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

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11 INTERVIEW OF: ERIC HERSCHMANN

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Wednesday, April 6, 2022

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Washington, D.C.

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The interview in the above matter was held via Webex, commencing at 10:00 a.m.

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Present: Representatives Cheney, Schiff, and Aguilar.

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Appearances:

- For the SELECT COMMITTEE TO INVESTIGATE
- THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:
- [REDACTED], SENIOR INVESTIGATIVE COUNSEL
- [REDACTED], CHIEF INVESTIGATIVE COUNSEL
- [REDACTED], INVESTIGATIVE COUNSEL
- [REDACTED], PROFESSIONAL STAFF MEMBER
- [REDACTED], SENIOR INVESTIGATIVE COUNSEL
- [REDACTED], STAFF ASSOCIATE
- [REDACTED], CHIEF CLERK
- [REDACTED], INVESTIGATIVE COUNSEL
- [REDACTED], SENIOR COUNSELOR TO THE VICE CHAIR
- [REDACTED], STAFF ASSOCIATE
- [REDACTED], SENIOR INVESTIGATIVE COUNSEL
- [REDACTED], SENIOR LEGISLATIVE COUNSEL

On behalf of the WITNESS:

DANIEL R. BENSON, Esq.  
JONATHAN GONZALES  
Kasowitz Benson Torres, LLP  
1633 Broadway  
New York, New York 10019

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2 [REDACTED] Good morning. This is a transcribed interview of Eric Herschmann.  
3 My name is [REDACTED]. I'm a senior investigative counsel for the House Select  
4 Committee to Investigate the January 6th Attack on the U.S. Capitol, and I'm also of  
5 counsel to the vice chair of the Committee, Representative Liz Cheney. We'll do  
6 introductions here. I'll let each member of the staff introduce themselves.

7 [REDACTED] Good morning, Mr. Herschmann. My name is [REDACTED],  
8 I'm investigative counsel for the Select Committee.

9 [REDACTED] Good morning, Mr. Herschmann. I'm [REDACTED]  
10 and I'm chief investigative counsel for the Select Committee.

11 [REDACTED] Good morning, Mr. Herschmann. My name is [REDACTED].  
12 I'm a professional staff member with the Committee.

13 [REDACTED] And Representative Liz Cheney is on as well. Other members of the  
14 Select Committee may be joining us throughout. When that occurs, you will likely see  
15 their name show up on the screen, and we'll also make an effort to announce it, so that  
16 it's on the record when they join. It's common for Members to join, and then have to  
17 jump off for other business. And so we probably will not make an effort to note every  
18 time they leave, simply because it's difficult to keep track of all that.

19 This will be a staff-led interview, so the staff here in this conference room will be  
20 asking most of the questions, but we'll pause throughout to see if Representative Cheney  
21 or other Members who might join us want to ask questions as well.

22 With that, Mr. Herschmann, could you please state your full name for the record,  
23 and spell your last name?

24 The Witness. Eric Herschmann, H-E-R-S-C-H-M-A-N-N.

25 [REDACTED] And, Mr. Benson, could you state your name for the record.

1           Mr. Benson. Daniel Benson, Kasowitz, Benson & Torres for the witness.

2           ██████████ Is anybody else from your firm joining us today.

3           Mr. Benson. Jonathan Gonzales is on as well.

4           ██████████ Great, thank you.

5                               EXAMINATION BY COUNSEL FOR Committee (RESUMED)

6           ██████████

7           Q     Mr. Herschmann, as you know, this is a transcribed interview, so we have an  
8           official reporter who will be making a transcript of the interview. In addition, this virtual  
9           interview is being recorded. The reporter's transcript constitutes the official record of  
10          the proceeding, and you and your counsel will be given an opportunity to review that  
11          before it's finalized if you so wish, but it is possible that the Committee will choose, at  
12          some point, to also make use of the video and audio recording?

13          As you know, since you're an experienced attorney, it's important that you wait  
14          until we complete each question before you begin your answer. That's for the benefit of  
15          the court reporter, so that they don't have multiple people talking at the same time.  
16          Obviously, as you know, if you don't understand a question, please say so, so that we can  
17          clarify it.

18          You are not under oath, because you are appearing here voluntarily, but as I'm  
19          sure you know, it is unlawful to knowingly make a false statement to Congress, and doing  
20          so could be a violation of 18 USC 1001. You may refuse to answer a question only if it's  
21          necessary to preserve a privilege recognized by the Select Committee. If you refuse to  
22          answer a question based on that privilege, the staff may either proceed with the  
23          deposition or seek a ruling from the chair on the objection. If the chair overrules such  
24          an objection, you will be required to answer the question.

25          If you need to consult with Mr. Benson at any time, don't hesitate to say so. We



1 would be happy to accommodate any breaks. Because you're not in the same room,  
2 you can just make sure you turn off your video and your audio if you want to call him.  
3 And also, if you just need a rest break or a lunch break, we can accommodate that as well.

4 Do you have any questions before we begin?

5 A No.

6 Q Okay. As I said earlier, Mr. Herschmann, you're appearing here voluntarily.  
7 This is not pursuant to a subpoena, but we did send Mr. Benson, your attorney, a list of  
8 issues for which we wanted you to check to see if you had any records responsive to the  
9 request?

10 Did you, in fact, have an opportunity to search for any responsive records?

11 A I did.

12 Q Okay. And you have not produced anything to the Committee; is that  
13 correct?

14 A That's correct.

15 Q Okay. When you worked at the White House, did you have a White House  
16 email account?

17 A Yes.

18 Q And as far as you know, are all of those emails with the National Archives?

19 A Yes.

20 Q Did you also have a personal email account?

21 A Yes.

22 Q Okay. And was that -- I won't say the full email address on the record for  
23 privacy concerns, but was it a Gmail account?

24 A Yes, it was.

25 Q And do you still have access to that account?

1           A    I have access to it, but I don't really use it, except I think, like, government  
2 forms, you know, for travel. I have, in particular, a COVID form. Otherwise, I don't use  
3 that email address predominantly for anything.

4           Q    Okay. Did you use that email address during the time period of interest to  
5 us, which is generally from November 3rd, 2020, election day, up until January 20, 2021?

6           A    Yes.

7           Q    And have you had a chance to review that Gmail account to see if you had  
8 anything responsive to our request?

9           A    I did.

10          Q    And as you said earlier, you didn't find anything. Do you have a general  
11 either practice of deleting your emails or a setting on your Gmail that deletes them after a  
12 certain number of days?

13          A    I don't know if general is the right term, but I do routinely delete emails over  
14 the course of my career. And that's what I presume I've done here.

15          Q    Did you have any other personal email addresses during that time period?

16          A    Not at all related to -- maybe family, but not related at all to anything for  
17 work.

18          Q    Okay. Did you have an email account with the Trump campaign?

19          A    No.

20          Q    When you worked at the White House, did you have a White House issued  
21 phone?

22          A    Yes.

23          Q    Do you know if that had text capability on it?

24          A    I don't remember.

25          Q    As a matter of practice, did you send and receive texts from your White

1 House issued phone?

2 A I just don't remember. I presume I sent texts, but I just don't remember.

3 Q Okay?

4 A When I came on board, there was not exactly a lot of on-boarding training.

5 Q Okay. Did you turn in that phone to somebody at the White House when  
6 you left?

7 A I did.

8 Q Did you also have a personal phone?

9 A Yes.

10 Q And did you send or receive texts from that phone?

11 A I believe so, yes.

12 Q Did you check to see whether you have any text messages responsive to our  
13 requests on that phone?

14 A I did.

15 Q Okay. And, again, you didn't have anything. Do you have a setting on  
16 your phone to delete things after a certain amount of time?

17 A I don't remember if I had a setting or not. I don't back up text messages at  
18 all. I don't think I ever have. And I know I got a new phone, but that's -- I didn't do a  
19 lot of texting.

20 Q Okay?

21 A That I recall.

22 Q So when you got a new phone, do you recall whether you transferred your  
23 texts over from your old phone?

24 A I would be surprised if I did transfer my texts over from my old phone,  
25 because I -- I never backed up texts beforehand. So I don't know how I would do it.

