, actually.

Q Okay.

A But when the President announced his bottom line, if I can put it that way, I think Mr. Clark was accepting that the President gets to make the call.

Q Yeah.

A It probably wasn't what he had thought -- what he, Jeff Clark, thought going in. But the President gets to make the call.

Q Yeah.

And did that, Mr. Rosen, essentially end it? When I say "it," I mean pushing you allegations of alleged voter fraud or suggestions that the Department should take certain action. I have a sense that this meeting was sort of the punctuation here, that, okay, Department of Justice is not any longer going to be a source of relief for the President.

A I perceive it the way you just said, that that was the end of it. And I would say that's somewhat corroborated by: The President had been calling me with some regularity in those 2 weeks, and after January 3rd he did not.

Q Yeah. No more contact with him until the very last -- well, did you ever have any more contact with the President after that meeting?

A I think, generally, no, except he called, I think, on the 19th. And I think he was calling various Cabinet officers and just saying, "Thank you for your service."

Q Yeah. I see.

How about Mr. Meadows? Did he continue to call you, talk with you, post- this meeting on January 3rd about anything, in particular about the election?

A To my best recollection as I'm sitting here is that he didn't talk to me about the election but he did contact me about some other stuff --

Q Yeah.

A -- including that oversight issue --

Q Got it.

A -- that had not been resolved.

Q Yeah. Which I'm not -- okay.

[Discussion off the record.]

Mr. Rosen. So just a clarification.

BY [REDACTED]:

Q Sure.

A January 6th I think of as being about a riot, but I suppose if you define that as also being about the electoral count -- because that was going on that day --

Q I see.

A -- there was a point in the early afternoon when Mr. Meadows and Mr. Cipollone called me.

Q Uh-huh.

A And we can talk some more about that if you --

Q We will, but [REDACTED] is going to get into that day. I appreciate the clarification.

I just have a couple broad, general questions, and then I'll stop and I'll turn it over again.

Your motivation throughout this, was it to keep your job or to prevent the misuse of the Department of Justice for improper political purposes?

A Well, the latter. As I said before, it was not about me or me keeping my job. There was only a month to go in the administration. And if there had been a decision to have Rich Donoghue or Steve Engel or someone that I thought was very well-qualified and of a similar outlook, I would've said that that's fine. I'm not really the issue.

So it was really more about just I felt strongly then, now -- I think this about all of government -- that the people who serve the public should be doing their utmost best to do the right things for the right reasons --

Q Uh-huh.

A -- to take very seriously their honoring of their obligations under the Constitution and their fidelity of the rule of law. And I just looked at that as an obligation --

Q Yeah.

A -- and one that I wanted to fulfill. And I felt that the people that I was working with, with one exception, had the same perspective.

Q Yeah. And it worked, essentially? The rule of law, in your view, with respect to the Department of Justice, held.

A Right.

Q Yeah.

I was trying to get you before to sort of distinguish Mr. Cipollone from Mr. Meadows in terms of who was a truth teller.

Who else was on the list of people, in your conversations with the President, who were telling the truth, who were saying to him, "Hey, that's incorrect, there's no evidence here," pushing back against some of the theories that you were hearing from him?

A Certainly Mr. Herschmann. I only saw him at that Sunday night meeting, but he was definitely in the category of somebody who was giving very candid and honest advice.

Q Uh-huh. Mr. Cipollone and Mr. Philbin both --

A Yes.

Q -- were in this category?

A Yes.

Q Who else, in your observation?

A You know, this was a pretty short window of time and a pretty limited --

Q It is.

A -- number of observations.

Q A lot happened in that short amount of time.

A Let me think about that. Who else did I even deal with or see in that window of time?

I mean, my general observation was that the people I dealt with in the White House Counsel's Office -- and that was my most frequent contact --

Q Uh-huh.

A -- were people of integrity that were trying to do the right things. But I'm trying to think of names and did they have the role that you're talking about, of needing to speak with the President.

I don't remember anyone other than Mr. Cipollone and Mr. Philbin and --

Q Yeah.

A -- Mr. Herschmann as being in the sessions I was in.

Q Yeah.

How about on the other side? Not necessarily in the sessions, but names that would come up as sources of this opposite view that said, "Hey, there's a lot of fraud, and Department of Justice isn't doing enough"? Who were the voices, in your direct observation or what you've heard, who were pushing those kinds of ideas to the President?

A So some of this would be hearsay and deduction rather than --

Q Uh-huh. That's okay.

A -- observation. But it just seemed to me that the people that were giving the President what I regarded as wrong information were mostly outside of government. They were people that were either affiliated with his campaign or were in some manner purporting to be supporters. But that's where the misinformation, or, at least, information that I did not think was accurate, was coming from.

Within the White House or the administration, I'll give that some thought, but, as I'm sitting here, I'm not perceiving that there are people that are like the campaign people saying that there's fraud.

Q Got it.

A But I have to qualify that, just in candor, that -- let's just say I have a very limited pool of observations. I, at the Justice Department, have an important role, but I don't have daily or hourly visibility in the White House.

Q Yeah.

How about the President himself? Was it your impression that he believed these theories? Was he taking them seriously and giving them credibility?

A Well, as I said, I can tell you the things he was saying, but I don't purport that

I can get in his head or read the mind of President Trump. I think, to some extent, those are the kinds of things that, as you assemble the record of your own work, you're the finder of facts as to what inferences and conclusions come out of it.

Q Yeah.

I asked you this a little bit before, but I'm just trying to get your sense of whether, during your discussions with him, he was more interested in getting to the bottom of the allegations or the Department saying something publicly about the fact that it was looking into these. Which of those goals came up more or seemed to be more important to him?

A I mean, it's really a variant of what I'm just saying, is, I just don't know that I could purport to get into the President's mind.

Q Yeah.

A I can only relate what are the things he said to me in substance.

Q Yeah.

A And I've tried to do that today. But I would not purport that I'm the right person to get inside the President's mind.

Q I completely understand.

██████████ Let me stop and turn first to Ms. Cheney and Mrs. Luria and then around the room.

Ms. Cheney. Mr. Rosen, there were press reports at the time that you took over that describe the President in various ways as agitated, people inside as unnerved. Is that accurate?

Mr. Rosen. There were, yes.

Ms. Cheney. Is it accurate that the President seemed agitated and --

Mr. Rosen. Oh.

Ms. Cheney. -- and unnerved?

Mr. Rosen. So I was aware, in a loose way, because I didn't have time to read every media article or whatever, but sometimes people would bring to my attention a clip or an article or something that would indicate that the President was extremely focused on the election as opposed to other business of government. And I think my conversations with him would corroborate that he was very focused on the election.

In terms of was he disturbed or the like, I can only speak to my own experience, but, in my conversations, I don't remember him ever, you know, raising his voice or shouting at me or being emotional in some way.

So, as I said, I can really only go from my own experience, but I definitely agree that he had a focus on the electoral result.

Ms. Cheney. When you first learned that Mr. Clark had had a meeting at the White House, did you talk to Pat Cipollone about it?

Mr. Rosen. Yes. I don't remember for sure if I called him, but I remember I had a conversation with him about it when he and I had a lunch during the holidays. And it was mostly social, but I had said to him along the lines of, "Did you know Jeff Clark was at a meeting with the President at the White House last week?"

And my recollection is he was as surprised as I was, that that was news to him and was not something that he knew of or had authorized.

Ms. Cheney. And was presumably not in the meeting, as far as you know.

Mr. Rosen. My understanding is he was not at the meeting.

Ms. Cheney. Did you have discussions with Greg Jacob?

Mr. Rosen. Let me think about that. I mean, I know Greg Jacob, but -- the reason I'm pausing is, I can't remember if I spoke with him or if I just heard that Claire Murray or somebody at the Justice Department had spoken with him when the Gohmert

case was filed. Because I think the Vice President's counsel had to weigh in on that and somebody asked the Justice Department to represent him.

I think, in theory -- this is a, you know, legal nuance -- that the Vice President has this -- or you probably have heard of something --

Ms. Cheney. Shh. Shh. Shh. He's a [inaudible] of two branches.

Mr. Rosen. That's right.

So I remember there was some legal thing that had to be sorted out as to whether the Vice President wanted the Justice Department to represent him, but the upshot was he did.

So I can't remember if Greg Jacob would've called me about that and just said, "I want a meeting with the Vice President," or if I heard about that secondhand. But that's the only thing that's coming to mind.

Ms. Cheney. So was there a moment or time before January 6th when you became aware that there were these discussions going on about the Vice President's role on January 6th?

Mr. Rosen. No. I have subsequently, in recent months, seen press accounts about some of this. But I don't think at the time I was aware of this set of issues, other than the Gohmert case. But some of the things that I've subsequently read about John Eastman had a six-page memo and things like that, I don't -- my best recollection is I was not aware of it at the time.

Ms. Cheney. What about, did you become aware of any meetings with Mike Flynn or Lindell at the time, and the President?

Mr. Rosen. So I think some of that was in the public reporting. That's one of the things I was alluding to, I think when I was answering Congresswoman Luria, that there were media accounts out there that some of those people -- I forgot about

Mr. Flynn, but Sidney Powell, Mike Lindell -- there were media accounts of these going on.

I wasn't present at them, and I didn't have anybody reporting to me what happened at them, but I had a just general awareness from media accounts that that has happened.

Ms. Cheney. And did Pat Cipollone ever tell you what he thought about the President's claims about election fraud?

Mr. Rosen. So the way you've stated that, I'm not sure. Because the way the conversations with him went more was that he was supportive of the Department's position, you know, that "the Department should do what you think is right," "I agree the Department should proceed the way you think best."

I would be surprised if he didn't agree on the Department's posture that there had not been widespread fraud, but I don't know if I can specifically remember that or not. But I have more of this big-picture recollection that he was very supportive of the Department and me. And I maybe -- I'm not sure if I assumed he agreed or he said he agreed.

Ms. Cheney. And then my last question: In the meeting on the 3rd, did he speak out and say, I also will resign?

Mr. Rosen. Yes.

Ms. Cheney. And did Pat Philbin as well?

Mr. Rosen. He may have. I think Pat Cipollone recited that lots of people were going to resign and that it would include him. And while I don't have a specific, you know, again, word-for-word kind of recollection, if he did that the way I remember it, I'm sure he would've included Pat Philbin, because they were very closely aligned.

So Pat Cipollone was one of the people who said that there would be lots of

resignations. I remember Rich Donoghue doing that. I remember Steve Engel, and then he personalized it. Probably others. That's what I'm saying. Pat Philbin, probably, but I don't have as clear a recollection.

Ms. Cheney. Okay. That's it.

██████████. ██████████ or ██████████?

██████████. Sure.

BY ██████████:

Q Regarding what I'll call the John Eastman theory that the Vice President can reject electors, to your knowledge, did anybody ask the Office of Legal Counsel at DOJ for an opinion on that?

A Not that I have any recollection of. When I've learned about these things, I have thought, "Gee, would that have occurred?" But I don't have any recollection of being aware that it did.

Q As you referenced earlier, the Vice President, particularly when he's presiding over something like a joint session of Congress, wears these two hats, some Article I, some Article II.

Is there any reason, based on that or anything else, why OLC would not be able to render an opinion regarding the Vice President's role?

A Is there any reason why OLC would not be able to render an opinion? I don't know the answer to that question. I think I just have to say what I said before. I don't have a recollection of being aware that that question went to them or that they answered it.

Q So you talked earlier about the Department of Justice policy on communications with the White House and Congress, which is exhibit 1. Right behind that -- actually, before I move on, other than Jeff Clark, are you aware of anybody at the

Department of Justice who violated this policy with regard to the 2020 election?

A As I sit here today, I don't remember any.

Q Right behind that memo in exhibit 1 should be another memo, this one being a White House memo dated January 27th, 2017 --

A Right.

Q -- from Don McGahn. And the subject is "Communications restrictions with personnel at the Department of Justice."

Is it fair to describe that as being sort of the other side of the coin, meaning it's the White House's policy regarding communications back and forth between the Justice Department and the White House?

A Yes.

Q And if you look at the bottom of page 1, the last sentence says, "The President, Vice President, Counsel to the President, and Deputy Counsel to the President are the only White House individuals who may initiate a conversation with DOJ about a specific case or investigation."

A I see that.

Q Did Mark Meadows comply with that?

A So remember that, in addition to those people, they can authorize somebody. So the President or the White House Counsel can authorize somebody.

And, at some early juncture, I think I asked Pat Cipollone about Meadows and was told that he had been authorized. I don't remember if he was authorized for just this one thing that I was asking about or more broadly, but I have a recollection that I -- because I had raised a concern, which is, are you guys aware Meadows, you know, emailed me or called me or whatever the episode was, and the response I got back was, well, he's been authorized.

Q Did Mr. Cipollone say who had authorized Mr. Meadows to do that?

A He may have, but, unfortunately, as I sit here today, I don't remember if it was the President or the White House Counsel.

Q Presumably those would be the only ones who would have that kind of authority?

A That would be my understanding.

Q Did Mr. Cipollone express any concern about the fact that Mr. Meadows had that authorization?

A Not on the particular incident. He and I had some conversation about making sure that the contacts policy was being adhered to. So I think he was, again, supportive, that he and I agreed we'd want people in the right channels.

But on that particular one that had -- and I wish I could remember what the episode was, but that I had just raised as a concern, he wasn't troubled by that one.

Q Was he concerned, to your knowledge, about any of the communications between Mr. Meadows and the Justice Department regarding the 2020 election?

A You'd probably have to ask him that, in that I don't have a detailed enough recollection about subsequent conversations on that coming up.

Q Leaving aside Mr. Meadows, who may have had authorization pursuant to this memo, are you aware of anybody on the White House staff who acted in violation of this memo with regard to the 2020 election?

A I think that I would need documents to kind of refresh who contacted me and when.

Q Nothing is coming to mind, as you sit here today?

A Not as I sit here right now; nothing is just popping up. But the volume of records and things that I remember looking at as I prepared for the Senate interview and

then this one makes me think that I would need to do that to give you a good answer.