1 Q Did you ever sendh or receive text messages with President Trump either  
2 while he was in office or afterwards?

3 A No, I don't believe so.

4 Q Okay. Do you know whether -- when President Trump was in office,  
5 whether he sent and received text messages?

6 A I never saw him doing that.

7 Q And do you know whether he carried a cell phone with him?

8 A I don't remember him with a cell phone, at least when I was with him. I  
9 just don't recall that.

10 Q Do you know what his practice was if he wanted to make a call? Would he  
11 have somebody with him place a call on their device? And I'm sure the answer may  
12 depend on whether he was in the Oval Office versus traveling or somewhere else?

13 A I don't remember -- well, I'm trying to think if I remember him making a  
14 phone call at any point outside of the Oval when I was there. But it would normally be  
15 yelling out to whoever was in the outer Oval to get, for example, [REDACTED] on the  
16 phone, right.

17 Q And just for the record, that never happened?

18 A I'm sorry, I was using you as an example. I apologize. Whoever it was.

19 Q Just to be clear?

20 A It would be -- I don't remember any specific details as much as it being, get  
21 so-and-so on the phone. And then somebody would either say, here comes so-and-so,  
22 or they were unable to reach them and left a message or something.

23 Q And when you worked at the White House, did you have a practice of  
24 keeping either handwritten or electronic notes?

25 A No, I didn't keep any notes or handwritten.

1 Q You didn't even have like a notepad you would carry around or anything like  
2 that?

3 A I didn't have that. I know other people did, but that's not my practice at all.

4 Q Okay. So changing topics here, you have a long, very distinguished career.  
5 We're short on time today, so I won't make you summarize the whole thing, but maybe  
6 you could start with when you first began a professional or personal relationship with  
7 President Trump, whether that was representing him as outside counsel or in any other  
8 capacity before he became President.

9 A Well, I had no involvement with him professionally at all beforehand. I  
10 didn't work on any matters with the President when I was at the firm at Kasowitz, Benson  
11 & Torres, at that time Friedman. But I didn't work on any of his matters.

12 Q But the firm did represent either him or his companies; is that correct?

13 A To the best of my knowledge -- without getting into background too much, I  
14 ran a publicly-traded company while I was still a partner, and maintained my partnership  
15 interest at Kasowitz. So I was not in the law firm for years at a time.

16 So, I mean, I knew generally that they worked with Trump, but I didn't know any  
17 details about any of those cases at all.

18 Q Okay. How did you first become involved with President Trump?

19 A The first -- by way of quick background, David Friedman was my law partner.

20 Q Mm-hmm?

21 A David Friedman was nominated to be ambassador to Israel. I took David  
22 through his nomination and confirmation process. So at that time would be -- at some  
23 point during that period is where I would have had interactions with President Trump, not  
24 in detail. And then before impeachment, I had some interactions with him, but I don't  
25 remember the details of those. And then I obviously represented him in the first

1 impeachment.

2 Q Okay. And then how did it come about that you ended up working in the  
3 White House?

4 A I think there were discussions -- well, the President asked me to. I had  
5 discussions with Bill Barr, and there were discussions originally when I took David  
6 Friedman through his confirmation, whether I would go work in the State Department,  
7 which I declined to do. And then I had discussions about whether -- people wanted me  
8 to join DOJ. At the end, the decision was made with the President and others that it  
9 would make sense for me to work in the White House, and they thought I could help.

10 Q Okay. And when did you start working at the White House?

11 A In August of '20. I don't remember the exact date. I believe it was the  
12 beginning.

13 Q August of 2020?

14 A Right.

15 Q And what was your position?

16 A Senior adviser to the President and assistant to the President.

17 Q Okay. And what were your responsibilities?

18 A Predominantly legal advice on different matters, and as I was assigned for  
19 different things to be involved with. I don't think there was any specific portfolio.

20 Q Now, when you say legal advice, you were not in the White House counsel's  
21 office, correct?

22 A I was not. But I knew Pat Cipollone before he became White House  
23 counsel, and we had worked together obviously for a period of time on impeachment and  
24 were friendly. So I think it was just a general belief that -- with my background and  
25 experience, and Pat's, it would make sense for me to quote/unquote report to Pat.

1 Q Did either of you report to the other? I know you didn't on a -- or interpret,  
2 as a functional matter, did one of you report to the other?

3 A No, I think we worked very, very closely on many things, but I wouldn't say  
4 we reported to each other. We both reported, I believe, to the President.

5 Q And so how do people know who to go to for legal advice if you had both  
6 you there as a lawyer and Pat Cipollone and others in the White House counsel's office?

7 A I have no idea. There were people that I think on certain things, you know,  
8 our personalities are very, very different. Pat's a little more subdued and a little more  
9 reserved, and I was a prosecutor at the beginning of my career out of New York. Our  
10 styles are slightly different. Just, you know, I could be in some ways more forceful than  
11 Pat, in some ways maybe less forceful in things. But I think it was whatever people  
12 chose.

13 Q Now, what about the President? Did he sometimes rely on you for legal  
14 advice and at other times rely on Mr. Cipollone for legal advice?

15 A I mean, I think he sought both of our legal advice. I can't say who he relied  
16 on more than the other, but I think, by and large, Pat and I were in agreement. There  
17 were times in which Pat would seek my assistance or for me to weigh in. There were  
18 times where I would say, you can ask Pat. But we complemented each other in, I think,  
19 the advice that we gave the President.

20 Q Was there any division of responsibility between you and Mr. Cipollone?

21 A I don't believe so. I mean, he was White House counsel, so he has  
22 obviously different categories and issues that he's going to deal with that I won't. But I  
23 don't think there was, like, a specific division. We would just consult with each other  
24 every day.

25 Q Did you have any role, either formal or informal, in the President's reelection

1 campaign in 2020?

2 A None whatsoever.

3 Q Did you interact with people from the campaign?

4 A The only time I believe I ever met anyone from the campaign would have  
5 been probably in the October time period, where I just wanted to get a general  
6 notification about the process and what happens and what to expect.

7 And at that point, I met with -- at first, I spoke with, and then I met with Matt  
8 Morgan and Justin Clark, who gave me a tutorial of what to expect and how things  
9 worked and, you know, at different stages, just conceptually that idea. But that was for  
10 my own edification more than anything else.

11 Q Were you involved in any of the legal challenges to the outcome of the 2020  
12 presidential campaign?

13 A I don't know what -- "involved in" is a little difficult. I would say that in the  
14 beginning, when there were discussions about -- I remember, in particular, there was an  
15 opinion or an order by Justice Alito that limited what the Secretary of State in  
16 Pennsylvania could do. And I believe either election night or some point shortly  
17 thereafter, it seemed the Secretary of State had given direction in writing that was  
18 contrary to a representation -- or an order of Justice Alito.

19 So I remember having some discussions about that, and I remember discussions  
20 about when I think Texas sued Pennsylvania dealing on original jurisdiction, that I thought  
21 that was a development that was positive, in the sense that the Court could make a  
22 decision on this, and a lot of other decisions that were being discussed would be resolved.  
23 But other than that, I don't remember anything in particular about it.

24 Q Did you have interactions with the campaign's outside counsel?

25 A Yes. I mean, like Rudy? Rudy Giuliani and them.



1 Q Maybe we should go through some of the names?

2 A Yeah.

3 Q We'll start with Rudy Giuliani?

4 A Yes, I knew Rudy from beforehand. I mean, Rudy obviously was the U.S.  
5 Attorney of the Southern District and the Mayor of New York. I started my career in the  
6 Southern District, and I knew Rudy over the years just professionally.

7 You'd have to go through other names and I can tell you.

8 Q And so what's your understanding of what Mayor Giuliani's role was as  
9 outside counsel? Was he, at some point, the lead outside counsel for the campaign?

10 A Yeah, at some point, he was made lead outside counsel. I think it was  
11 some point shortly after the election. It would probably be in a week or two afterwards.  
12 I know he was advocating to be put in charge.

13 Q And was that decision made by the President?

14 A I think he publicly announced it.

15 Q Who was in charge, if anybody, before Mr. Giuliani was in charge?

16 A No idea. I presume it was run out of the campaign.

17 Q Okay?

18 A Just so we're clear, my understanding was that there was traditional  
19 litigation that always happened post elections, both by Republicans and Democrats, and  
20 that people had tracked all the lawsuits that -- I didn't know his name until, whatever, in  
21 the October time period, Marc Elias had been filing around the country. And that the  
22 campaign had counsel that they would use, and that these were standard challenges.

23 So whatever the process existed for that, I had the general understanding that  
24 they were doing those things. And then when Rudy was put in charge, things changed.

25 Q Changed in what way?

1           A    I mean, it wasn't being run out of the campaign.  It was being run by Rudy  
2   and his team.

3           Q    And do you know if they were reporting back to Justin Clark or Matt Morgan  
4   or anybody else on the campaign?

5           A    I don't believe so.  I think that a lot of what went on is that people were, for  
6   lack of a better term, badmouthing the campaign lawyers and that caused obvious  
7   dissension.  And then they may have done some level of support, but it was  
8   predominantly Rudy's team running it independently.

9           Q    And reporting directly to the President?

10          A    I don't know.  I don't know what level of reporting existed or didn't exist.

11          Q    Did Sidney Powell represent the campaign?

12          A    Not to my knowledge.

13          Q    Okay.  What's your understanding of what her level was?

14          A    At some point after election, I met Sidney Powell.  I didn't have much  
15   interactions with her except I knew she was promoting claims about Dominion, right, and  
16   I think she, in particular, was derogatory towards the attorneys that were working at the  
17   campaign.  And she was doing that, as best I could tell, somewhat on her own.  I'm  
18   certain you guys are aware of the meeting with Sidney, you know, in the Oval.

19                But other than that, I don't know who she was working for or whether she had  
20   ever been retained by anybody.

21          Q    What was your understanding of what John Eastman's role was with the  
22   campaign?

23          A    I don't think Eastman was ever retained by the campaign.  Eastman at one  
24   point -- I don't remember when he came into the scene.  He came in as a constitutional  
25   law expert, I remember that.  He was advising, and then he seemed to be involved with

1 Rudy on some levels, and others, but I didn't know exactly how. But I don't remember  
2 Eastman ever being retained in any way. At least no one told me that.

3 Q Okay. And did you have interactions with Dr. Eastman?

4 A I did.

5 Q We'll follow up on those in a moment?

6 What's your understanding of what role, if any, Jenna Ellis had.

7 A I'm not -- to be honest, I'm not 100 percent what role Jenna had. She was, I  
8 think, the spokesperson for Rudy's team. I think she coined whatever the term was,  
9 elite strike force, or whatever she had come up with to describe Rudy's team. She  
10 worked obviously -- I saw her sitting next to Rudy in some presentation, I forgot, some  
11 legislature where she was acting as counsel. But I would say predominantly she acted  
12 as, counsel and as a spokesperson for that group. And also, I think there was dissension  
13 between Jenna and the campaign lawyers.

14 Q And when you say the campaign lawyers, is that Matt Morgan and Justin  
15 Clark?

16 A Yeah, predominantly.

17 Q So what role did Justin Clark and Matt Morgan have after Mayor Giuliani  
18 took the lead?

19 A Not much, except I would say if there were factual allegations, you know, or  
20 statements that were made, they would either assist or try to assist in whether it could be  
21 validated or not.

22 Q Okay. Do you know anything about Cleta Mitchell's role, if any, with the  
23 campaign?

24 A I don't think she had a role with the campaign. Cleta I met through Mark  
25 Meadows. He asked me at one point to speak with her.

1 Q What did you speak to her about?

2 A She -- when I first spoke with her, I believe she was in Georgia working on  
3 election challenges. And she was derogatory towards the lawyers that were working on  
4 it at the time, and she was stepping in, I think, to take a more active role in those  
5 challenges.

6 Q And in what way was she derogatory towards the lawyers who were already  
7 working on it?

8 A She said, in essence, they didn't know what they were doing. They weren't  
9 following up correctly, they weren't being straight in what was happening.

10 Q And who were those lawyers?

11 A I don't remember which lawyers. I remember that Stefan Passantino, I  
12 believe, was one of them that she was derogatory about. And I said, I believe Stefan  
13 was my lawyer when I did -- submitting my forms. I think he represented Pat Cipollone,  
14 potentially Bill Barr, Jared, and others.

15 And I thought, you understand you're talking about somebody that a lot of people  
16 here used and trust. And your first conversation is to be derogatory towards them.  
17 And I found Stefan to be a pretty straightlaced guy. So that was my first interaction with  
18 her.

19 Q So did Ms. Mitchell express any difference of opinion from Mr. Passantino's  
20 view of the facts, so specific allegations of voter fraud in Georgia?

21 A I don't know if it's that. I think it's the overall strategy that she thought she  
22 was going to develop and go forward with. And I just -- lost you guys.

23 Q Okay. Can you see us now?

24 A Yeah, you're back. Okay.

25 No, I don't know if there's any specific factual allegations. You guys are moving

1 all over the place. There we go.

2 I don't think there was any specific factual allegations that I remember. I mean, I  
3 did have several confrontations with her, but those were later on. At a certain point, we  
4 had a nasty conversation and I was like, okay, I'm done with you.

5 And the next time I think I interacted with her was a document came in on a -- I  
6 think it was a verification that they were asking the President to sign in blank before the  
7 document had been written. And I happened to be in the outer Oval, you know,  
8 when -- I don't remember who showed it to me. And I don't even think it came from  
9 Cleta, I think it came from some other lawyer. I said, I wouldn't let anybody sign a  
10 verification in blank before you know what the document stated, factual allegations. He  
11 is not signing it, it's ridiculous.

12 And then we had an email exchange about it later on. I think actually it's one of  
13 the documents you sent me, but I don't think you have my response, from what you sent  
14 me.

15 Q And so when you say a document that was blank, meaning it's just like a  
16 signature line and somebody else would fill in the content?

17 A No, it's a verification for a verified complaint without the complaint.

18 Q I see?

19 A Right. And I said, I thought it was a ridiculous thing to do under any  
20 circumstances. And the draft, I think they had incorporated other documents that had  
21 been previously filed. And I said -- I said, you know, I'm going to tell him not to do it, no  
22 matter what.

23 Q Do you recall which case that was?

24 A I don't remember which document number it is, but I think it's -- whatever  
25 range it was in those documents, they were trying to -- that's what they were trying to get

1 done. So if you tell me which document it is that covers that, then we can do it.

2 Q That might take us a minute to find that?

3 A I don't mean to jump that far ahead.

4 Q That's okay?

5 So what else did you have confrontations with Cleta Mitchell about.

6 A I just -- I thought her overall approach was -- and her treatment of people,  
7 was harsh.

8 Q Did she want to make any allegations that you thought were unsupported?

9 A I don't know if I would answer they were unsupported. The allegations  
10 they were putting down, I had not seen support for those allegations. And that's one of  
11 the things I had challenged. I just don't remember the factual allegations. I remember  
12 looking at it and there were specific details about specific numbers, and they were relying  
13 on an expert that I thought had been determined was not reliable. And that's what the  
14 basis was.

15

BY [REDACTED]

16 Q Do you remember who that expert was?

17 A I don't. If you tell me the names, I'll probably remember it. But whoever  
18 they were relying upon in their report, I believe was not there. I don't have an index of  
19 what you guys sent me. So, let's see.

20 [REDACTED] So let's put up Exhibit 12.

21 The Witness. This is it. So this says, I don't know what K stands for Trump  
22 Georgia Federal Action Final, right? And, right, so this must be the attachment that  
23 went with it. But can you scroll back up to the top?

24 Okay, yeah. So there's a response to this email, because when she said, like, this  
25 is the version from John Eastman with your edits converted to PDF, I'm positive that I

1 never edited anything from John Eastman. And I remember writing back to her about  
2 this, that that's not what I was talking about, and that I thought there was not sufficient  
3 evidence for the allegations that I had seen.