Q If you think of anything later, can you have your counsel let us know?

A Yes.

Q You spoke earlier about the request from Kurt Olsen and others that the Department of Justice initiate an original action in the Supreme Court and your strongly held view that the Justice Department would not have standing to bring such a complaint.

A That was one of several problems with it, but yes.

Q That was going to be my next question. Did you ever have conversations about the merits of such a lawsuit if the Justice Department could get past the standing issue?

A No, because, remember, this was -- we had an initial reaction, this thing is not viable. And then the SG's Office had said, there's multiple legal problems with this. And then I wanted to translate the multiple legal problems into some talking-points type stuff.

So there was never a point where we said, if it weren't for standing, this would be a good case. No, that didn't happen.

Q Do you have a view as to whether, aside from standing, such a case would have any merit?

A Well, I had a view at the time that it was rife with legal problems.

Q In addition to standing?

A Yes.

[Discussion held off record.]

BY ██████████:

Q Do you need a moment?

A Well, I'm just recalling that -- I can't remember if this is in the earlier

interview or not, but there's documents where the Solicitor General's Office and OLC each prepared one-pagers for me. And so I could refer you to those as some of the issues that were problems with the document.

Q Okay. And we have at least the Steve Engel memo. I'm happy to go through it, but if you don't really recall things beyond what's on the face of the memo, I don't want to take up your time.

A Okay. Well, I think the only thing I would add is, so when I called the President, I didn't literally, you know, read the document or something. It was input to me, and then I turned it into, "Mr. President, this is not something we can do."

Q So, in your Senate Judiciary testimony -- and this is at page 158, starting at line 12, which you can find, or I can just read it to you if you'd like.

A Sure.

[2:44 p.m.]

Mr. Rosen. Sure.

BY [REDACTED]:

Q I believe this is referring to January 3rd that Jeff Clark told you, and I'm quoting from the transcript: The schedule had moved up and that the President had decided to offer him -- meaning Mr. Clark -- the position, and he had decided to take it. So that I would be replaced that Sunday, and the Department would chart a different path, closed quote.

Is it fair to say that, by January 3rd, at least, the President had at least preliminarily made a decision to offer the position of Acting Attorney General to Jeff Clark?

A So this is what Jeff Clark told me, but I had not heard that from the President or, really, anybody from the White House. So this is part of why I take the initiative and I say, well, I'm not going to accept that this is the message, or I'll read about it in a tweet or something like that. I called Mr. Meadows and said: I need to see the President. I'm -- the line is drawn now. So the sentence that you read from my earlier testimony is accurate as to what Jeff Clark said.

Q Knowing everything you know now, but for the fact that you reached out to Mr. Meadows and requested a meeting with the President, do you think that the President would have gone through with his plan to appoint Jeff Clark as Acting Attorney General?

A So this goes back, and I apologize for doing this again, but you're asking me the hypothetical counterfactual, and I really think my role is to talk about what actually did happen, what I saw, what I heard, where I was. The what would have happened,

what -- you know, what would have happened in a different world than what actually happened, I understand the question, and I don't mean to be difficult, but I just don't think that's my role as a factual witness.

Q But I do think you may have some facts relevant to that question. So, at the beginning of the meeting on January 3rd, is it fair to say that the President appeared to you to be inclined to replace you with Jeff Clark as Acting Attorney General?

A Well, again, I just -- I would point to what he said and with the qualifier it wasn't literally the first thing, you know, as we entered the room. It was -- there was some table setting and some initial, you know, who's who and some preliminaries, but very, very early in the meeting, the President made these remarks that I've paraphrased. Again, it's not an exact transcript, but where he underscored -- he looked at me and he underscored: Well, the one thing we know is you're not going to do anything. You don't even agree that the concerns that are being presented are valid. And here is someone who has a different view, so why shouldn't I do that, you know? That's how the discussion then proceeded.

I started off by explaining why I thought the course I had was the right one under the law in accordance with the legal merits. It was the best thing for the country and, for those reasons, was also the right thing for him.

Q You testified before the Senate Judiciary Committee, and here I'm referring to the transcript, page 112, lines 14 and 15, and, again, I'll just read you the quote. It's very short. You said, quote: It wasn't necessarily a very encouraging moment earlier, closed quote. So I think you're referring there to early on in the meeting. So was it your sense that your side seemed to be losing early on in the meeting?

A Well, I think you read the right quote. It was not an encouraging start, but it was the right ending.

Q So, as you've described, there are several things that happened that appear to have contributed to the President's decision not to replace you with Jeff Clark. Those would seem to include the fact that Jeff Clark told you about the President's alleged intention to appoint him as Acting Attorney General.

A He did tell me. He did say that.

Q The fact that you reached out to Mr. Meadows to request a meeting with the President; the fact that you, Mr. Donoghue, Mr. Engel, Mr. Cipollone, Mr. Feldman, and Mr. Herschmann were all opposed to appointing Jeff Clark as acting Attorney General; the fact that, as I think you said, multiple people in the meeting said that essentially the senior leadership of the Department of Justice would resign if the President went forward with replacing you as Attorney General.

Ms. Cheney. I think you have to say the word. I'm new at this.

Mr. Rosen. I'm waiting for the -- there's a number of clauses to this thing.

Ms. Cheney. I see that.

Mr. Rosen. He is summarizing various things from earlier discussions about the meeting, and I'm not actually nodding in agreement or disagreement. I'm just saying you're summarizing. I'm following you.

BY [REDACTED]

Q Is it safe to say that there were several things that happened that eventually led to the President deciding not to remove you as Acting Attorney General?

A I think it's accurate to say there was an extensive discussion that included the elements you just walked through, and at the end of that discussion, the President said he wasn't going to make the change.

Q And, regarding that January 3rd meeting where both the draft Jeffrey Clark letter to the Georgia officials and the idea of replacing you as Acting Attorney General

were discussed, you testified before the Senate that those were tied together. In what way were those two things, meaning the draft letter from Jeff Clark and appointing Jeff Clark as Acting Attorney General tied together?

A So I think this goes back to the discussion we had with [REDACTED], that the personnel and the approach were bound together, that it wasn't -- well, here is maybe a simple way to say it. There was no scenario in which he got to keep me and send a letter to Georgia because I'd resign before that happened. And, likewise, Jeff Clark, if he had been chosen, did not indicate that he would be pleased to be the Acting Attorney General and take no actions with respect to the validity of the election.

Q So I know you're reluctant to speculate on what could have happened, but based on what Jeff Clark had said to you, were you under the impression that, if Jeff Clark had been appointed Acting Attorney General, he would have sent the letter or something like it to State officials in Georgia?

A Yeah. I don't -- I'm not speculating there. He advocated that he wanted to do that.

Q And I believe he referred to it or maybe even labeled it at some point as a proof-of-concept letter. Is that correct?

A Yes.

Q And, from that, did you take it that he wanted to send a similar letter to other States as well?

A Yes, because I think he had said that. I don't know if he said it at the meeting or he said that to me and Rich Donoghue in the earlier conversations. But, at some point, I think he had said that, while Georgia was the focal, that he would think that, as you alluded to, it's a proof of concept to do other places as well.

Q And did Jeff Clark ever indicate that if he were appointed Acting Attorney

General, he would state publicly that the 2020 Presidential election was corrupt?

A Maybe not as blunt as you just said it, but --

Q What's the best way to describe it?

A That he advocated not just that the letter be sent but that there be public assertions about the improprieties with regard to the 2020 election.

Q And did Jeff Clark ever express an opinion whether, if he had been appointed Acting Attorney General, he would have the Department of Justice file an original action in the Supreme Court?

A I don't remember the Supreme Court thing coming up at the Sunday night meeting, so I have to harken back to whether I commented on that later on. As I sit here right now, nothing's coming to mind, but that -- that's one I might need to think about.

Q So, regarding the President's suggestion that he might change the Department of Justice's leadership during one of your meetings with the President, Mr. Donoghue's notes indicated that he said something to the -- that he, Mr. Donoghue, said something to the effect of "fine, but that won't change the Department's position."

Do you remember him saying something along those lines?

A Yes. That -- this is in the early phase, right, where we know that Jeff -- at that early phase, we were aware that Jeff Clark had gone to this meeting at the Oval, but we did not have insight that he had a different path in mind. So, when the President raised that comment that -- again, I'm just paraphrasing, that Jeff -- people tell me Jeff Clark is great or whatever, we somewhat discounted that as in, you know, fine. You -- you've met him once. But, you know, the Department's position is the Department's position.

Q So it's certainly understandable that, given what Mr. Donoghue knew at the

time, that he would think that changing the personnel would not change the Department's position. But, knowing everything that subsequently transpired, do you think that he was right to say that changing the personnel would not change the Department's position?

A Well, at the time when I think both Rich and I said variants of that, I think you were referencing around Sunday, December 27th timeframe, that's what we thought. I think at the January 3rd meeting, which is -- I was going to say it's a long time later. It's only a week. It's a week later. Mr. Clark has indicated, has said it, so this was not conjecture. He said he wanted to pursue a different path, including sending that letter to the Georgia legislators.

Q So, given everything you know today, isn't it likely that changing Acting Attorneys General would have changed the Department's approach to matters related to the 2020 election?

A Mr. Clark said that if he were made Acting Attorney General, he wanted to send that letter.

Q So you said earlier that the Department of Justice maintained its integrity and maintained the rule of law.

A Right.

Q Do you have any concern that, if Jeff Clark had been appointed Acting Attorney General, that the Department would not have been able to maintain the rule of law?

A Well, in terms of what I said, I was talking again about what did happen, not about the what if, if a different outcome had occurred. So the point I was making is that the steps we took did, in fact, result in the circumstance to where the Department maintained its obligations under the Constitution and consistent with the rule of law. Is

it possible that if there -- if things had gone differently, you know, of course. Anything is possible if it didn't go the way it actually did go.

██████████: Can I have just a minute?

Ms. Cheney. You can, but I have another question I'm going to ask first.

██████████: Go ahead.

Ms. Cheney. Do you want a break?

Mr. Brown. Yeah. We'd like a break.

██████████: Sure. Not a problem. We'll take 5 or 10 minutes.

Mr. Brown. Thanks. Great.

[Recess.]

██████████: Let's go back on the record. So we're close, promise, to finishing with this election-related stuff. ██████████ has a couple more questions to follow up on.

██████████: I didn't know if Congresswoman Cheney wanted to ask anything first.

Ms. Cheney. Oh.

Just back on an issue, and I understand we are asking you to speculate, but your request for an emergency meeting on a Sunday in the Oval Office with the President and the fact that you had the entire leadership of the Department of Justice threaten to resign, senior members, including White House counsel, threaten to resign, that would only happen if you considered this to be a threat, that there was something very serious that you needed to address. Is that right?

Mr. Rosen. Yes. Jeff Clark had told me that the President was going to replace me that day. So I didn't know if that was accurate or not or if that was just his perception or if that was something the President had said. But, if that was going to happen, then I wanted to speak to the President first. So that's why I requested a meeting that very day, but it was -- it hinged on what Jeff Clark told me.

Ms. Cheney. And you said before that, if that were going to happen and you were going to be replaced by Donoghue or Engel, that, you know, that would not have caused you concern.

Mr. Rosen. That's right.

Ms. Cheney. So the threat here, the concern here, the fear that drove you to ask for this meeting was the potential for replacement by Jeff Clark. Is that accurate?

Mr. Rosen. Yes.

Ms. Cheney. Okay. That's all.

██████████. Okay.

BY ██████████:

Q Mr. Rosen, during your tenure as Acting Attorney General of the United States, were you involved in any discussions about the potential invocation of the 25th Amendment of the U.S. Constitution?

A So I understand why that was an issue because, after January 6th, the next -- in the aftermath the next day and the next several days, people were justifiably very upset, but I don't recall ever having had any discussions about that.

Q And, presumably, if you had had such discussions on a matter of that magnitude, you'd remember it. Is that right?

A I tend to think I would.

Q Did you ever have any discussions about the possible use of the Insurrection Act?

A Not that I recall.

Q Did you have any discussions about the potential for the President to establish martial law?

A Not that I recall.

██████████ That's all I have.

BY ██████████:

Q Very quickly.

So, as I understand it, on December 29th, Molly Michael, the President's assistant, emailed you a draft complaint of the original jurisdiction complaint for the Supreme Court. Is that right? You remember that?

A Yes.

Q Okay. And, later that day, I believe you received a text message from a person named Bill Olson saying that the President has instructed Kurt Olson to meet with you about this complaint. Is that right?

A Gee. Can you refresh me on that?

Q Well, I guess what I'm getting to is, did Kurt Olson ultimately reach you about this Supreme Court case?

A Yes. Yes. My recollection is that Kurt Olson had called all around the Department. He called John Moran, who was then my Chief of Staff. He called Jeff Wall. He called all over the place saying he has this urgent need to talk to me, but I had not actually agreed to talk to him or taking the meeting, and then somehow he got my cell phone. And my best recollection is that I didn't recognize it. So I picked up, and he was there.

Q Okay. And, just to be clear, Kurt Olson is not a Department of Justice employee?

A He's not. He's not.

Q Okay. When you spoke to Mr. Olson after picking up, did he say who his client was, who he was representing?

A So let me take a half step back. There's actually two calls with him.

There's one on the Tuesday and one on the Wednesday. Well, the Wednesday is the one we talked about some notes on earlier, the gist of which is I say: You're out of this conversation.

He had said something to the effect that the President wants you to file this case by noon today, and I said: Oh, yeah? He hasn't said that to me, and I'm not going to have this conversation with you.

The first conversation, which is what I think you and I were talking about, I think he initially had some small talk and then wanted to talk about the brief. And I said to him -- I think he shared that he had been counsel or one of the counsel on Texas' lawsuit against Pennsylvania that the Supreme Court had rejected, and that had been, as I understood it, rejected at least in part on standing grounds. So I think I said to him: You have a standing problem. You have a standing problem, you know. I mean, you're not going to be able to get around that.

And he was purporting at that time that he had talked to the President, but I think I challenged him: Is the President your client?

And he gave evasive answers, you know: I think I've told you what I'm doing -- or, you know, something like that. So that first call ended on the -- I've said before, from my vantage point, something of a polite brush off, like: Okay. You got me. You say that you're helping the President do a case like the Texas case. You've got a standing problem. See ya, you know.

And -- but he tried again the next day, and that was a more contentious kind of call.

Q Okay. So did he -- and just to clarify, did he say he's representing the President in his personal capacity, the campaign? Did he say anything like that?

A He had said the President wants this, you know. The President wants this

filed. And so I was challenging him. Well, who are you, you know? The President didn't tell me that. Who are you? And, when challenged, he would give answers like, I've told you who I'm speaking for or something like that. So I think he was purporting to represent the President, but when I subsequently spoke to the President, the President didn't say, why didn't you do what Kurt Olson asked or anything like that? Kurt Olson didn't even come up in that -- in the call with the President.

Q Okay. And is it fair to say that, outside of maybe the qui tam context, the responsibility for drafting complaints on behalf of the United States is a responsibility for the Department of Justice and not private attorneys?

A In general, I think that's true, particularly as to the drafting. However, in the Supreme Court, I think there is a process of consultation where sometimes when the government is trying to decide whether to intervene in the case or take a position in the case, there sometimes are consultations with either States, if the States are affected, or sometimes private parties. So there's nuance to this. But, as to drafting a government brief, I think you're right.

Q And, to be clear, Kurt Olson wasn't asking you to intervene in a case. This was on behalf of the United States original jurisdiction of the Supreme Court, correct?

A That's right.

██████████. That's all.

██████████ All right. Anybody else? No?

All right. Let's move on now to more January 6th specific stuff. My colleague,

██████████ is going to move it forward.

BY ██████████:

Q I just want to begin with I do have your House testimony. I reviewed it, and I just want to use that as a guide map for the interview. Hopefully, we can move

through it pretty fast because of what you've already testified to.

A Great.

Q We're going to begin with the preparations for January 6th, but I wanted to take a step back and start with the November 12th and the December 14th marches that occurred, the Million MAGA Marches, I believe they were referred to. What was your role at the Department at that time? This would be --

A For both of those, I was Deputy Attorney General.

Q And were you familiar with any involvement the DOJ had in those two rallies?

A At a very high level in that the -- you know, demonstrations, rallies, protests in the district are relatively common. And so the U.S. attorney and the Department's law enforcement components, specifically FBI and ATF and the U.S. Marshals, often are in coordination with the police just to see are there things you need? Are there things we have to anticipate? The U.S. attorney in particular as to those, my recollection, was the one coordinating because if there were problems, the U.S. attorney is the one who would prosecute any violence or vandalism or other crimes.

Q And that would be Michael Sherwin at the time --

A Yes.

Q -- in the District of Columbia?

A Yes.

Q Were you aware of incidents of violence that occurred during those two rallies?

A Yes. The -- I think it's the second one. There was some counter demonstrators in what I would characterize as scuffles at hotels, one or more hotels, between the protesters and counter protesters. I don't remember a lot of details about

those, but I have some recollection that the U.S. attorney did bring some charges.

Q Do you remember if a SIOC was set up for either of those rallies?

A I believe there was not.

Q I'm just going to move forward, then, to when the preparations began specifically for January 6th. You said in your statement to the House committee that formal information coordination activities among DOJ and its components, as well as local folks, began during the week of December 28th. Is that correct?

A Yes.

Q And we don't need to go through all these exhibits, of course, but exhibit 22, which I believe you have in front of you, was an email from yourself to Michael Sherwin --

A Uh-huh.

Q -- concerning specifically January 6th. Do you know what prompted you to send that --

A Yes.

Q -- email at that time?

A I do. So I think just before Christmas, we had some awareness of another one of these rallies. I don't remember if it was through news accounts or a tweet or what, but there was some suggestion that people were going to come for another -- I can't remember. Was it maybe "stop the steal" or something like that. And so Mike was -- Mike Sherwin was headed out of town, but I told him over the holidays, I want to talk. We should just make sure that all the normal things are being done, we give this some attention, and he was in agreement with that.

So I had tried to reach him, I think, on Tuesday, and I had missed him. So I asked my assistant to just set up a time and -- so we could talk because the U.S. Attorney's Office, as I said, coordinates closely with all the police departments because they would

prosecute in D.C. both locally and Federal charges referred by any of the police. So I had asked Mike to make sure that all appropriate coordination was underway and to let me know if there were anyone indicating they need help, resources, whatever.

Q Let me just stop you there for a second. You mentioned news reports triggered this call to Michael Sherwin.

A Uh-huh.

Q Did you learn anything in any briefing that would -- that raised a concern with you?

A No. It was the other way. It was that I learned there was another rally coming, and that caused me to say I know all the folks in the Department are very professional, and they know their jobs, but I just want to make sure this is getting some attention for my own satisfaction that I know everybody's doing what they need to do, so --

Q Do you -- sorry to interrupt.

A I did that with Mike. Yeah. I'm sorry. I did this with Mike. I also did this with the FBI.

Q Great. And was there anything in the news reports that you were seeing outside of your capacity as the Attorney General at that time that raised this concern with you?

A Nothing I could point to specific. I think that, because there had been some confrontations or violence at the previous ones and that I wanted to make sure I understood what kind of numbers were coming -- the previous ones had not been -- they had -- they were sizable, but they were not tens of thousands. And so I was more interested in what do we know about this, and let's make sure people are paying attention.

Q Did Michael Sherwin share your concern about the upcoming rally?

A I think so. I mean, he was responsive. He was: I agree with you, you know. We'll be on top of this.

Q And did you learn anything from the FBI about any potential specific concern for the potential for violence on January 6th?

A Well, so these initial ones, I would characterize them as more touching base, just making sure that other people are thinking about the issues. So I talked to somebody at the FBI. I can't remember if this is right before Christmas or after, but it was the same thing, you know. Is everybody on top of this stuff? And I just got what I'd call a summary, yes, you know. We're aware.

Q Would your contact at the FBI be Director Wray, or would you have reached out to David Bowdich?

A It could be either, and it depended a little bit on holiday schedules.

Q Fair enough.

A And in what I'll call this pre-December 28th, I don't have a clear recollection which of them it was. I think the week of -- between the holidays, I think Director Wray was away, and, actually, Mike Sherwin was away, but he was doing a lot of things by conference call, which is why -- I knew he was working I guess is the way I'll put it. Director Wray is always working.

But, in that week, as I said in the House testimony, the efforts accelerated as in this email in exhibit 22. I wanted to get Mike on the phone and just get an update, you know: What's going to happen this week? What do we know? What -- are there any crowd estimates? That type of thing.

Q I believe, from the exhibits -- we put in your calendar, actually, so that will be part of the record, which goes from December 14th until I believe January 6th. But one

of the calendar entries is that December 30th call you had with Michael Sherwin about January 6th. And, on that call, do you remember -- do you remember during that call whether there was any raised concern about anything specifically, or did you end that call feeling that preparations had begun?

A Both. I received a report that the preparations had begun, and he indicated to me that there were going to be -- well, a multi-agency coordination, that in addition to his office coordinating with the police, they were going to set up some conference calls. And I can't remember if it's on that Wednesday or a couple of days later because he did wind up checking in afterwards.

But I learned that the Metro Police were setting up a joint operations center and that the FBI had set up at the Washington field office a command post to enable the police, the DOJ law enforcement agencies, and DHS and I think the Park Police to, you know, sit side by side and have daily coordination.

Q At some point, as you said in your House testimony, the DOJ components were activated to prepare for January 6th.

A Yes.

Q When was that decision made?

A I couldn't put a day on it as I sit here now, but it was, you know, within a week of January 6th.

Q And was that a decision from the Bureau, or was it coming from yourself or Mr. Donoghue?

A It was hybrid in the sense that we, Mr. Donoghue and I, gave a general direction that we wanted everybody to be maximally prepared to do things, but we left it to them to implement, you know, what -- does that mean they're going to add extra SWAT teams or -- the operational and tactical parts were really their responsibility, but

we gave general top-down direction. We wanted full preparedness.

Q And which components were called upon to do so?

A FBI was the main one, but also ATF -- Alcohol, Tobacco, Firearms -- U.S. Marshals. I think Rich Donoghue spoke with DEA, but that was very conditional because they're less well-equipped is the way I would put it.

Q Right. So that brings us to the end of December, December 30th, and then we go into a different phase now, the beginning of the first week of January. Is there a call on January 3rd with the Department of Defense?

A And others. So we have two calls on Sunday and Monday, the 3rd and the 4th, with the Defense Department, the Homeland Security Department, Interior. I believe Secretary Berner was on those calls and somebody from the Park Police. My best recollection is that Robert O'Brien, the White House national security counselor/homeland security advisor. The first day me and Rich Donoghue. The second day I had asked David Bowdich and Mike Sherwin to join as well.

Q On the first call, the January 3rd call, to start with that, who initiated that call?

A Secretary Miller. Acting Secretary Miller of DOD.

Q Generally, what was discussed, from your memory?

A Two -- there were two general topics. One was that DOD -- DOD had not been part of -- and I'm talking really DOD's responsibility is the National Guard. They -- I think -- I don't think I learned this until later, but as it turned out, they had not been part of either the MPD, JOCC, nor the WFO, FBI post. So they didn't know about the coordination activities that were going on to find how we share information and any needs for assistance.

So they wanted to get plugged into things, and they were proposing that the FBI

set up a SIOC, a coordination center at the FBI. SIOC is an acronym for -- I believe it's Strategic Information and Operations Center. So they wanted to raise, I think not knowing that there were already MPD and FBI command posts, having a SIOC.

And the -- I think the other issue of discussion was we were -- this merges a couple of issues, but we were comparing what we knew about crowd size estimates, and I think we and maybe DHS were concerned that all contingencies be planned for where the National Guard might be needed, and they were concerned that the National Guard should be the last line, you know. The law enforcement support for the police should come before them. So those were the initial discussions on Sunday. They got resolved on Monday.

Q Okay. Let me start with the two issues that you brought up. So DOD asked for a SIOC to be set up --

A Yes.

Q -- as you just mentioned. On January 3rd, had a decision been made that you know of about whether the Bureau would set up a SIOC?

A So, at that point, the Bureau did not think that was necessary because they had the Washington field office command post. They had everyone there. And they would -- their -- if I recall correctly, their thought was they used the National Coordination Center, the SIOC, for multicity, multiday events. And this was a local D.C. event, and so normally they would do that out of the Washington field office. So initially they were -- the FBI was resistant to the SIOC.

Q Ultimately, a SIOC was set up.

A Yes, uh-huh.

Q We'll get to that.

A We'll come to that.

Q On the second aspect of that that you mentioned, DOD was concerned about contingency plans; they didn't want the National Guard to be used unless it was a last --

A That's right.

Q -- resort. Is that right?

A Yes.

Q As part of that conversation, did they ask if DOJ was going to be the civilian lead for the operations?

A So that's not really a term that I used, but I think you may be right that they raised it. That became something we had longer conversation about on Monday. On Sunday, they used that pretty much as the SIOC. We want you to be the lead and to set up a SIOC.

Q Okay.

A And so, initially, at least the way I construed it, those were synonymous: Are you going to run the SIOC?

Q I see. So, in your recollection, they used the phrase "SIOC." I just want to point out, and I can provide them to you if you don't have them, Rich Donoghue's notes from that meeting. Do you want to look at them?

A Yeah. I don't think I've seen those.

Q Sure. In that -- I can hand these over to you. This would be January 3rd at the top.

[REDACTED]. Are they in the binder?

[REDACTED]. No. I did not provide these. Sorry --

[REDACTED]. -- binder --

[REDACTED]. -- I'm going to mark that as an exhibit --

Mr. Rosen. So one thing I should just mention is just so I can see which these are is I -- there were both these multi-agency calls --

BY [REDACTED]:

Q Right.

A -- but I also had calls with just Secretary Miller and myself after both Sunday and Monday.

Q Okay.

A So I'm going to look at this, but do you know of the notes from the Miller call or from the multi-agency calls?

Q This is from the multi-agency calls where Rich Donoghue was on.

I actually only have one copy.

[REDACTED]. Okay.

BY [REDACTED]:

Q From the notes, it says -- this is again from what he wrote down. DOD asked for civilian lead for ops in D.C., asked if DOJ is willing to do that as they did in Lafayette Square.

A Oh, okay.

Q Do you see that?

A I do. Now that I see that, that reminds me. I said that we did not think we were going to do things like Lafayette Square.

Q Right. So Rich has put in these notes, it says: Not prepared to do that now.

Is that your recollection of what your response was too?

A Yes, because I felt that they were merging some things that didn't have to go together. They were asking for coordination through a SIOC, but we already had a WFO

command post. They wanted to make sure that that they were plugged into the discussions other people were having. I was sympathetic to that, but the FBI didn't think the SIOC was the way to do that.

And then when they brought up they want to do it like Lafayette Square, I said: First of all, that's a totally different kind of situation, but that's -- that -- no, not going to commit to doing it like that, you know.

Q Can you explain why? Well, first, you said it was a totally different situation. Can you expand on that?

A Well, at least the way I remember it is that Lafayette Square came up after there had been some days of violence, one or more. I'm now blocking if it was the second day or the third day, but it was a situation where there had been multicity violence, and there had already been violence in the District.

And the -- this was going -- Lafayette Square was going to be by the White House, and I had not been involved in the operational or tactical part of Lafayette Square, but my loose understanding had been that that had been handled on an ad hoc way. It wasn't -- I'll call it just standard. I could be wrong about that because I wasn't closely involved, but I wanted to get across to the Defense Department that that's not how we want to do this. We want to use the conventional approach as -- that the police are responsible, and we're going to provide support.