4 BY [REDACTED]

5 Q In this complaint, or in a different document?

6 A I think it was in this complaint.

7 Q Okay?

8 A And my concern was they were submitting the verification that they wanted  
9 him to sign that I didn't believe would be sustainable, or I had not seen sufficient proof  
10 that it would be sustainable, and I didn't know how the President could sustain that  
11 allegation. I said, if you're going to make any allegations, then you should try to make  
12 certain that it's going to be outcome determinative, or something along those lines. But  
13 there's definitely got to be a response to this.

14 Q Okay. And so what happened?

15 A As far as I know, he didn't sign the verification. And, you know, she was  
16 upset about it. But I had thought that after it didn't get done. I don't remember how  
17 they signed it. And I think this complaint, I remember attaching a prior complaint that  
18 had not been, in my view -- I don't think it was verified, the prior one. I said, you can't  
19 ask him to verify something that they didn't verify the first time, and now claim he should  
20 verify this.

21 Q But was the lawsuit eventually filed?

22 A I just don't recall.

23 Q Okay?

24 A I mean, they may have filed it without the verification. I just don't recall.

25 Q Okay?

1 [REDACTED] I'm going to pause to see if anybody else has questions on what  
2 we've covered so far.

3 BY [REDACTED]

4 Q So I would like to now turn to the events of January 6, 2021. And then  
5 once we get through that, I'll go back in time a little bit and cover some of the things  
6 leading up to it. But because the events of January 6th are so important to us, we  
7 wanted to start with that early in the day?

8 So, first of all, did you have any involvement in either planning or preparing for  
9 any of the rallies on January 6, 2021.

10 A None whatsoever.

11 Q In the days leading up to January 6th, what was your understanding of what  
12 was supposed to happen that day? So we understand there was both a rally at the  
13 Ellipse, and then a joint session of Congress. And then of course, we know what  
14 eventually happened. But what was your understanding of what the significance of  
15 January 6th was?

16 A The VP was going to finish the certification of the votes, and that was the  
17 end.

18 Q And did you have an understanding of what the purpose of the rally was?

19 A No. I may have attended one rally, only because I was working on  
20 something and went on a trip with people. But other than that, I had never been to a  
21 rally.

22 Q Okay?

23 [REDACTED] And I'll just note that Congressman Schiff has joined us.

24 BY [REDACTED]

25 Q Were you involved at all in the preparation of the President's remarks for the



1 January 6th rally at the Ellipse?

2 A I believe a copy was sent to me. And I don't remember editing or marking  
3 it up, as much as suggesting that if there were any factual allegations, someone needed  
4 to independently validate or verify the statements.

5 Q Okay. To whom did you make that suggestion?

6 A It probably would have been either to speechwriters or to everybody. I just  
7 don't remember.

8 Q Okay. Do you remember, did you do that orally or by email?

9 A I may have done it both ways.

10 Q Did you have a concern about any of the factual statements in the draft?

11 A I don't know if concern's the right word. I didn't know whether -- what the  
12 source was for some of them.

13 Q But what led you to make that comment? Because I would assume there  
14 are fact checkers who regularly check things that are in the President's speech. So what  
15 made you on that particular speech express the need to make sure everything had been  
16 checked?

17 A I don't know if it's -- I wouldn't limit it to that specific speech. There were, I  
18 think, other times in which, if there were factual allegations that I didn't recognize the  
19 source for, or I thought it came from Sidney or whomever, I may have very well said, see  
20 if you have an independent way of validating that. And if it was from an expert that I  
21 thought had been discredited at a certain point, obviously I would say -- raise that issue.

22 Q Did you have a concern that some of the President's outside advisers were  
23 providing information that the President was relying on that may not have been verified?

24 A I don't know if that's a fair description. I think one of the problems that I  
25 had was there was a tremendous influx of information that was coming in from different

1 sources at different times, and I could not tell how they were validating what the basis  
2 was for some of the information.

3 So I started to question a lot of it, what's the basis, and what's the source, and  
4 who is the source, and are they reliable, and everything else that I thought was needed if  
5 this was going to be a court presentation one day.

6 So whether it's Daubert or other issues, that's the type of things that I was looking  
7 at. And then, did the argument that they were presenting, was it consistent with other  
8 arguments? I thought Sidney's position was inconsistent with some of the arguments  
9 that Rudy was making.

10 Q In what way?

11 A Well, Sidney was arguing Dominion and altering of voting machines through  
12 the internet. And at some point, using Nest thermostats and a bunch of other stuff that  
13 I thought was impossible to determine in the time period that she claimed to have figured  
14 all this out.

15 And that was inconsistent with Rudy's position of rules were changed at different  
16 times during the course of the run-up to the election as well as, you know, people that  
17 had moved out, or X amount of people -- dead people voting or observers not being in  
18 the room, or something like that. I didn't understand how they intersected, let  
19 alone -- you now, under Sidney's theory, if it was Dominion machines that were used to  
20 flip all the votes, then why were we having a runoff in Georgia, if they could just eliminate  
21 that whole issue altogether.

22 Q During the days leading up to January 6th, were you aware of any  
23 discussions about encouraging people to go to the Capitol?

24 A No.

25 Q Were you aware of any discussions about the possibility of President Trump

1 himself going to the Capitol on January 6th?

2 A No. The only time I heard that is I went to the Ellipse, and I ended up  
3 walking back in the middle of the speech. And at some point, somebody asked me, is  
4 the President going to the Capitol? And I said no. And then I guess he must have said  
5 something along those lines, and I said, no, forget that. I don't believe it's happening.

6 Q Okay. And after the President gave his speech at the Ellipse, were you  
7 aware of any conversations about the possibility of him going to the Capitol?

8 A No, I don't believe there was ever any serious view that he was going to go  
9 to the Capitol. That would have been logistically, I think, impossible. And I presume it  
10 would have been a big conversation within the White House if the President was going to  
11 walk down to the Capitol. I can't imagine that. That wasn't going to happen without  
12 everybody knowing.

13 Q Did you ever hear the President or anybody else discuss the possible effect  
14 that having a crowd march to the Capitol could have on the Members of Congress?

15 A No.

16 Q Were you aware of any discussions leading up to January 6th about the  
17 possibility of violence that day?

18 A None whatsoever.

19 Q Not even the possibility of violence between protesters and  
20 counter-protesters?

21 A None at all.

22 Q Okay. Were you aware of any discussions in the White House about  
23 possible protests by groups such as the Proud Boys, Oath Keepers, or any other groups?

24 A No, I never heard of them until after January 6th.

25 Q Did anybody discuss with you the possibility that Congress might reject

1 certification of certain electors?

2 A I don't think that's the right description. I know what Eastman's initial  
3 theory was. And I had a conversation with Eastman, which we can cover.

4 Q Okay?

5 A But not that I expected anyone in Congress to reject any slate of electors.

6 Q Now, some Members of Congress obviously did vote to reject certain  
7 electors. Did you ever consider it a realistic possibility that a majority of both Houses  
8 would do so?

9 A I don't think I ever thought about it, but practically speaking, no.

10 Q Were you involved in any discussions about lobbying or communicating with  
11 Members of Congress about objecting to the certification of certain electors?

12 A No. I should say, I don't recall any conversations with Members of  
13 Congress about voting to reject the slate of electors.

14 Q But do you remember any conversations within the White House about  
15 other people's conversations with Members of Congress about that?

16 A No. The only conversation I remember is I went with Marc Short, at some  
17 point before the 6th, over when Eastman was meeting with Greg Jacob. And I walked  
18 over with Marc to chew out Eastman a little bit, with the view that whatever -- if you're  
19 going to give people information to make speeches on the floor about factual allegations,  
20 then someone better make sure they're accurate, and nothing should come out of  
21 someone's mouth that hasn't been independently verified and is reliable. But I didn't  
22 expect anything where people were going to reject slates of electors from states.