Q From what you did observe during the summer of 2020, the protests that occurred, did DOJ serve as the coordinator of the Federal agencies that responded?

A I would say that the circumstances varied because that was a multicity thing. We did run a SIOC, but there were some places, Minneapolis comes to mind, where large numbers of National Guard troops were called out by the Governor and other places like Oregon where the Governor would not call out the National Guard, and DHS actually

wound up with the lead. But DOJ had a support role at the courthouse with the U.S. Marshals. So these things varied, and that was one of my concerns is so saying we're going to do it like Lafayette Park, that's apples and oranges.

Q What occurred in D.C. during the summer, though? You said, in Portland, I think you just said, DHS took on the lead. Was there a lead during the summer?

A See, to me, there's some semantics here, and the use of "lead" doesn't actually help. What we really have to define is who's doing what? What are people's roles and responsibilities? And so that's where we tried to move the conversation to and is part of why I asked Dave Bowdich and Mike Sherwin to join the Monday call because they're more operational.

Q Got it. Before we go to that Monday call, though, just to wrap up kind of the summer aspect of it, what would you say was the role and responsibility of DOJ during the summer in D.C.?

A There were -- the thing I was most familiar with, but this is not the most germane part, was the arrests and prosecutions because I was less involved in the tactical and the coordination among the policing part of things. So I don't have -- I'm not the ideal person to kind of walk through how the stuff in the summer was all done --

Q Uh-huh.

A -- because I was more focused on the prosecutorial aspect in the different cities. But we did run a SIOC for an extended period of time at the FBI.

Q And, from your memory, was DOD a part of that SIOC?

A I think so for at least part of the time and because the National Guard was heavily involved in some locations.

Q And, before we move to January 4th, I just want to be clear: As of January 3rd, a SIOC was not going to be set up, but a Washington field office command post was

to be set up?

A Yes, which was a coordination. It's information sharing.

Q Right. But there's a significant difference between the FBI headquarters' SIOC versus the field office's command post. Is that fair to say?

A Not in this context. Conceptually, at least the way it was explained to me, is the SIOC tends to be multicity, multi-event on pretty multiple days. But that is when they tend to use it versus single incidents, single city kind of thing where we use the field office. But in this instance, the -- they were really the same. They're just a way to have people in a room so you can share information quickly and stay abreast.

Q And, at that time, the thought on January 3rd was the Washington field office command post would suffice for January 6th?

A That -- that's how I understood the Bureau's preference.

Q There's obviously these kind of comparing narratives, what DOD thought DOJ's role was, and I want to talk about that a little bit more. But, on January 3rd, do you know who hosted that call? You said it was initiated by Secretary Miller. Was there anyone from the White House on that call?

A I believe -- from memory, I -- my best recollection is that Robert O'Brien was on the call.

Q Apart from him, do you remember if there was anyone else?

A Not that I remember, but I think most of the principals did have staff with them, so it's possible he did, and I just don't remember who it was.

Q And from DOD's review of the events of January 6th, they believed that, as of January 3rd, as a result of that call, the Department of Justice was designated as the lead Federal agency. You're shaking your head now vigorously. If you could expand on that.

A So -- yeah. So, remember. There's a call on the 3rd. There's a call on the 4th, the afternoon of the 4th, and I speak to Secretary Miller after both of those. So the first call ends with some indeterminateness that -- sorry. I dropped a piece of paper.

So the first call more surfaces the issues, and the way I remember it, and I have to look at Rich Donoghue's notes here because I don't think I've seen these before, is -- one request is that there be a SIOC, and the other is this general concern about the National Guard as the last resort kind of thing.

So I have a meeting with the FBI on Monday morning. That first call's a Sunday. And I talk to them generally about the issues, and then I also ask Dave Bowdich to join me for the second call because it's already scheduled. And I then I believe I asked Mike Sherwin, who was back in D.C., to join as well along with me and Rich Donoghue.

So, the second call, we have very explicit conversation about who's doing what; what are the roles and responsibilities that the -- so we have some discussion about the crowd size because there's different but similar estimates, 10- to 20,000, 10- to 30,000, something along those lines. But discussion about we need to -- the police are reporting that, if it's 10- to 30,000, they have it in hand, that it's -- they've handled that before. At least this is what's coming to me, and this is what's being discussed on the call, that if it's 10- to 30,000, but if it's more than that, people have to think about the contingencies. And DHS can provide support, the FBI and other DOJ agencies can provide some support, but we have limited numbers of people. And, in particular, what DOJ doesn't have is anyone, or at least any meaningful numbers, who do crowd control or street policing, that the National Guard are the ones who have the numbers. So the way this discussion goes --

Q And I'm sorry to stop you. So this would be the January 4th discussion --

A Yes.

Q -- you're discussing?

A Yes.

Q So one -- just one quick question before we switch to January 4th. You said, after the call on January 3rd, you had a direct call with Secretary Miller.

A Yeah.

Q Do you remember what was discussed on that call, before we get to January 4th?

A I think he and I actually tended to see things alike, and I think that the nature of that call -- I don't remember what the specifics was: It sounds like there's some issues here that we should be able to solve, you know. Let's get with our teams and solve this.

Q Okay. So -- sorry. Before we go into the January 4th call with DOD, and I believe you had a call with Michael Sherwin before that DOD call, so we can talk about that as well. But, at the end of January 3rd, just so I'm clear, DOD thinks that the DOJ's been designated as a result of that --

A If they're saying that, I don't know why they're saying that.

Q But you -- but that's not your understanding?

A That's not my understanding.

Q Okay. Did you hear from anyone at the White House concerning this so-called designation? And I understand it's semantics, but we'll adopt their terminology.

A Not that I recall.

Q Did anyone at DOD on January 3rd inform you we learned that you were the -- you've been designated as the lead?

A No, because on the 3rd, I had the multi-agency call and I had the call with

Secretary Miller, and in neither of those had the FBI or DOJ agreed to be in any kind of lead. We hadn't even agreed to establish the SIOC.

Q So just --

A And --

Q Sorry. One more aspect before we get to January 3rd. From DOD's perspective, one of -- they had a request from Mayor Bowser for the D.C. National Guard, as you're aware of. One of the conditions Secretary McCarthy put forth for approving the request was that a lead Federal agency would be named other than -- other than Department of Defense.

A So I haven't heard that, but that would seem, if we put the semantics aside, consistent with their desire to have the National Guard be the last resort rather than earlier in the queue, let's say.

Q And, just, again, focusing on January 3rd, is it possible that the White House had informed DOD about this "designation," in quotes, and not informed DOJ?

A It just didn't seem like that's how things would work. Why would the White House be doing any designation? Again, this is a protest in the Capitol where the three police departments are responsible for the security and crowd control, and so it doesn't make sense to me that the White House would do anything on that.

Their main -- from a legal point of view, their main authority is to enable the use of the National Guard, and it's my understanding, and I don't remember if it's from what I knew later, that the President had authorized the use of the National Guard on Sunday.

Q So I think, and I'm paraphrasing what you're saying, but it would be unusual for the White House to be involved in making such designations?

A Yes, with a caveat, the caveat being there's a different category of things than demonstrations in the Capitol where there are national special security events.

And DHS really designates those, but I think the statutory authority is the President or DHS.

[3:52 p.m.]

BY [REDACTED]

Q Correct. You're talking about the NSSE.

A Yeah, yeah, for NSSE. Now, I'm not aware of anybody having asked for this rally to be an NSSE. There's usually one or two NSSEs a year, and they're -- the inauguration was one.

Q Correct.

A But the rallies and protest and demonstrations, I'm not aware of any of them having been an NSSE.

Q So all of this is news to DOJ about the designation on January 3rd? And we can move off this.

A It's -- at least it's not the way I remember it.

Q Okay.

I just want to enter this exhibit that's the January -- it's exhibit 26, which is a letter from Secretary McCarthy to yourself.

A So, before we do that --

Q Sure.

A -- should I just finish getting into the January 4th stuff?

Q Yep, yes, we can jump ahead to --

A Because I think I can talk about the --

Q Sure.

A -- McCarthy letter pretty simply.

Q Yep.

A So we had this call on the 4th. And, at my request, Dave Bowdich really

lays out -- we decided that we would agree to set up a SIOC, albeit it was going to start on Tuesday afternoon, January 5th, and go 24/7 through January 6th, but that it was largely going to fold in DOD to the existing coordination discussions that had gone on, that if they want to go to FBI headquarters and be in the SIOC and have people there, fine, but we put on the screen, in essence -- I wasn't there, so I'm probably getting a little beyond my personal knowledge here, but -- they would plug in the WFO command post coordination activities.

Q So was there anything specific that led to deciding to set up a SIOC?

A That DOD had requested it, and we decided to make that as a concession.

But, in the course of doing that -- this is where I was going -- Dave Bowdich laid out and I reinforced: Look, here's what we do, here's what we don't do, here's what we need other people to do.

So we start with step one, which is the Park Police are responsible for the Federal grounds; the MPD are responsible for the city and its streets; and the Capitol Police have the Capitol. And, of course, they're the legislative branch. So DOJ and DHS provide support.

And Chad Wolf was on this call too, by the way, so DHS is in this, as was Interior.

So Bowdich lays out: DOJ does crime intelligence, and we share that. By the way, DHS does that too and they share it. So we will do crime intelligence. We will do information sharing. We're already doing it. That is, we will share the intelligence, and we will share -- we will get people in a room together, as in the command post and then the SIOC, so that, if there's new information on crowd size, not just crime intelligence but operational aspects of the rally, we will do information sharing.

We are always the lead on prosecution, because we're the only ones who can do prosecutions in the District, at least the felonies.

And so Dave Bowdich sets out, those are the three things we do.

Now, the police are the first of these. If something goes wrong, if the crowd size is way different than we expect, then -- we have tactical support, DHS has some tactical support, but we don't do crowd control and street policing. We don't have the people to do that. We have, by and large, detectives and prosecutors. And so we were very explicit about that --

Q Okay. And -- sorry -- let me just make sure we're clear on that. This is the January 4th 5:30 call with Department of Defense, correct?

A Yes.

Q And you said Chad Wolf was on it. Do you remember who else was on that call from DOD?

A So my recollection is, it's the same group as the day before. It could've varied by -- some variation, as in I added Dave Bowdich and Mike Sherwin. The DHS and Interior people, I don't remember who were with their Cabinet officers, but Secretary Bernhardt and Secretary Wolf were on the call. I think Robert O'Brien was on again. And DOD Acting Secretary Miller was on the call. But DOD had more people than the rest of us. They had, you know, a number of the military chain of command were on the call. They probably identified them, but I don't remember who was who.

Q Do you remember if General Milley was on that call?

A I think probably, but I couldn't say for certain.

Q Do you remember if Kash Patel, the chief of staff for the Defense Secretary, was there?

A Again, that would seem reasonable. But what I remember is it was just Acting Secretary Miller and, I would say, a dozen DOD people.

Q Well, we might just take a second here. I handed your counsel the January

4th notes from Rich Donoghue, which, in essence, describes exactly what you just stated, that Mr. Bowdich had outlined four buckets of, kind of, aspects for January 6th: intel, command posts, and investigations. Is that --

A Investigations and prosecutions, yeah.

Q Investigations and prosecutions.

And is it fair to say DOJ agreed that you would take the lead on three of those buckets, meaning intel, command posts, and prosecutions?

A Yes.

Q But not the street.

A Correct. We would not be responsible for crowd control or street policing.

And if there were contingencies -- nobody knew at that point exactly what they were, right? There could be violence at the Ellipse. There could be violence at the Capitol -- that we and DHS could provide some tactical support. But if the numbers -- and, at the time, we were thinking numbers. We weren't thinking about what actually happened, necessarily, but just -- then the National Guard has to be available.

And DOD's posture was, okay, we get that, but National Guard should be last resort. And nobody was really fighting that. It was more just, okay, so let's plug DOD, through the SIOC, into the coordination mechanisms, and then let's understand people's roles and responsibilities.

And we're all in a support function, because the police, in their respective jurisdictions, are the front line. Everyone else is support and assistance. But DOD has much larger numbers, if it comes to it.

And so I never -- I don't recall, at least -- and I hope the notes corroborate this -- I don't recall ever agreeing or saying we're the lead agency, because that obfuscates. I

think Dave Bowdich and I were making the point, what are everyone's roles and responsibilities, so everyone can do their jobs? And so that's how we approached it.

And, you know, as I said at the top of the whole thing --

Q Uh-huh.

A -- I think, while DOJ was in a support role that day, we did what we were supposed to do. We had prepared and we supplied assistance to restore order at the Capitol -- not exclusively. MPD and DHS and, you know, lots of people sent help, but we did our part.

Q Do you remember if DOD again brought up the role of the Department of Justice during the summer in that call, on the January 4th call?

A I don't. Do the notes suggest it? I don't remember that.

Q Mr. Donoghue's notes reflect a breakdown of DOJ's components, if you want to take a minute and look at that.

A Can you point me a little bit to --

Q Sure. It's at the bottom. It says -- the right-hand -- Mr. Donoghue's handwriting is a little bit confusing here, but it says, "Summer," and then it breaks down: 500 Park Police, 160 -- 600 Capitol Police, 475 -- hopefully we're looking at the same notes. Do --

A Yeah.

Q -- you see that?

A Yeah, I don't know what that is. Is that "Chairman"?

Q It then goes on to say, "8,000 available in NCR."

And then Mr. Donoghue's notes says, "... therefore, should be plenty of forces available without using Federal military troops."

Do you remember that discussion?

A So I don't remember the numbers, but I do remember the discussion that the National Guard should be the last resort, because the police have plenty of people, you guys at DHS and DOJ should be able to supply people, and since the crowd estimate is 10,000 to 30,000, it just shouldn't have to get to DOD.

I did push back on that, as in, I don't disagree with the principle -- the military is certainly not the first resort in a domestic violence -- but that we had to prepare for contingencies. What if it didn't all go according to script, you know, the way the first two had gone, in a fairly conventional way? A little bit of street violence, or violence at a hotel, if I remember correctly. But, look, the what-ifs, then the people that have the big numbers are the National Guard.

Q And what was the response to --

A So the way I remember that is what I'd call a grudging "you have a point, but we shouldn't get there, you know, we shouldn't need to get there" kind of thing.

And when I spoke to Secretary Miller afterwards, he -- as I said, he and I tended to see eye-to-eye pretty well, and I think he was appreciative that we had agreed to do the SIOC and plug them into the information sharing. And he agreed with me that they should think through the contingencies. So he was supportive of that and said, basically, you know, we understand.

Now, what the contingencies were, of course, is hard to foretell. But the one I was most concerned about, which turned out actually not to be the issue, was, what if there's 10 times as many people as the estimates, or something like that.

So he said, you've raised good points -- you know, again, I'm paraphrasing. I can't say these are quotes. But I think we had what I perceived as agreement. We get what everyone's roles and responsibilities are. We do agree the National Guard's not the first line of call. But if there's contingencies, everybody's got to do their part.

Q And did you feel, at the end of that January 3rd interagency call, your direct call with Secretary Miller, then the January 4th interagency call, and your direct call with Secretary Miller, that DOJ and DOD were on the same page going into January 6th?

A I did. I did. I thought we had had constructive conversations and had reached an understanding along the lines I said, that we're in support roles to the police, but, in the support roles, here's what DOJ does, here's what other people have to do, here's dealing with contingencies.

Q You wanted to talk about exhibit 26, the letter from Secretary McCarthy.

A Yeah.

Q I just understand this to be the -- well, what did you understand this to be, as far as why Secretary McCarthy --

A Yeah. So I brought along -- because I thought this was going to come up -- Executive Order 11485. I can pass that over to you.

Q Sure. Thank you.

A So there's a 1969 executive order. You know, back in the late '60s, the National Guard did wind up being used for some riot control. And there was an executive order put in. It actually replaced an earlier one from the early '60s, but this one from 1969 has been in effect ever since.

And it sets out that the Secretary of Defense is authorized and directed to supervise, administer, and control the Army National Guard and Air National Guard for uses in civilian disturbances.

But there is a section that calls for the Attorney General to be able to advise the President about the legal alternatives and if there's any impediments to using the National Guard.

So there's a longstanding practice -- and this is really more of an OLC issue than

mine.

Q Uh-huh.

A I'd somewhat forgot about this until documents refreshed me.

So, when the Army is going to use the National Guard, they send over a letter -- and you'll notice the last paragraph of the letter says, "My contact is Amy Luyster, Office of General Counsel, Department of the Army." They send over a letter that goes to DOJ's OLC to see if there are any legal impediments. So it's OLC just checking off that there is not going to be some illegality to the proposed use of the National Guard, so the President could be told of that before he authorizes it.

So this -- my best recollection, I don't think I even saw this January 4th letter. I think it probably, when it came in, got directly routed over to OLC.

Q Uh-huh.

A I think I heard about it later, because I think OLC advised that the proposed use was fine. It was going to be using 340 Guard to do traffic control. And, at some point, OLC came back to me with a draft letter saying we need to document for the file that we had given this advice that it's okay.

Q Right.

A So I think that's -- that's what I think, at least, as they were marked previously, I guess, exhibit 26 and 27 --

Q Right.

A -- are just compliance with this Executive Order 11485. They don't have real significance, in my opinion.

There's certainly nothing about them that would suggest the FBI or the Justice Department is responsible for deploying military personnel, right? Is there any world in which the Defense Department would say lawyers at the Justice Department get to

supersede or direct the chain of command in the Defense Department, in the military?
It doesn't even make sense.

Q So, just to close out this letter, it's based upon what you just said, the Executive Order 11485. You were not sent this letter, in your opinion, because DOJ was deemed the lead Federal agency on January 6th.

A Correct.

Q Okay.

And, again, exhibit 27 is your January 12th response, which, as you say, probably got sent to OLC. And then you responded afterwards.

A That's how I had perceived this, as best I can recall.

██████████ Before we kind of move on to January 6th, really -- I just have one topic to hit on the 5th -- is there anything about the DOD calls?

Ms. Cheney?

Anyone?

██████████:

Q Let me just go back to exhibit 23 in your binder just to clarify some things here.

A Okay.

Q Exhibit 23 is an email from ██████████ to Rich Donoghue. Again, you're not on these emails. I'm not spending much time at all on this, but it goes to your point about the crowd estimates. And as of January 4th at 12:21, at least, it indicates there was no current plans for a SIOC.

A That's right. That's consistent with what I said.

Q Then --

A And --

Q Go ahead.

A Can I just finish out from the prior?

Q Of course. Sorry.

A I do want to emphasize that, in some ways -- because I've seen a little bit of this back-and-forth about "lead agency" -- I think that's a semantic thing that is confusing rather than helpful, in two ways.

It's the way I talked about, that what really matters is what are the roles and responsibilities and do people fulfill them. And as I maintained in my May hearing, I think that, while DOJ was in a support role, it fulfilled its functions.

But I think it's also -- distracts from the underlying issue, which is, what difference does it make whether you use that label or not? The Capitol Police, who are responsible for securing the Capitol, had been unable to provide it, and the rioters were getting into the building. So, at that point, everyone has a responsibility to help. And the issue is, are they helping?

And so, does it mean anything if DHS has sent up Secret Service agents and ICE agents and Federal Protective Service and DOJ has sent ATF and FBI and U.S. Marshals? What matters is what they're doing and are they doing it effectively, not is DHS the lead, is DOJ the lead.

I just feel that that's a semantic distraction from the fact that the real problem here is that the security at the Capitol that the police were supposed to provide -- for whatever reason, they weren't able to provide that security, and then a response was needed.

Q I appreciate you expanding on that, because it is an issue that goes back and forth on it.

And, in your mind --

Mr. Brown. Can I pause for a second?

[REDACTED]. Sure.

Mr. Brown. This is really important for us. We're happy to take as much time -- I do not want you to rush through this and miss the argument because we were rushing through it. If we need to come back, if we need to stay longer, we'll stay longer tonight. We don't want you to rush through this at all, because it's really important.

[REDACTED]. I appreciate that. I think that, once we get to January 6th, it will probably be 30 minutes.

Mr. Brown. Okay. Great.

[REDACTED]. So we're seeing the light at the end of the tunnel.

Mr. Brown. Okay. Thank you.

[REDACTED]. If you're good. Do you want to take pause now, or --

Mr. Brown. No, no, no, but --

[REDACTED]. Okay.

Mr. Brown. -- just don't rush through it, because it's better for people to hear it than not.

[REDACTED]. No, I appreciate that.

Mr. Rosen. Okay. So you were talking about the documents that had indicated that, as of -- I guess it's -- early in the day, DHS had sent this memo that said no SIOC contemplated.

[REDACTED] Right.

Mr. Rosen. And then I'm sure Director Bowdich, later in the day, changed that.

BY [REDACTED]:

Q Correct. And you had mentioned that setting up the SIOC was as a result of DOD asking for it. Were there any additional factors that you know of that led to setting

up the SIOC?

A Well, as I say, just that I think Rich Donoghue and I talked with the FBI leadership about it, and they were amenable as long as it was kind of understood this isn't a multi-city, multi-day thing, but we could make it work.

Q So, as far as you knew, was there any available intelligence or threat information that led to setting up a SIOC?

A That's not the way I remember it. The way I remember it, it was partly an accommodation of DOD and partly that, as a practical matter, it could be done just consistent with what was already being done.

Q Understood.

Exhibit 24 is a 202 email from [REDACTED], who is the chief of Counterterrorism, to Mr. Donoghue and Mr. Sherwin --

A Yeah, let me just clarify one thing there, because you might wonder why [REDACTED] is doing this.

Q Uh-huh.

A [REDACTED] used to be on my direct staff. He had been in ODAG. And he had previously worked on some SIOC-type issues and some coordination with FBI. So I think -- I would estimate it was probably Rich, but someone in our office said, let's see if [REDACTED] available to help out because it's the holiday season and not everybody's here.

Q Are you familiar with this reporting? This exhibit includes information received from a nonprofit group called the SITE Intelligence Group.

Now, I certainly -- I know you're not on this email. I think the larger question is: What did you, in your position, know about any online reports or open sources about the threat to the Capitol?

And let me just say, this particular email, it called for: Online forum is

threatening attacks on Democrat and Republican politicians. There's calls to occupy Federal buildings, and there's calls to invade the Capitol Building.

This is specifically on January 4th as part of the threat assessment.

Were you aware of this on January 4th?

A I don't remember ever having seen this email.

And, in terms of the threat assessment, I received some updates from the FBI that Monday morning and on Wednesday. I don't remember this document or this set of information being in it. I have more of a recollection about what I'll characterize as the robustness of their efforts to look for information and that they were sharing it through the command post and then, later, the SIOC.

Q Can you explain what you mean by the robust efforts they were taking?

A That they had put, you know, significant resources, number of people, and effort into it.

Q Just to clarify, the FBI had put significant resources into the intelligence gathering or to --

A Yes.

Q Okay.

A Yes. That's my best recollection, that they reported that they were putting resources into that, because that was an area that we could be helpful and supportive of the police, as to what are we seeing or hearing.

I'll let you ask the next question. I have some thoughts about this in the big picture, but I'll let you ask the questions.

Q What are your thoughts about the big-picture threat assessment going into January 6th?

A I feel that, while I totally understand why this committee and others want to

understand the detailed picture, there's really two aspects that, for me, stand out.

On the one hand, the risk of violence is almost common sense. There's reports that a lot of people are coming to a rally who are unhappy about the election. And it may not be totally clear if they're going to get violent or not at the Ellipse, at the Capitol, or somewhere else, but the need for the police agencies and others, but especially the frontline crowd control, to prepare doesn't really turn on how detailed the crime warnings are, that this is kind of obvious, on the one hand.

And then, on the other hand, especially in light of things I've seen subsequently from the Capitol Police inspector general and others, there were specific warnings of threats that were available to the Capitol Police. And the FBI, my understanding -- I didn't know this before January 6th, but subsequently -- did share a report from the Norfolk Field Office three different ways.

So it's both ways. It was common sense that they should be prepared because there was threats of crowds and violence in the atmosphere and there was specifics.

So, from my vantage point, while I certainly, as I say, understand the reason that the committees want to understand each step of the process, the big picture is what I said: Common sense says they needed to prepare, and there were specific warnings that were provided, according to the Capitol Police inspector general and others, to the Capitol Police. And that's the bottom line.

Q What responsibility do you think there was in terms of the threat assessment being issued? Would that have made a difference, in your perception?

A Particularly given my point one before, you could deduce that I don't see why that's any kind of game changer.

Q So what's your response to Chief Sund, who testified that intelligence drives the preparation, and they didn't have the intelligence for them to prepare differently?

That's a paraphrase.

A Well, that's point two, which is, the Capitol Police inspector general says they had lots of intelligence warnings.

And I can't speak for the Bureau on the granularity of what they saw and what they assessed. I do know Director Wray and Assistant Director Sanborn have addressed that. And, again, I do understand why it's desirable to piece together who did what when. I don't take exception to that in any way.

Q Uh-huh.

A I'm just saying, from where I sit, the bottom line is, some risk was obvious, and some specific threat warnings were actually in the possession of the Capitol Police. So the effort to get into the adequacy of the crime intelligence strikes me as a bit of a red herring.

Q On the January 4th call or at any time in your conversations with Secretary Miller, did he express any concern about particular groups arriving on January 6th? The Proud Boys or Boogaloo Bois?

A No, I don't recall that.

I do recall that Mike Sherwin, the acting U.S. attorney, told me that one of -- I think the leader of the -- I think it's the Proud Boys -- had come to the District but been arrested on January 4th and that that had gone right into the courthouse, and a judge had issued an order requiring him to leave the District, which I think happened.

Q Exhibit 28 is a draft statement from the Department that was not released. And, in that statement, it says -- do you have that in front of you?

A I do.

Q -- we anticipate the protests to be peaceful.

A Yeah, I remember this one. We did not actually put out a statement. I

think there was, as the document reflects, some back-and-forth and some editing. And I think the ultimate conclusion was, what's the objective we're trying -- was a question: What's the objective we're trying to achieve, and are we really positioned to achieve it by a release like this?

So the decision was not to send one out, because the objective was not well-defined and the sufficiency of the support for things to achieve the objective wasn't there.

Q Was --

A It's my recollection that this didn't go out.

Q Right. Would it have been accurate to say that we, DOJ, anticipate the protests to be peaceful, based upon everything you all knew at this point, going back to your intelligence?

A What I would say is, I think that there was some thought that by -- when we anticipate and expect, I don't think that's a report on the intelligence. I think that, as a draft, was a way of saying, "You people that are coming, this is what we expect of you."

Q Uh-huh.

A But, as a tool to get them to realize that and salute and say, "Yep, you said it, we'll do it," there was not a lot of belief that that was how things would work. So, as I said, this one didn't go out.

Q Exhibit 29 is a letter from Mayor Bowser to yourself, Secretary Miller, and Secretary McCarthy.

A Yes.

Q And this was dated January 5th.

Now, in this letter, it's very explicit. She states in the bottom paragraph, "To be clear, the District of Columbia is not requesting other Federal law enforcement personnel

and discourages any additional deployment without immediate notification to, and consultation with, MPD if such plans are underway."

A Yes.

Q At that point, were there plans for the DOJ tactical unit components, rather, to be prepositioned, at you stated in your House testimony?

A I think the answer to is that yes, but let me provide the context.

So I remember this letter, and I think we regarded it as just corroborative of the reports that the various police departments felt that, with the crowd estimates what they were, that they had seen rallies and demonstrations like that before. So I think we viewed this as corroborative that they feel they have it in hand.

That doesn't mean that we shouldn't have our own contingency planning. So we did have those tactical teams available. They were not policing the streets. They were not doing crowd control. They were not -- I don't think it was inconsistent with the mayor's request here, actually.