23 Q And what prompted you to go with Mr. Short and chew out Mr. Eastman, as  
24 you described it?

25 A I was walking towards the Oval and Marc was walking out. I believe the VP

1 had gone out beforehand and he was with Eastman. And he asked me, could he talk to  
2 me. Marc asked me, could he talk to me. And he asked me what I thought of  
3 Eastman. And I said, I don't know, he's a law professor or dean somewhere. He seems  
4 bright, maybe a little off in a practical world. But I put that in with some law professors  
5 that I've known.

6 And he said, well, do you want to come with me to the other side. And he just  
7 talked to me about generally what his interactions had been with Eastman. And he said,  
8 I think he's crazy. And I said, okay.

9 But, you know, I had watched enough people say enough things that I thought  
10 were difficult to validate, and I took it as an opportunity, based on my prior interactions  
11 with Eastman, to just chew him out.

12 Q What were your prior interactions with Eastman?

13 A When he -- I don't remember how I first met him. I believe it was in the  
14 White House. I initially thought, okay, he's a constitutional law expert. Then at some  
15 point, he explained that his theory was based on Electoral Count Act. And what he  
16 thought was the ambiguity in the statute and there had been a significant amount of  
17 violence in the country at different times. I don't believe by Trump supporters. We  
18 had discussed generally the temperature and what was happening in the country. And  
19 so let me put it in context for you.

20 Pre-November 3rd, and I traveled back and forth. I lived in  
21 Texas, went back and forth several times. When I came back, it  
22 looked like a hurricane was going to come through DC. And I grew  
23 up in Miami Beach, where you boarded up things with plywood  
24 before hurricanes. Storefronts were boarded up, you couldn't get  
25 through doors. It looked like a storm was coming.

1           After November 3rd, and after the election had been called, there was dancing  
2 and celebrations in the streets by the Biden supporters and no violence whatsoever. So  
3 at the time, my focus was -- they weren't concerned that Trump supporters would be  
4 violent. And he described for me what he thought the ambiguity was in the statute and  
5 he was walking through it at that time.

6           And I said to him, hold on a second, I want to understand what you're saying.  
7 You're saying you believe the Vice President, acting as President of the Senate, can be the  
8 sole decisionmaker as to, under your theory, who becomes the next President of the  
9 United States? And he said, yes. And I said, are you out of your F'ing mind, right.

10           And that was pretty blunt. I said, you're completely crazy. You're going to turn  
11 around and tell 78 plus million people in this country that your theory is, this is how  
12 you're going to invalidate their votes because you think the election was stolen? I said,  
13 they're not going to tolerate that. I said, you're going to cause riots in the streets.

14           And he said words to the effect of there's been violence in the history of our  
15 country to protect the democracy or to protect the republic.

16           And I told him that, again, he's F'ing out of his mind. This isn't law school. This  
17 is the real world. And I so berated him that I believed that theory would not go forward.  
18 I thought, conceptually, you can discuss it. And I said, how long do you think it's going  
19 to take for somebody to realize what your strategy is and walk into a courtroom and  
20 block the whole thing? It going to take three minutes. And his concept that we're  
21 going to skip states and table it for a while and all this other stuff, and I said I thought it  
22 was ridiculous.

23           So that was my interaction with him as related to that, and it was pretty brutal.

24           Q    Do you remember when that conversation was?

25           A    It would be some point after he had floated this idea with whatever memo

1 he had done.

2 I mean, is there ambiguity in the statute? I believe yes. You know, are there  
3 questions that can be discussed? I remember, he mentioned Laurence Tribe having  
4 written an article that he said that he believed the statute was unconstitutional. I said,  
5 with all due respect, Laurence Tribe, who cares? I mean, the concept in my view made  
6 no practical sense at all.

7 Q So Dr. Eastman wrote two memos which are in the materials. We can  
8 show them to you if that's helpful. Do you remember, when you say it was after he  
9 wrote one of these memos, whether it was the first one or the second one? The first  
10 one, I think, was a two-page memo, the second was more like a six-page memo?

11 A I don't remember. It may have been the more detailed one. Because I  
12 had not heard about this. As far as I knew, initially, he was just working on the  
13 traditional lawsuits. You know, I think there was -- he worked on, I believe, the original  
14 jurisdiction lawsuit, right, between Texas and I think Pennsylvania. But I think it  
15 probably was the second one, if I had to guess on timing.

16 Q So this would have been pretty close to January 6th?

17 A If you tell me the dates of the two, it may help. I just don't recall which, in  
18 particular. But I remember once we had gone over it, it was clear to me that whether  
19 his legal analysis was correct or not, in practical application, I thought it was impossible.

20 Q And was this conversation you had in person or by phone?

21 A In person.

22 Q Where was it?

23 A I believe it was in the White House somewhere, because I don't think I met  
24 him anywhere else.

25 Q Was anybody else there?

1           A    I don't believe so.

2           Q    Do you recall how this meeting came about?

3           A    I don't. I don't know if someone told him to discuss it with me or what the  
4 circumstances were.

5           Q    Okay. But based on what you described, this was before the meeting that  
6 you were talking about where you went with Marc Short to meet with Eastman?

7           A    Yes.

8           Q    Okay?

9           A    That's -- I'm sorry, so we're clear, by the time I went with Marc Short to meet  
10 with Eastman, I was convinced that as aggressive as I was towards him, he was not -- he  
11 didn't believe practically this would work, because it required a whole domino set of  
12 circumstances, and some of which were state legislatures coming back into session to put  
13 up additional slates or alternate slates. I said, if your theory is correct and this is what  
14 they want to do, why aren't they doing it now? Why aren't they already coming into  
15 session and saying, we want to change the slates, and why do you need the VP to go  
16 down this path.

17          Q    Did he have an answer for that?

18          A    No. That's why I was convinced that, you know, in the real world, you  
19 could talk about -- we all went to law school, right? About the theoretics of what  
20 somebody may say may happen. But in practical application, I didn't think there was  
21 any chance in the world this could work. I thought, if the VP -- as I understood it, and as  
22 he explained it, the VP would go state by state in alphabetical order. And then would  
23 skip states where he says there were challenges. And that would trigger -- he had  
24 different alternatives as to what would happen. And if the time clock ran out, then we  
25 would go to the full House.



1 I thought it's not a practical approach. I said, do you have any precedent at all  
2 for the VP or anyone acting in the capacity as the President of the Senate declaring some  
3 statute invalid.

4 And he goes, like, no, but these are unprecedented times. And I thought that  
5 was a ridiculous answer.

6 And I think also, one of the issues is it was starting from a premise that there was  
7 sufficient effort to prove that the entire election was stolen and this was a way of getting  
8 it done. And I didn't think that was practical at all.

9 Q Did he seem like he genuinely believed that the election was stolen?

10 A I think he did. I don't know what factual information he had, but I think he  
11 did.

12 Q Did he seem like he genuinely believed that he was correct in his  
13 interpretation of the law, or more that the circumstances justified this kind of action?

14 A I think he believed -- let me take a step back.

15 There's no question in my mind, he is a bright guy, really no question, right? But  
16 as I said beforehand, a lot of times law professors who are not out there practicing have a  
17 view of how things should work. And then we get into the real practice of law, and  
18 realize it doesn't always work that way.

19 I think he believed it and he was putting forth a theory. I just didn't believe that  
20 it had -- and I told him -- any chance of practical success. The amount of things that he  
21 thought had to happen, starting with the VP's decision to do things, I thought were  
22 practically impossible.

23 Q Did he ever express a view as to whether he thought it was, in fact,  
24 practically possible for his scenario to work?

25 A I think he thought it could work if everybody got in line. But I think it was

1 clear that, the first legal challenges, he would lose.

2 Q And so when you told Marc Short that you thought Eastman was a little bit  
3 off, I think was the term you used, what did you mean by that?

4 A That he didn't have a practical approach to, you know, what he was  
5 suggesting.

6 Q Do you know how John Eastman came to the President's attention?

7 A No idea.

8 Q Okay. Were you -- at the time when you and Marc Short went to meet  
9 with Dr. Eastman, were you aware that the day before, I believe it was, Dr. Eastman had  
10 met with the President and the Vice President?

11 A I was not.

12 Q Okay. Did Mr. Short mention that?

13 A He didn't. He just asked generally what I thought of Eastman, and he said  
14 he had heard that, you know, he was off. I don't remember what term he used, but  
15 along those lines.