I think it -- and, if I recall, with the exception of the SWAT teams at the FBI headquarters, I think they were prepositioned in Virginia, for the most part. Could be exceptions to that. The FBI Director and ATF Director and the like would have more granularity than I do, but a loose recollection.

So I think the context is, you know, if there are bombs, we should be prepared to deal with bomb squads. If there's hostages, we should be prepared to have the FBI Hostage Rescue Team on standby in Quantico, as we did.

Q So it did not impact DOJ's preparations in any way.

A No, I don't think it impacted the preparations, but, as I say, I think it was corroborative that the -- in this case, the MPD, but that the police departments felt that they would have it under control.

Q And, in her letter, she references the Park Police, the Capitol Police, MPD, Secret Service. Was there a point of contact from DOJ to each of those agencies?

A That's a level of specificity beyond my recollection. But what I would say is, we had people at the MPD's Joint Operations Center. They had people from MPD at the FBI's Washington Field Office command post. The U.S. attorney has convened multiple phone calls and has people talking to the MPD every single day. So, while I can't name who's each other's contact by name, I think that there have been ongoing efforts to have everybody talking to everybody.

[REDACTED]. We can either take a pause now or we can start with January 6th.

Mr. Rosen. Yeah, let's keep going.

Mr. Brown. Nah, let's take a break.

Mr. Rosen. Okay. Sounds like we're taking a break. Great.

[Recess.]

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

BY [REDACTED]

Q I think where we ended was the end of January 5th. So we can start with January 6th, the morning of.

A Okay.

Q So you said you had a briefing that morning?

A Yes. I met with the FBI leadership.

Q And was that in person or was it --

A It was in person.

Q What was the, you know, assessment going into the day of this?

A So, the day before, the 5th, there had been crowds, there had been what I'll

call mini-rallies that day. There had been some, and those had been, at least as it was reported to me, basically incident-free. So that was a hopeful note. Not a reason to let the guard down or anything, but just -- nothing bad had happened on Tuesday.

And then, on Wednesday, it was more of a situational update: We've got everybody ready. We're going to hope for the best, prepare for the worst.

Q And I think that's --

A And, you know, I say that in hindsight, of course. I don't think anybody contemplated exactly, you know, how bad that afternoon turned out to be.

Q Why don't we just start with when you first -- and I know this is laid out a bit in your House testimony, about when you first became concerned about the events that were going on.

I know Mr. Trump's speech started about 1 o'clock. Is that right? Did you watch Mr. Trump's speech?

A I didn't. I called U.S. Attorney Mike Sherwin while it was going on, and I turned it on at that point just so that I could see the crowd size. So I didn't actually watch the whole speech, but I saw a segment of it probably near the end. Because, while it was on, I called Mike Sherwin.

He was actually in the vicinity, monitoring, himself, I think with some of his own folks. And, as I said in the May hearing, he reported that the crowd size appeared, visually, to be either at the low end or even below the low end of the estimate. But, of course, it's just the Ellipse; it's not the whole day yet.

Q When you were listening to the end of Mr. Trump's speech, were you concerned about anything that you were hearing at that time?

A So that's why I was saying, I had the picture on, but I was on the phone, so I wasn't really listening to the content at the time.

BY [REDACTED]:

Q Was that --

A You know, I was really focused at the time, for whatever, on: Is there violence? How big's the crowd? Is there disruption? Is it unruly? You know, that kind of thing.

Q It sounded at that time -- I know Mr. Trump's speech went on for about 70 minutes. So do you think you -- can you estimate when you talked to Mr. Sherwin?

A One of the exhibits are some notes I made after the fact of some of my phone calls.

Q Oh, great. We can start with those.

A That's exhibit 40. So I guess I'll just tell you what this is, and then we can look at the calls to Sherwin.

Q Uh-huh.

A But sometime shortly after January 6th, I believe that the DOJ Government Affairs advised us that there were requests for -- I think it was records or a briefing or something about the day. So this is my handwriting. I just put together quickly a list. I don't think it's a comprehensive list, but it's what I could put together quickly.

Q Of?

A Of the phone calls that I had that day.

Q So if we could just kind of go through them with your handwriting.

So it says 10:55 --

A Yeah. So 10:55, that's a call with Pat Cipollone. And it looks like there was a followup 6 minutes later. I don't actually remember much about that one.

Q Do you know if Mr. Cipollone called you or did you reach out to him?

A I don't actually remember. Like, this call doesn't stick with me. It is in the

notes, but I don't remember what that was about. It might not have -- well, I shouldn't even speculate.

Q The third line there, can you tell us what that says?

A Tried Sherwin at the Ellipse 12:40, 1:09. And then I got him at 1:17.

Q Now, the 1:17 call sounds like it was during Mr. Trump's speech.

A Yes.

Q And it sounded like, at the end of that call -- and you tell me -- you weren't too concerned because there wasn't a negative report from Mr. Sherwin at that time.

A Right. Right. I mean, I think we knew it was, you know, the first quarter; the game wasn't over, if you want to think of it that way. It was early, but at least the initial report was: Crowd size doesn't appear to be unexpected, and the conduct so far is okay.

Q So then have you a 2:33 call with Sherwin?

A Yes.

Q Had anything changed at that point?

A Yeah. I mean, at that point, I think the Capitol has been breached. And I think we're talking about, does he know what's going on, that I see some things -- I still have the TV on at that point. And a lot of people have come into my office, and my office is turning into, you know, a mini command post of its own.

Q Uh-huh. And who was in your office at that time?

A Rich Donoghue for sure, and then there were a bunch of people that were coming in and out, and I think Marc Raimondi, whose job was public affairs but had just volunteered to help man the phones and things.

I'm trying to remember. Because this was a day when I think remote work was maybe encouraged -- I don't remember exactly -- that attendance at the

building -- people were working, but attendance at the building was less than an ordinary Wednesday. So there were some people who had come up and just volunteered to help out.

But then there were people coming into my office, sometimes handing me a phone, you know, saying, someone wants to talk to you, and they couldn't get you, they called me, and I told them I'd come get you. Which is part of why this phone list isn't comprehensive. But it was an effort by me to take down the ones I could remember or saw in my call list.

Q So, at 2:33, when you called Michael Sherwin, was he still at the Ellipse?

A No. I think he had walked up Pennsylvania Avenue and was -- I don't think he was in the Capitol, but I think he was on Pennsylvania Avenue, near the Capitol.

Q And --

A Or, I meant Constitution Avenue.

Q The 2:39 entry, can you read that?

A That's "Moran with Schumer." So John Moran is at this point my chief of staff, and he calls me to say he's going to patch through to Senator Schumer.

Q And was it just Senator Schumer on the phone, or were there other Members?

A I can't exactly remember. I remember that the thrust of this was Senator Schumer saying, "Do you know what's going on up here? Can you help?" and me just reporting that, at this point, we're sending people as quick as we can.

Q Let's go to the 2:43 entry.

A Let me see. That's "Donoghue at SIOC."

Q Okay.

A So you may remember, in my written testimony, Rich Donoghue had been in

my office, and then he and I had planned to go over to the SIOC, but I couldn't get out. There's calls coming in, and there's people trying to grab me. And I said, Rich, why don't you go over to the SIOC, and I'll catch up as soon as I can. So he went over there, and then we spoke about his update from over there.

Q Just to go back to Senator Schumer's call, how would you describe the tone of that call?

A Unhappy?

Q And before we, kind of, talk about the time after that, I just want to ask you about -- this would be exhibit 32. And this is -- you mentioned Marc Raimondi was present at your office.

A Yeah.

Q He's the press person.

A Yes.

Q And I'm just hoping you can clarify what he's saying here.

This is an email to you that says, "We are receiving several requests on what the Federal response is. The Capitol Police have said they have asked for MPD and Federal assistance. Thus far I have been referring media to the Capitol Police and MPD. If we are going to have a more engaged posture, we should consider what we will say about it or who we want to designate our DOJ entity that we can speak on behalf of."

So it seems at that point, at 2:37, that there was not a DOJ presence or activation towards the Capitol. Can you clarify?

A Yeah. There was an activation. And, in fact, ATF had -- first, they had sent people to address the bomb threat at the -- I can't remember if it was the RNC or the DNC or both, because I think there were bomb threats at both, but I forget which one had caused ATF to send people over.

And then they initially redeployed some of them to the Capitol but then sent out more people. And, at least the way it was reported to me -- and this may not have been, you know, contemporaneous at 2:37. I don't think I knew this at 2:37. But I later became aware that they had -- they reported that they had had large numbers at the Capitol by about 2:40. It wasn't, maybe, all of the people --

Q Uh-huh.

A -- they ultimately sent, but it was -- the characterization that I got was large numbers.

Q And those were the ATF agents who had responded to the pipe bombs but then went --

A No. Some of those were that, but then they sent more. So they got larger numbers by 2:40.

Q And then if you look at the next --

A And can I just --

Q Oh, sorry.

A So, when Marc's raising this, he doesn't actually know what's already happened. And I think this is what triggers him to come spend the better part of the afternoon with me, actually. Marc's a very good press person, but we probably had made a mistake of not keeping him sufficiently in the loop before this. So he does come, and he ultimately spends the bulk of afternoon with me.

So what I would just say on this is, he's reporting that he's getting requests, but he doesn't know what he's supposed to say.

Q Apart from ATF, though, the other prepositioned units that you spoke about --

A Uh-huh.

Q -- were they told to head to the Capitol at that time?

A Generally, yes.

I think this thing went in a couple of stages. I think Rich Donoghue and I initially said, let's tell the components -- you know, the Bureau, ATF, and the Marshals -- get help. Not get help of this person or this unit, but just get help. And then they respond. And then Rich, in particular, is following up, of course, with some more specifics of who's doing what, because he goes over to the SIOC initially.

And so we rely on the leadership of the components to know what they're doing, of course, but we'd like to get some feedback of what are they doing. So that becomes an iterative process. I think the initial thing was just, tell them to provide help.

Q Gotcha.

So, just going back to your call log, then, at 2:43, you speak to Mr. Donoghue, who's at the SIOC. Was there any sense from that conversation that he would be going towards the Capitol?

A Not yet.

Q Okay.

A I think that probably comes up, you know, 15, 20 minutes later.

Q The 2:57 entry, who's that?

A Cipollone and Meadows.

Q Okay.

A So --

Q Go ahead.

A So I have a recollection of speaking to them earlier than this, but I saw this in the notes. So I don't know if it's this call or the earlier one that I have recollection of, but they called and basically said what most of the people who called me were saying:

Have you seen this stuff going on at the Capitol? Can you send help?

And I don't think I was the only one they were calling. I think they were calling DHS and DOD, you know, anybody they thought could help.

So they were requesting that DOJ take whatever measures it could do to provide assistance at the Capitol. And we said, we're on it, that's what we're doing.

Q What was the tone of that call with Mr. Cipollone and Mr. Meadows?

A Urgent. It was urgent. It was -- let me see. Again, this one's 2 minutes, roughly. And I don't know why but I seem to remember either an earlier call or that I have the wrong time on this or something, but I remember, when I first spoke to them, they were both on the line and it was urgent. Their tone was, this is urgent.

Q Did they indicate if anyone else was on the line?

A No.

Q And did they indicate they were with Mr. Trump?

A No.

Q The 3:01, sorry, I can't read your handwriting.

A Yeah, I'm sorry. I have poor handwriting. But that's 3:01, that's Donoghue. I think this is when he tells me that he and Dave Bowdich are talking and they really think that they should go up to the Capitol, and is that okay with me. And I think I said it is, that, you know -- because we don't know what exactly what the situation is, but it sounds like that would be helpful.

Q Why, if you have a SIOC set up, didn't you know what the situation was without Mr. Donoghue going physically to the Capitol?

A Because the SIOC relies on input of the participants. So the Capitol Police are one of the participants, really through the WFO, but they're linked to the SIOC.

So I don't actually know the answer as to what the Capitol Police were reporting

or not at that point. I didn't get, again, that level of granularity. I just knew that two guys I think extremely highly of and who are very capable are saying that -- they weren't saying the SIOC's shutting down or anything, when there's other very capable people in the SIOC. They're saying that they think it would be helpful for them to go up to the Capitol. And I said, that's okay, yeah, if you think that's a sensible move, go for it, let's do it. And they did.

Q At 3:10, that entry there?

A That's a congressional call. I don't remember who that is, but I got a number of congressional calls during the day of Members. And, again, I don't think they were just calling me. I think they were calling multiple agencies, like, saying, again, in so many words: Are you aware of this terrible situation here, and can you provide some help?

And, you know, the consistent answer, in different forms, is: We are aware of it, and we're going to do everything possible. We're sending people as urgently as we can.

Q So that 3:10 call --

A And, remember, ultimately, they don't all arrive at once, but we sent from the Department of Justice components over 500 agents and officers to the Capitol to help restore order very urgently.

Q That 3:10 call, though, you don't know who specifically it was?

A I don't. I don't.

Q Then at 3:11?

A That's Cipollone.

Q And --

A And I think he's just asking for an update. And I think I'm telling him we've got some people there and more on the way.

Q Okay. I think exhibit 33 is an update from [REDACTED] saying, "All FBI SWAT resources in the NCR," which is the national capital region, "and agent teams are headed to the Capitol to clear the Capitol." And that would be 3:30.

In your sense -- and, again, I just don't have any -- just rely on your own memory -- is that around the time that you believe FBI arrived to the Capitol? Or earlier?

A I don't have a good recollection on what I was told about that. You know, the fact [REDACTED] sent this email, I'm not on it, but it makes sense to me that he's reporting -- I see to Rich Donoghue -- this update. So, you know, Rich is, I think, with Dave Bowdich at this point, so maybe he knows more. But, on this one, I'd have to defer to the two of them.

[4:55 p.m.]

BY [REDACTED]:

Q Are you able, when Mr. Cipollone called you, though, to provide any update as far as --

A Yes. It's not -- I don't think he's asking for, and I don't give him an update that says there's 12 bomb technicians --

Q Sure.

A -- and 6 of this, or that kind of specificity. It's more, "We've got ATF, FBI, U.S. Marshals all in urgent mode. Some people have arrived. I'm getting reports. I'm going to get some more there shortly." It's that kind of update. Those may not be, again, exact words, but conceptually, that's the sort of thing I'm trying to do.

Q Yep. Right. And I'm going to go to exhibit 34, but you're not on this email either. So who are you getting your updates from? Is it primarily Mr. Donoghue and Mr. Bowdich?

A Yes. They're the key ones. And I am hearing there are people that are helping out ad hoc.

I mean, just as an illustration, John Daukas, who, remember, John was the principal deputy in the Civil Rights Division, but he was in the office that day, and, you know, he was aware from TV what was going on. And he came up to my office, "How can I help?" you know.

And I said, "John, thanks for the offer. Here's some things I need you to do. Call these three people, you know. Follow up on this. Get back to me."

And I think similar things happened with that, with a couple of other people. But it was ad hoc, so, unfortunately, I -- that's not reflected in this call list.

Q Got it.

This exhibit -- this will be 34 -- this is a 3:48 update from [REDACTED] saying, "HRT will be fast roping into the Capitol area."

A Yeah.

Q "FBI will be staging DOJ resources to secure and clear the Capitol."

A So this was the folks from Quantico had been helicoptered up. This says 3:48.

Q And I want to ask a question about the timing, because I understand, you know, there is a delay in information that's from real time and what's going on there. But is that a sense that that's the first time that anyone from the Bureau gets to the Capitol, around that time?

A No, I don't think so, because Dave Bowdich is already there.

Q That's true. Okay.

A But I think the hostage rescue teams were -- had been on alert at Quantico. And I don't remember the why, but I just remember being told at some point that the fastest way to get them up was going to be to helicopter them, and that meant they were going to have to fast rope into the Capitol area.

Q Going back to your call list, 3:25, it looked like that's redacted, but let me move on to 3 -- I think that's 3 -- I can't read it. Oh, it looks like the call with Bowdich is 3:18.

A Yes. Right. That's Bowdich. And I don't remember the specifics of it. I just remember that I spoke with he and Rich Donoghue with great frequency.

Q Uh-huh.

A And I also connected some other people who wanted more on-the-ground reporting type stuff, too.

Q Is it your memory that at 3:18 Mr. Bowdich was at the Capitol?

A I think so. There may be other records that could refresh us -- or refresh me at least -- on that. But my general recollection is that it was around 3 that Mr. Donoghue and Mr. Bowdich decided to go up to the Capitol. And it's, you know, not very far from FBI headquarters to the Capitol, but I also don't know what impediments they would have faced getting through.

Q Right.

A So I'm not totally sure.

Q 3:20, who is that call to?

A Sherwin. That's Mike Sherwin, real quick update. I don't remember specifics of what that was, but he was on Constitution Ave, so I -- and I don't remember if at this point he had headed back to his office or not. I know that, at a later point, he got focused on there is going to be some arrests and some prosecutions.

Q So I'll just march through these until the end there.

So 3:30, it looks like that's Bowdich again.

A Yes.

Q 3:36 is --

A That says, "Donoghue at Capitol."

Q Okay. That's helpful.

A So, at least that one, he's at the Capitol when we speak. So maybe that means, the earlier ones, that Dave Bowdich isn't at the Capitol, or for some reason I made a note on Rich and didn't on Dave, unfortunately. I don't remember.

Q 3:38, is that Bowdich again?

A Yes.

Q 3:55?

A Donoghue.

Q Donoghue?

A Yep. Then there is this call with Steve Engel at 4:13. That's just follow-up on an email exchange.

Q And was that about the deputization of the --

A Pretty much.

Q Okay.

A Because at this point, we were trying to -- I think Rich Donoghue and I were having some conversations about are we going to need to bring DEA into this just to have some armed personnel at the Capitol.

But they can't -- you know, they don't have shields or anything like that. So the question is, is it going to be useful to have some people that are just, you know, armed agents? And if we are going to do that, they have to be deputized, because --

Q Right.

A -- they don't have the authority to be there otherwise.

So we had some discussion and sorted out with Steve. I think the ultimate call, after some consultation with the people we were trying to help at the Capitol, was that that wasn't going to be desirable.

Q Okay. 4:31, it's Donoghue again?

A Yes.

Q 4:34 is a White House call?

A Yeah. So that's -- my best recollection is that's Vice President Pence.

Q Where was Mr. Pence at the time?

A Somewhere at the Capitol.

Q And did he call you, or were you asked to make that --

A No. He called me. That's why I went through the White House switchboard.

Q It looks like that's a 6-minute call. Is that right?

A Yes.

Q And what was discussed on that call?

A It was a variant of what I'm saying many of these calls were like. He was, you know, reporting on the circumstance from his vantage point and asking what we were doing and could we do more to help out and my reporting, as best I could, on what we were doing. And there was no higher priority or urgency than trying to provide additional support and resources to restore order at the Capitol.

Q What was your sense at that time, at 4:34, what the situation was at the Capitol?

A It was improving a lot was the report I was getting, in the sense that there were additional resources from Justice Department, from DHS. I think the Metro Police had supplied a lot of police officers. I learned later, I think, that other jurisdictions also did, but I don't think I knew that at the time.

And so I think they were having some success at clearing the Capitol, but there were a lot of unknowns as I understood it, which is: What damage? Are there people hiding? Could there be explosives? It was far from, "The coast is clear," but it was improving in terms of the riot situation, is how I understood it.

And I think it was around this time that I had become aware -- I think ATF was working one Chamber and the FBI the other Chamber, and I've lost track of which was which.

Q Uh-huh.

A But they had divided up. They were coordinating with the Capitol Police,

who, as I said before, are the responsible authority, but -- so my understanding is the situation was improving, but I think everybody was aware that we wanted to get to a situation where it was completely secure and Congress could return.

Q Did Mr. Pence ask you specifically about whether they would be able to resume session of the joint Congress that evening?

A I don't specifically remember. You know, he may have, but I, unfortunately, in the blur of all these calls during the day, I only remember the general thrust being, you know, "Can you tell me a little bit about how you can help and what you're doing, and can you do more?"

Q What was the tone at that time? You said things were improving, but --

A One thing I remember was Vice President Pence, because he was extraordinarily calm. He was very calm and measured. And that, I mean, it just was what it was. That's what I remember.

Q Was there anyone else on the call with you?

A I don't think there was anybody else on the call. I think Marc Raimondi might have been in my office, because Marc spent a good part of the day in my office, partly as a courier, partly as a updating me on things. He was very magnanimous about saying, "I'll do whatever I can do to help."

Q Was there any inquiry from Mr. Pence about the National Guard to you?

A Not that I recall.

Q The last entry there at 4:42 in this column?

A So that says Raimondi. So at some point he had left my office, but he had called me. I suspect -- I'd have to reconstruct a little bit with these documents --

Q Uh-huh.

A -- that he and I had a discussion that we needed to get out a statement.

And I suspect it's about that, but that's a little bit of a guess, because time of day seems about right, but I don't -- I can't say I remember the exact conversation.

Q Let me direct your attention to exhibit 35, which is about the press statement. And, if you look at the middle part of that statement, it says, "DOD had issued a statement that said the law enforcement response will be led by the Department of Justice."

And I know we have belabored this point, but, on a new day, on January 6th, this is the statement that's released by the Pentagon.

A Yeah. Well, I suppose that they mean that we're the ones who are going to prosecute the wrongdoers, that that's an accurate statement, that the law enforcement response in terms of investigating and prosecuting would be led by the Department of Justice. I can't speak to what they were doing or why they phrased it the way they did.

Q Had you had any discussion with -- prior to that time, to 4 o'clock, had you had any discussion with any DOD official about --

A Yeah. Yeah. So at some point in the afternoon, I want to say in the neighborhood of quarter to 3 to 3 o'clock, there was another multiagency call that did include White House officials. It included DHS, Chad Wolf and others. It included a number of people from DOD, including Secretary Miller, but I couldn't say the full range of who was on. There were someone from Interior. That may have been Secretary Bernhardt, but I'm not totally certain.

And the White House contingent, my recollection, it did include Pat Cipollone, I think Robert O'Brien was on. There may have been others. It's a little bit of a blur.

But there was a call, and I don't remember all the specifics, but it was in the nature of, "We need" -- "Everybody needs all hands on deck."

Q Is that reflected in the notes of exhibit 30 as the 2:48 p.m. date?

A It's in the bottom right corner.

Q Okay. So just so I'm clear on this, so it's 2:48, DOD, Secretary of Defense; 5 o'clock, DOD, Secretary --

A Yeah. Those are shorthands, so let me --

Q Yes.

A Those are the multiagency things. I think DOD supplied the telecommunications capacity, because there are a lot of people on these calls. So it's DOD, it's DHS, it's White House, it's Interior. I'm trying to remember if there was anybody else. It's several of us at Justice.

And we had this initial call. And then we had set up, if I remember correctly, that we would do hourly calls, but for some reason there is not a 4 o'clock, and I don't remember why that is.

So maybe I'm wrong that it's hourly. But there were calls at 5, 6, and 7. And the 7 is the one I remember very well.

Q During any -- sorry.

[Discussion off the record.]

BY [REDACTED]:

Q During any of these interagency calls where you said the White House would be on those calls as well, was there any discussion or request for President Trump to issue a statement to quell the violence?

A Not that I recall, but one of the challenges here is, of these calls, the only one I remember really well is the 7 o'clock.

The others, as I said, this day is just so full of calls and discussions and people in and out of my office and the like that much of it's a blur. So I don't have good recollection of the content of these calls. I just remember that the general thrust was

we need everybody to, you know, do their part.

Do you want to hold the 7 o'clock and come around once there is --

Q Yeah. I think we can come back to the 7 o'clock. Is that the one where Mr. Donoghue briefed --

A Yes.

Q -- everyone on the call?

A Yes. And that one had the congressional leadership as well as the White House staff, and my recollection is the Vice President was on that call as well.

Q Okay. Why don't we go through the second column so we could have a clear record of it.

A Okay. All right.

Q Starting from the top, it says -- you tell me what it says.

A 5:31 p.m. is Donoghue.

Q Okay.

A Then there is a 5:32 that's Cipollone.

5:39, I think that is, is another call with Mike Sherwin, acting U.S. attorney.

5:41 is Rich Donoghue again.

5:51 is Sherwin again.

6:33 is Sherwin again.

I think the Sherwin calls pick up late in the day because we start turning our attention -- we're not -- you know, we haven't -- the Capitol is not fully restored, but the situation is improving, so we turn our attention somewhat to the law is going to be enforced.

And so I think that's some of what Mike Sherwin and I are discussing.

Q Uh-huh.

A But I'm still talking to Rich Donoghue in particular, who is still in the, you know, Capitol.

Q Sorry. 6:34, that's --

A Yes.

Q -- Donoghue?

A Yes. That's Donoghue. 6 -- I can't read my own writing -- 6:38 is Sherwin again.

Q 8:37?

A Yeah. 8:37 is Donoghue. I think at that point he's calling to tell me that he's going to come back to DOJ, that he thinks Congress has resumed at --

Q Uh-huh.

A -- I think it was about 8:05, and he thinks his work up there is done, and he's heading back to DOJ. And he just gives me a general update of what's happened.

Q Did Mr. Donoghue ever convey that he had received calls from the White House as well?

A I think I put Pat Cipollone through to him at one point.

Q Okay.

A I think there was something where I said -- I don't remember the details, but I said, "You know, Pat, I don't know the answer to that, but why don't I patch in Rich Donoghue, put you through to Rich Donoghue."

Q The next one is -- I'm sorry. I can't read that.

A This is at 9:06. There is a number that I can't remember what it was, so it's just -- I remember I have a call, and I have a phone number, but I can't remember what it is. So --

Q And then the 9:08 is?

A Yeah. 9:09 is Cipollone, and then 10:31 is Cipollone.

Q Now, at that point, at 10:31, are you still at DOJ?

A Yeah. I think I was just getting ready to leave.

Q Do you remember the substance of that call? It's not -- at that time, the joint session had resumed?

A I don't remember the specifics. I think it was a bit of a recap, but I really don't remember the specifics at all.

Q What was the sense of Mr. Cipollone's demeanor at the end of that day?

A Well, I think it was a dispiriting day for all of us. I mean, it's a really terrible thing that people attacked the Capitol.

Q Do you remember anything from those conversations with any -- anyone during the day that struck you in terms of how it had hit people, these high-level government officials that you were talking to?

A Pretty much what I was just saying. I think it was dispiriting to all of us, that it was exhausting, and, you know, it had been a very intense day.

But it was a response to something that was -- that should never happen. And it -- I think that it was, as I say, it was dispiriting. It was troubling. And it was -- there was a fatigue, like this is not something that should ever happen, and look at the day we've all had, just, you know, a mile a minute.

And you can really only imagine for the folks in Congress how terrible it is, and the individual police officers, the Capitol Police and the Metro Police who were dealing with it even before they got assistance from Federal agencies. You know, some real heroism and courage. But what a terrible thing to go through.

So, as I say, I think it was some combination of dispiritedness and fatigue.

██████████. Before I move on from this exhibit, I just want to make sure if

anyone has any questions about the calls that day.

Ms. Cheney. I do, [REDACTED].

Jeff, can you talk about, over the course of the day, whether it occurred to you at all to think about President Trump and what he was doing?

Mr. Rosen. In some sense. I mean, you can see there is so much going on that there is not a lot of time for what I'll call reflection.

But I think that -- I think I learned at some point he had put out some kind of a statement that was not what we would have wished for. You may have it and refresh me. I don't remember the specifics. But I just remembered thinking that's not what we would have wished for.

And the White House staff were -- at least the ones I dealt with, and they're reflected on this, which, at least to my best recollection, were Pat Cipollone, Robert O'Brien, and Mark Meadows -- they were very much in the same posture we were: Let's get as much help to the Capitol as fast as possible.