16 Q And do you know why Dr. Eastman was providing what appeared to be legal  
17 advice to the President and Vice President without you or Mr. Cipollone there, how that  
18 could come about?

19 A Rudy could have provided legal advice to the President and others without  
20 our being there. I don't think we were there for every conversation that occurred.

21 I mean, just -- [REDACTED] so you keep this in mind, there were, like, lawsuits that  
22 Eastman worked on that I thought were, okay, traditional lawsuits, and I understood that  
23 part, right? And then there was this concept that I didn't obviously agree with at all.

24 I mean, my view was like the original jurisdiction lawsuit would determine  
25 whether the Supreme Court wanted to take up the issue or not. If the Supreme Court

1 said we're not taking up the issue, then I thought that would foreclose a lot of the  
2 arguments. And as we all know, the judicial system doesn't allow enough time between  
3 election day and inauguration to have any real challenges that could have any impact.  
4 It's just impossible from a practical standpoint.

5 So on those things that he dealt with, I didn't participate much, but I didn't really  
6 care. This concept I thought was just completely impractical.

7 Q So I think the meeting that you're referring to where you and Marc Short  
8 met with Dr. Eastman, that that was January 5th. Does that sound correct?

9 A It's in that time period. I just don't remember. It was definitely -- I know  
10 that they walked out of the Oval, Marc asked me to go with him and talk with him. I  
11 went over for a short period of time. Eastman was already sitting with Greg Jacob going  
12 over stuff.

13 Q And what do you recall saying?

14 A I said, you know, if you guys are providing any information for Members of  
15 Congress to state on the floor about anything dealing with any states or elections, you'd  
16 better damn well make sure it's F'ing accurate and independently verifiable, so people  
17 don't get up there and say stupid -- you know -- without getting into too many curse  
18 words, you know. And then I walked out. And Marc said, thank you. I thought I had  
19 made my point to him.

20 Q Did Eastman respond to that at all?

21 A Yeah, I think he said okay. But it was -- there were enough interactions  
22 with John where, when I -- I think yelled at him or berated him, he tended to back down.

23 Q So did he sound like he was going to comply?

24 A I don't know. I mean, I will tell you that January 6th completely shocked  
25 me. So I didn't know that Eastman had even spoken at the Ellipse until the next day,

1 until the 7th. So, I mean, obviously, he didn't comply if he stood up there and spoke at a  
2 rally. That's not exactly what I would consider a typical law professor type of conduct.

3 Q When you met with Dr. Eastman, Greg Jacob, and Marc Short, in addition to  
4 talking about the need to make sure that anything that was said to Members of Congress  
5 was accurate, did you discuss again with Dr. Eastman his theory about the role of the Vice  
6 President?

7 A No, I thought it was already a given that that was not going to go anywhere.  
8 I didn't think there was even a plan to even push it any longer.

9 Q So we understand from other witnesses that that topic was discussed in that  
10 meeting, but possibly not while you were there. So while you were there in the  
11 meeting, you were not involved in any discussion with Dr. Eastman about the role of the  
12 Vice President?

13 A None whatsoever.

14 Q Okay. So we got sidetracked a little bit talking at length about Dr. Eastman  
15 and your interactions with him. Before I go back to the events of January 6th, I'll pause  
16 to see if anyone has any questions?

17 [REDACTED] Just a couple follow-ups, [REDACTED]

18 BY [REDACTED]

19 Q Mr. Herschmann, [REDACTED] again. Thanks for this. It's very useful?

20 I'm just wondering whether or not your view of Dr. Eastman's theory as expressed  
21 to him was also expressed to others. Did you talk, for example, to Pat Cipollone or Pat  
22 Philbin inside the White House about sort of the ridiculousness of this theory that  
23 Dr. Eastman had put forth.

24 A I don't recall if we did. It wouldn't surprise me that we did. It would not  
25 surprise me at all that Eastman has a theory that's impractical, right.

1           Q    Okay.  Was it a topic of discussion among folks in the White House?  
2   Beyond your conversation with him directly, was it sort of, you know, you shared your  
3   view with anyone else?

4           A    I don't think so.  I think here's the issue just to keep in mind in all these  
5   litigations that were going on.  So there were discussions about certain litigations and  
6   certain allegations that were being made, and this was almost like, in my view, a  
7   back-burner type of thing that was never going to come into fruition.  Right?  And that  
8   was it.  That it -- I didn't understand under his theory and how he presented it, how this  
9   could ever be practically implemented.

10          Q    I see?

11          A    It may be a great law school discussion, you know, but that was irrelevant to  
12   me at that time.

13          Q    I understand.  So it was sort of so out there, so ridiculous that you didn't  
14   feel the need to kind of practically process it or discuss it with others?

15          A    I don't want to say that.  I mean, it was -- I would say it was unprecedented  
16   times, COVID, the amount of mail-in ballots, things that was going on in different states  
17   and everything else.  I thought that, as he described it, even if his legal analysis was  
18   correct, there was no way that I could see this going forward until its ultimate conclusion  
19   without there being court intervention, challenges.  And you'd have to have an  
20   agreement with all types of people in certain time periods.  I just thought that was not  
21   practical at all.

22          Q    So there was sort of the academic perspective that the professor puts  
23   forward.  And then there's the practicing lawyer perspective that regardless of the  
24   possible merits of statutory or constitutional interpretation, it will never work, right?  
25   You're providing sort of the practical response to this?

1           A    Yeah. My view was this had no practical ability to work, unless the VP  
2 completely agreed, nobody went to court, the state legislatures were already sitting and  
3 ready to vote a new slate, timing, a million things had to go into practical effect. And no  
4 Democrat was going to sit there and say, what are you doing? Forgetting, you know,  
5 you'd end up having one person, in essence, choose who the next President of the United  
6 States should be, and that person was on the ticket. That obviously made no sense to  
7 me.

8           Q    Right. Were you aware at the time of your conversations with Dr. Eastman  
9 that the Vice President's lawyer, Greg Jacob, and his chief of staff had -- did you know  
10 what their perspective was on whether or not the Vice President did have the authority  
11 that Eastman suggested that he had?

12          A    I don't know the perspective. I mean, I know it now, obviously.

13          Q    Yeah?

14          A    But it wouldn't surprise me if their view was as they articulated, that the Vice  
15 President could not overrule or change the results of the election. It made no  
16 sense -- I'm sorry, it made no sense to me that, in all the protections that were built into  
17 the Constitution for a President to get elected and steps that had to be taken or to choose  
18 the next President would be sitting with the Vice President, because he's acting in his  
19 capacity as President of the Senate. I thought that had zero chance of occurring.

20          Q    I completely understand your perspective. I'm just wondering how broadly  
21 your perspective was discussed or was shared with the people with whom you worked,  
22 whether it was on the Vice President's team, the White House counsel, or even up to the  
23 President himself?

24          A    I will tell you, I don't remember discussing it with -- I just lost you guys again.  
25 I remember discussing it with Pat Philbin, who I will say, Pat Philbin is by far the

1       brightest person I met in the White House. I think he's absolutely brilliant. Or Pat  
2       Cipollone, in any detail. But it wouldn't surprise me if I did, and it wouldn't surprise me  
3       if they discussed it with somebody. I just don't have a recollection.

4             Q    I see?

5             A    And I don't remember discussing it with Greg or Marc.

6             Q    Okay. How about the President himself?

7             A    I don't believe I even discussed it with him. My view was, when I was done  
8       with Eastman and the conversations and summarizing it, I was so brutal that I didn't think  
9       he was going to put it forth or go forward.

10            Q    Okay?

11            [REDACTED] I appreciate it. Thank you. Thank you, [REDACTED]

12            BY [REDACTED]

13            Q    So if you had thought that Dr. Eastman was going to persist in advocating  
14       this theory about the a role of the Vice President, and particularly if you had reason to  
15       think that he was advocating this directly to the President of the United States and the  
16       Vice President, would you have done something further?

17            A    No, I don't want to speculate on that, [REDACTED] I think that if you've told me  
18       you've heard from enough people, you can figure out that I was extremely aggressive  
19       when I thought it was necessary.

20            Q    Understood?

21            A    Okay.

22            [REDACTED] And I'll just note Congressman Aguilar has joined us.

23            BY [REDACTED]

24            Q    I want to go back to something you said earlier when you said that you  
25       mentioned to Dr. Eastman that if his theory prevailed, there could be something like

1 violence in the street. And he said something to the effect of, well, there's been  
2 violence in the history of our country to protect our republic?

3 A Or democracy. I don't remember what term he used, but the  
4 essence -- that was the essence of his answer.

5 Q Understood. Do you think he was suggesting that violence would be  
6 justified to keep President Trump in office?

7 A No. No, it was more his giving me a lecture on kind of like the history of  
8 the country, you know, and what had happened. And I found that response to be  
9 meaningless to me.

10 Q But was he suggesting that you might be right that there could be violence,  
11 but that he wanted to proceed anyway?

12 A No, let me make is this part really clear. There is zero question in my mind,  
13 literally zero, that anyone I worked with in the White House had any expectation or  
14 thought there would be violence. I will tell you that if Pat Cipollone, Pat Philbin,  
15 Kayleigh McEnany, Jared Kushner, Ivanka Trump, Mark Meadows, clearly myself, had any  
16 belief that there would have been violence on January 6th, there would have been a lot  
17 of activity. You know, I knew how to reach the people in DOJ. I do not believe that at  
18 all. I think that everyone, based on obviously living through it, was shocked, I mean,  
19 completely, completely shocked.

20 Q And I understand that, and that's because the Vice President did not go  
21 through with what Dr. Eastman was proposing. But I was asking about something  
22 different. Sort of, did Dr. Eastman suggest that had the Vice President done what he  
23 wanted and there had been violence, that that would be acceptable to him?

24 A No, I think the answer is, no, [REDACTED] And I understand what you're asking.  
25 If there was the slightest hint of that, then there's not a chance in the world I wouldn't



1 have been all over it, literally no chance in the world. I thought that it was his response  
2 to my saying -- especially after the violence that we had seen throughout the country, and  
3 I was assigned from the White House when we dealt with the Portland violence and  
4 different law enforcement, that things were obviously heated throughout the whole  
5 country.

6 And the idea of just telling half the country that your votes don't count anymore,  
7 they've been changed, or here's the statutory reason as to why, I did not see that as being  
8 a calming circumstance. But I don't think his response was, yeah, well, that's what we're  
9 going to have to do. Because if it was remotely like that, my reaction would have been  
10 completely different.

11 Q I understand?

12 A My response to him, I know I told you, was are you F'ing crazy? I just  
13 thought the answer was so idiotic that it made no sense.

14 Q And did it seem like he was backing down?

15 A I thought he had backed down. I was convinced that this theory was  
16 impractical, and that he would not be pursuing it even if he was right quote/unquote  
17 legally.

18 Q So the answer to my next question may be implicit in the fact that we just  
19 had an extended discussion about your conversations with Dr. Eastman. But  
20 Dr. Eastman, perhaps in some capacity, represented the campaign, although that sounds  
21 like that may not be clear. You obviously were a government employee working in the  
22 White House. Did you have any reason to think that your communications with  
23 Dr. Eastman, whether those conversations or any written communications, were  
24 privileged in any way?

25 A No, I don't believe I had any privileged communications with Eastman

1       whatsoever.

2               Q     What about with -- and just to be clear, not only do you not think they were  
3 covered by attorney-client privilege, is it your view that they would not be covered by the  
4 work product doctrine?

5               A     I do not believe they should be covered by work product doctrine, either.

6               Q     Okay.    The same thing for Jenna Ellis, and you already said you weren't sure  
7 she was even functioning as a lawyer as a spokesperson?

8               If you had any communications with her, do you believe those were privileged.

9               A     No, I do not.    And just to be clear, I think Jenna functioned as a lawyer.    I  
10 don't think she was counsel of record for anything.

11              Q     Okay?

12              A     And I didn't think Jenna had the experience to be handling an election  
13 challenge for the President of the United States.

14              Q     Do you think that she had the background to be giving advice to the  
15 President of the United States about things like the role of the Vice President in the joint  
16 session of Congress?

17              A     I don't know.    I never saw that based on my interactions with her.    I know  
18 she did a memo, I don't know when I learned about it, which I thought was a simpler  
19 version of Eastman's memo.    I thought, with Jenna -- and I probably expressed this to  
20 her.    I thought she was very good on TV in simplifying legal issues for people.    I thought  
21 stepping into the role of a Presidential challenge, working on Rudy's team, based on my  
22 understanding of her background, she did not have that expertise.

23              Q     Okay?

24              ██████████ I'll pause here to see if any Members have any questions.    ██████████

25              ██████████ Seeing that no Members have questions, I just had a few

1 questions on my own.

2 BY [REDACTED].

3 Q Mr. Herschmann, in case it helps clarify that timeline for you, our  
4 understanding is that Dr. Eastman prepared his first shorter memo sometime around  
5 December 23rd or 24th, 2020, and then the second memo was prepared sometime  
6 around January 3rd?

7 Does that help you place this.

8 A If that's the -- yeah, it does. If that's what happened, then my conversation  
9 with Eastman would have happened prior to January 3rd.

10 Q Okay. So in the 24th to January 3rd period?

11 A I don't remember. I would have to look at a calendar of where I was and  
12 stuff like that. I don't remember. But based on that, my belief would be that it would  
13 have happened -- well, I know -- is the 3rd the date of the Jeff Clark meeting.

14 Q That's right?

15 A Okay. So I know that I was in Texas flying back right before that meeting,  
16 so I would have to go back and look at a calendar, but -- and then I can -- I shouldn't say  
17 that. I would have to go back and look at airline tickets because I don't, sadly, maintain  
18 a calendar. But it would have been somewhere in that time period, because I don't  
19 remember having a conversation with Eastman after the Jeff Clark meeting about this.  
20 So I believe it would have predated that.

21 Q And earlier, you said something to the effect that this is an idea that, in your  
22 view, was sort of on the back burner relative to other legal challenges that were  
23 happening?

24 Do you have a sense of when you first became aware of this theory about the Vice  
25 President's role? Maybe not specifically tethered to Dr. Eastman's proposal, but maybe

1 more generally about legal theories about the Vice President's role in the joint session.

2 A I don't remember it coming about until Eastman. I don't remember anyone  
3 else raising it before that time.

4 Q Okay. So we've asked you a lot about the discussions and awareness of  
5 people in the White House about Dr. Eastman's theories. Do you have any knowledge  
6 about the outside legal team? For instance, do you have any sense of Rudy Giuliani's  
7 awareness or role in advancing Dr. Eastman's theory?

8 A My recollection is -- and I've known Rudy for a while -- that on the morning  
9 of January 6th, I think he called me out of the blue, right? And I was getting dressed.  
10 And we had an intellectual discussion about Eastman -- I don't know if it's Eastman's  
11 theory, per se, but the VP's role.

12 And, you know, he was asking me my view and analysis and the practical  
13 implications of it. And when we finished, he said, look, I believe that, you know, you're  
14 probably right, it wouldn't practically be able to go forward without, you know, courts  
15 letting the whole process being battled out, but it's an intellectual discussion and  
16 conversation about whether the statute is ambiguous.

17 And so that's the only conversation that I remember with Rudy about it at all.

18 Q Okay. Do you recall anything else about that call? Do you have anything  
19 else you discussed during that conversation?

20 A That was it. That was literally a call out of the blue. And it was just, I took  
21 it more as a we're having a lawyerly discussion on a theoretical approach to things. And  
22 that's why, when I finished the call, I was like, okay, this isn't practically happening,  
23 obviously.

24 Q So it's your understanding that Mr. Giuliani felt like the theory wasn't  
25 practical; is that fair?

1           A    I don't think it's that. I think -- I think he thought that it was legally  
2 sustainable, right? But after we finished the conversation, the practical implication of it  
3 would be almost impossible to do. He says, you're probably right, but I actually, if I was  
4 sitting on the bench, I would spend time thinking about it some more before issuing my  
5 decision.