So I think that there was at least the hope that somebody in the White House could talk to the President.

Ms. Cheney. And were there any discussions about that?

Mr. Rosen. That's what I'm saying, is I -- it's such a blur, the day is such a blur that I just don't recall that.

Ms. Cheney. Did you -- how did you think about the fact that you had talked to everybody up to the Vice President, but not the President?

Mr. Rosen. Well, I, as I say, I think the initial statement that I had seen put out was not what we would have wished for. And I'm really not -- not really even sure how to respond to that, because we got so focused during the day on what we have to do and what can we do and trying to be in a posture of being part of the solution, trying to be

helpful.

Obviously, the situation was terrible, but once this breach of the Capitol occurred there was this tremendous urgency and just ongoing all day long, you know -- what's happening, what can we do, what else do we know, and what do we hear from DHS, what do we know -- that it just gets caught up in the moment of: Let's do our job. You know, we'll do our job, and let's hope everybody is doing what they're supposed to do. And that's how I remember it.

Ms. Cheney. In terms of the first statement, do you recall the statement that the President put out calling the Vice President a coward?

Mr. Rosen. Yeah. I didn't actually see it, but someone had come into my office and said a variant of, "You will not believe this statement." And it was something similar to what you just said -- again, I don't remember the exact words -- and just being both surprised and disappointed at that statement.

Ms. Cheney. Did you have any reason to believe at any moment that the President was taking action? Did anybody come to you and say, "He's taking action to stop this"?

Mr. Rosen. Not -- no, not in those words or equivalent. Just the fact that Mark Meadows and other White House staff were saying, "Do everything you can to help address this situation."

Ms. Cheney. But they weren't telling you what they are trying to do --

Mr. Rosen. No.

Ms. Cheney. -- internally?

Mr. Rosen. No. At least not that I remember. The thing that just sticks with me is this urgency of, "Can everybody try to get help?"

Ms. Cheney. Okay.

[REDACTED]. [REDACTED], can I?

[REDACTED]. Yes.

BY [REDACTED]:

Q On these calls, Mr. Rosen, you just mentioned that the statement that President Trump issued was not what you had wished for. Did you want the President to make a statement to address what was happening at the Capitol?

A I'll try not to be semantic about this. I didn't sit and reflect, you know, what are the three things that the White House should do that will solve this, because I'm so focused on what I have to do.

But I certainly thought that, if the President had said something more positive than what Congresswoman Cheney had just said, if he had urged people to stop this, that that would have been a good thing.

Q And did you express that in any of the calls that day, that the President should say something?

A I just don't remember, you know, that the -- as I say, the conversations are such a blur. And I felt like we had at Justice -- and particularly FBI -- so many things we had to be doing that I had to make sure we were doing what we're supposed to be doing and hope that everybody else is doing the same.

And more than hope. I mean, there, obviously, was coordination going on. But it's kind of first things first. Do your own job.

Q And you said it's not what you had wished for or would have wished for. What would you have wished for as the leader of Federal law enforcement dealing with this at the time?

A Well, as I said, I just -- I think that it would have been a good thing if the President would have said something positive and constructive, to say this needs to stop.

Q And just to clarify or kind of rephrase the question that came up earlier, in your conversations with the Vice President that day, did he express a desire to continue the joint session to continue counting the votes?

A I just don't remember at that level of specificity. I'm not saying he didn't, I just -- or did -- I just -- it's just too much of a blur these months later.

██████████. Thank you.

██████████. I think I'm wrapping up, Mr. Rosen. I really appreciate you going through this. And, obviously, the emotions of the day are conveyed as something that won't be read in the transcript, but we appreciate you going through that.

BY ██████████:

Q Going back to the exhibit of your handwritten notes, I want to clarify a box we didn't go through. Again, if I could read it, I would --

A Sure. What's --

Q This is exhibit --

A Oh.

Q Your handwritten notes.

A Yes. So where it says "other calls from memory."

Q Uh-huh.

A And I say, okay, so the SecDef, et al., meaning "and others," multiple, that's the interagency calls.

Q Uh-huh.

A So I recall that I had those calls. I recall that I received a call from Speaker Pelosi and a separate call from Leader McCarthy.

I think this says Senator Schumer, Senator McConnell's staff, and -- well, this is in here. It says McConnell, but I don't actually remember speaking with

Senator McConnell. I think it was his chief of staff that called me.

And then VP Pence, I marked 2X, but I think that includes the 4:34 and the 7 o'clock --

Q Okay.

A -- is the way I remember that.

So that's more the leadership type calls that I remember having received. It's not comprehensive because there were some individual Members of Congress who also called at some points.

But these, as I alluded to, they all had a similar flavor in the sense that they're -- I don't think I was the only one they were calling. I think they were calling, saying, "There is an urgent situation up here, and can you provide assistance?"

Q Do you remember anything specific from your call with Mr. McCarthy?

A No. As I say, just this general tenor, that all the calls had a similarity. The words differed, the sequence may have differed, but the general tenor was, "There is an urgent situation here, and can you help? Can you let us know what you're doing?"

Q The next page has a typed version.

A Yes.

Q And that's just a typed version of what's the first page, or some of them --

A It's a separate thing. I think I had asked somebody --

Q Oh.

A -- to figure out from my assistant's desk what calls had come in. So it's a different list, but it overlaps, because, if you look at the 4:53 to 6:59, those are either preparatory to or the calls I was talking about as happening at 5, 6, and 7. I think some of those may not have got to me, but they were announcing there will be a call at 7, there will be a call at 6.

The two that are marked "JCC," I think, were inquiring as to would I be available at some later time.

Q The 3:37 call?

A So I think that's the Eric Herschmann tried to reach me, but I don't think he did. I think, as I said, this list was put together at after the fact --

Q Got it.

A -- and I think I learned in compiling this that he had tried to call me. Maybe he got me, but I don't recall that he did.

And the earlier calls, you know, Jeffrey Wall is the Solicitor General. That's what I call in the morning. We had some regular Department business talking about some ongoing litigation.

Q During those interagency calls, did anyone express any concern about the arrival of the D.C. National Guard?

A Not that I recall. And I would expect that there was discussion that the Guard was going to be called out, was going to be supplied to the Capitol. But I don't really remember the specifics of that. I had more the general recollection that it was everybody needs to do what they can do.

Q It sounds like from what you're saying that everybody on those interagency calls were working together to try to restore some security to the Capitol. Is that fair?

A That's how I perceived it. I mean, as I say, I, unfortunately, do not remember the specific conversations or any back and forth, but I just had this general impression that, yes, people were trying to work together to have each department do what it could do.

Q Just to follow up on Ms. Cheney's line of questioning, was there any time, after January 6th, did you ever have a conversation with Mr. Cipollone or anyone to say,

"Hey, I wish Mr. Trump had done more on that day"?

A It's a good question, but, like much of this, I can't actually say yes or no, because it's just -- it's too much in the past, and so much stuff was happening that I just can't remember, "Did we talk about X, did we talk about Y, did we talk about Z?"

It's possible, but I just don't recall.

Q In your view of the events of that day, what do you identify as the key factor that led to the attack?

A Well, I always start that the perpetrators are the first ones that should be identified as responsible, right?

Mr. Brown. Can we have a minute? Can we go off the record?

[REDACTED]. Sure.

[REDACTED]. And, Reg, these are the last questions.

Mr. Brown. No, I get it.

[REDACTED] Okay.

[Discussion off the record.]

Mr. Brown. We can go back on.

Mr. Rosen. Okay.

So I just start with the general proposition that you start with the perpetrators. And so the Department immediately focused on the investigation and identification of any wrongdoing. And it was the 7th, January 7th, that we first brought charges. And I think, by the time I left, which was only 2 weeks later, there had been over a hundred people charged.

That continued, and, obviously, the investigation continued, and the Department's done whatever it's done. And I'm not talking about any individual situation. I'm just saying that the acts of violence associated with the attack on the Capitol that day, we felt

strongly that there were violations of the law, they need to be addressed. And so I continue to think that's right.

BY [REDACTED]

Q How much responsibility do you put -- do you place on the events of spreading the lie that the election was stolen and that impact on January 6th?

A Well, this harkens back to some things early in the day. I'm trying, in my role here as a factual witness, to refrain from opinions and conclusions, because I see that as the purview of others in the process, that my role is, as I've said earlier today, to describe what I saw, what I heard, what I said, what I did, what I saw other people do.

And then the conclusions from that are really for others, that maybe there is some other time or place where we all share opinions. But I think the role I should really try to hold myself in this process is more to what I know factually so that I could contribute to the efforts to understand the facts.

Q I appreciate that. And I appreciate our conversation earlier about the intelligence piece of it.

Do you -- and you mentioned that Norfolk, Virginia, intelligence product. Were you aware of any other intelligence product about January 6th specifically?

A Not that I recall. Even that one I learned of after the fact.

Q Okay.

A I didn't know about it before January 6th.

But, you know, when I was -- I was briefed by the FBI about these things, but it's another area where I don't remember anybody saying, "Here, look at this intelligence product or that intelligence product, or focus on it."

Q Right.

A I think it was more high level than that.

Q So, in your House testimony when you said the FBI shared the intelligence they had with their law enforcement partners, that was told to you?

A That's right.

Q Okay. Do you believe that, had the FBI and DHS issued a joint intelligence bulletin about the potential for violence on January 6th, would that have affected anybody's security plans?

A Well, again, that's an opinion or conclusion from what happened, and I think, as I alluded to earlier, it seemed to me -- and maybe I ventured slightly into some opinion here -- that the risks of violence and the need to prepare were apparent.

██████████. That ends my questions.

I just want to mark from the -- for the record that counsel provided -- you provided your statements, so I wanted them marked as an exhibit.

We skipped so many exhibits that I don't know, I'll consult with the court reporter what exhibit number this should be. I'll call it exhibit 44, because that's what I have on the file.

But this includes your statements from January 6th, January 7th, January 8th, as well as a January DOJ press release, a January 13th video statement that you made, the January 14th SIOC visit that you made, and a January 19th pre-inauguration press release that you made.

And I'll include in this your House testimony, because I had not marked that prior as an exhibit.

Mr. Rosen. That sounds good.

██████████. We just have a little bit more.

Ms. Cheney, go ahead.

Ms. Cheney. Mr. Rosen, you talked about the fact that the possibility of violence

was common sense, that it was out there, that people knew that it was coming. You talked about the fact that you were dealing with the President continuing to ask about a quantum of claims about the election that you had demonstrated -- the Department demonstrated weren't true.

You talked about the fact that your view was the President did not do enough. I'm not trying to put words in your mouth, but in terms of on that day, on the day of the 6th, the statement that you heard about was insufficient.

Do you believe that it is the responsibility of the President of the United States, consistent with his oath, to defend the Constitution, including on a day like that when there was a mob that had attacked the Capitol while Congress was counting electoral votes?

Mr. Rosen. So bear with me, because there were multiple prefatory comments, and rather than go through those, let me just say in a big picture way, I think every President has an obligation to adhere to the U.S. Constitution. And in fact, all of us as -- when we're public officials, have that obligation.

Ms. Cheney. And that would include coming to the aid of any of the other two branches of government while they were under attack?

Mr. Rosen. The only reason I'm pausing here is not because we've stated it as what's in the Constitution. I don't know that the Constitution actually has a provision that envisions the Capitol being under attack. I think that would have horrified the Founders.

So I find myself -- the way I have answered has created an awkwardness that I -- I don't mean to be difficult on your question. I think that there is no getting around that January 6th was a horrible day. It should never have happened, and I hope it won't happen again. It shouldn't ever happen again.

Ms. Cheney. And on a day like that, when Congress is engaged in a constitutionally prescribed effort to count electoral votes, and the President of the United States, as you've described for us, was not engaged in an effort that was obvious to stop the attack, is that an accurate description?

Mr. Rosen. Step one is I would hope there would never be an attack on the Capitol.

Step two, I would hope that the people who provide the security could prevent an attack. In this case, I'm referencing the Capitol Police.

And I mean no disrespect to the heroic efforts of the many police officers that day. I'm just saying that that part of it, would like to see everybody doing whatever they can to try to prevent that from happening in the first place and from restoring order if it's occurred.

Ms. Cheney. Well, I want to thank you for your efforts on that day and in the lead-up to it. And I wish everybody had been as engaged and active as you were. And I know it was very difficult circumstances. So thank you.

Mr. Rosen. Thank you.

Ms. Cheney. Thank you for appearing today.

Mr. Rosen. Thank you.

██████████. Before we stop, any other follow-ups?

██████████. Can you think of anything else that this committee should know that you haven't already told it?

Mr. Rosen. We, you know, we've had a very full day. So it's the nature of these things that probably anybody will think of something tomorrow that we could have today. But I think in light of how full and extensive this conversation has been, there is nothing jumping out at me right at this moment.

██████████. Well, as we said before, Mr. Rosen, we will get you a transcript, a draft of this. You'll have a chance to go over it and make any corrections.

Let me just echo Ms. Cheney's thanks. I appreciate it. I know you've told this story and retold the story several times, but it's an important story, and we appreciate your willingness to continue to do that and to be truthful with your -- and patient with all of your answers today.

Mr. Rosen. Well, thank you. And the only other thing I always like to do in these things, if you'd just indulge me, is I had the privilege to be the Acting Attorney General, but of course there is this whole team of people.

And we've talked about the fact Rich Donoghue, you know, and David Bowdich went to the rotunda, and I haven't even really mentioned Regina Lombardo, the head of ATF, who had her people get up there on a really urgent basis.

I can't name them all, but I just would like to express my appreciation to the people at the Justice Department that worked with me and that I had, for that period, the opportunity to lead.

██████████. Appreciate that. Okay.

██████████. Thank you.

██████████. I think that concludes it, Mr. Rosen. Thank you very much.

██████████. Thanks so much.

[Whereupon, at 5:44 p.m., the interview was concluded.]

Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date