6           Q    So -- and maybe I'm asking you to speculate here. But it sounds like  
7 Mr. Giuliani felt like that the theory was sustainable. Did he say anything about whether  
8 he felt like you could win that argument in court, or just that it was sort of a plausible  
9 argument to be made?

10          A    I think he thought it would be something he would have to consider if he  
11 were sitting on the bench, but he would probably come down that you couldn't interpret  
12 it or sustain the argument long term. Something along those lines.

13                But it was literally what I viewed as some intellectual discussion about the statute  
14 and the ambiguity, and what I thought the language had to mean if it didn't mean this,  
15 you know, along those lines.

16          Q    And you said that was the only conversation you recalled with Rudy Giuliani  
17 on the topic?

18          A    Yeah, I don't think I spoke with Rudy about it at all.

19          Q    What about other members of Giuliani's legal team? For instance, do you  
20 know anything about Jenna Ellis's involvement and/or awareness?

21          A    Until I heard there was a memo that she put out, I had no knowledge that  
22 Jenna had any involvement. I didn't even remember her memo until much later on, and  
23 I don't know if it was after we left the White House that I heard she had been trying to get  
24 a memo in.

25          Q    What about Boris Epshteyn?

1           A    I could not understand what Boris was doing on this team whatsoever. In  
2 my interactions with him, I didn't think he had the experience at all, and I thought that he  
3 was predominantly running around doing things, as he said, for the mayor. But I didn't  
4 understand his legal involvement at all, other than logistics.

5           Q    Understood. Briefly, to go back to your conversation with Rudy Giuliani, do  
6 you have a sense of around what time you spoke with him on the phone?

7           A    I don't. It was in the morning. That's all I remember.

8           Q    Could you ballpark? Was it like after 9:00 a.m., before 9:00 a.m.?

9           A    It was probably before 9:00, if I had to ballpark it.

10          Q    Sorry to get granular. Do you think it was maybe before, like, 8:00 a.m.?

11          A    I would be surprised if it was before 8:00. I just don't remember. I just  
12 remember the phone ringing, and I had known Rudy for years. And it was what I  
13 thought was predominantly a theoretical, intellectual conversation about, you know, the  
14 statute.

15          Q    Okay?

16          [REDACTED] That's all I have.

17          BY [REDACTED]

18          Q    Just on that last topic, Mr. Herschmann, In the call with Mr. Giuliani, did he  
19 say whether or not he had spoken to the President or was about to speak to the President  
20 that morning?

21          A    He did not.

22          Q    I'm sorry, I interrupted you?

23          A    He did not.

24          Q    Okay. So he didn't say anything about whether or not he was going to or  
25 had implemented this strategy or anything practical about whether it was going forward?

1 A Nothing at all. This was --

2 Q Okay?

3 A It was almost literally a theoretical, intellectual conversation about the  
4 concept and what they would do.

5 Q Got it?

6 [REDACTED] Thank you.

7 BY [REDACTED]

8 Q Did Mayor Giuliani give you any indication of why he was calling you about  
9 this?

10 A No, the phone call literally came out of the blue.

11 Q I guess the part that's surprising to me is that he would be doing that on the  
12 morning of the 6th. It seems pretty late to be seeking somebody's thoughts on an issue  
13 as monumental as the one you discussed with him?

14 A I don't have an answer for that, [REDACTED] I can only tell you I remember the  
15 phone call.

16 [REDACTED] Do any Members have any questions? Okay.

17 BY [REDACTED]

18 Q I guess before we move from Dr. Eastman, did you have any communications  
19 with Dr. Eastman either on January 6th or any time after that?

20 A I did.

21 Q Can you tell us about those?

22 A Yes. It was the day after. Eastman -- I don't remember why he called me,  
23 or he texted me or called me, wanted to talk with me. And he said he couldn't reach  
24 others. And he started to ask me about something dealing with Georgia and preserving  
25 something potentially for appeal.

1           And I said to him, are you out of your F'ing mind? Right? I said, because I only  
2 want to hear two words coming out of your mouth from now on: Orderly transition. I  
3 said, I don't want to hear any other F'ing words coming out of your mouth, no matter  
4 what, other than orderly transition. Repeat those words to me. And I --

5           Q    What did he say?

6           A    Eventually, he said orderly transition. I said, good, John. Now I'm going  
7 to give you the best free legal advice you're ever getting in your life. Get a great F'ing  
8 criminal defense lawyer, you're going to need it. And then I hung up on him.

9           Q    Do you remember anything else about the conversation?

10          A    That was it.

11          Q    Did you have any communication with him after that?

12          A    I don't believe so.

13          Q    Okay. And that was on the 7th. Just to double back, did you have any  
14 conversations with Dr. Eastman on the 6th?

15          A    No. I'm sorry, there was one other thing that I told him. I'm sorry.  
16 What I told him on that call is, you know, about him speaking at the Ellipse on the  
17 morning. And I did say to him, you know, in a rather harsh tone, you got up there and  
18 you F'ing spoke at the Ellipse at a rally? You're a law professor and you're speaking at a  
19 rally, right? And what type of F'ing lawyer are you, or law professor are you.

20                And then I -- so that was part of the 7th. I did not speak to him on the 6th.

21          Q    Did you either see or hear or read Dr. Eastman's remarks from the Ellipse  
22 rally?

23          A    No. I remember seeing a picture of him, I think, standing up there with a  
24 hat on. I mean, it was freezing that day and I did not plan on going to the Ellipse. So it  
25 was a brutally cold day.



1 Q Did you end up going to the Ellipse?

2 A I did. I left -- I went to the Ellipse in part of whatever motorcade or car  
3 there was, but I walked back by myself in the middle, or at some point while the President  
4 was still speaking.

5 Q Why did you end up going to the Ellipse?

6 A I thought, after hearing the tone of the conversation between the President  
7 and the Vice President, that maybe I could be helpful in trying to temper some of the  
8 emotions that were running high.

9 Q Okay. So we'll want to cover that, but maybe we should back up, and have  
10 you just walk us through your entire day on the 6th?

11 Did you have any calls or interactions with anybody before you got into the office.

12 A Just with Rudy, I told you that.

13 Q Okay. Anybody else?

14 A I don't believe so.

15 Q Do you remember roughly when you got to the office?

16 A I don't. I remember at some point -- I just don't remember the times. At  
17 some point, I did a physical or a quasi physical because someone on the White House  
18 medical team said, hey, you're the only one who hasn't done anything. So I thought at  
19 some point, I may have spoken to someone on the medical team just to give me an  
20 update of my blood test results, but I don't remember if it was that day or not.

21 But when I got in, somebody called me and said that the family and others were in  
22 the Oval, and do I want to come up. So I went upstairs.

23 Q Do you remember who it was that called you?

24 A I don't.

25 Q Okay. Any idea why you were invited to that meeting?

1           A    I don't think it was a meeting.  When I got there, it seemed to be more of a  
2   social thing.  That was -- people were sitting around in a semicircle, you know, the  
3   family.  And so I ended up going in.  It wasn't a meeting that was going on, at least  
4   when I got there.

5           Q    And who do you recall being in the Oval Office?

6           A    Don, Jr., Eric, Laura, Kimberly, I believe Meadows was there.  I don't  
7   remember if Steven Miller was there or -- there was a speech writer that was there.  At  
8   some point, Ivanka came in.  She may have come and left a couple of times.  And at  
9   some point, I didn't know -- now I know it's General Kellogg.  No one ever introduced us,  
10  so all I knew him in the hallway was general.

11           So whenever I saw him, I said, hi, general.  But I didn't know who he was at all,  
12  except that he worked somewhat with the VP.  That was my general understanding.  
13  And he had at least come in for a little bit of it, but he was not seated in any of the chairs.

14           Q    What do you recall from that -- I know you said it's not really a  
15  meeting -- that gathering?

16           A    Just social conversations predominantly.

17

BY [REDACTED]

18           Q    Were you, Mr. Herschmann, familiar with the Trump children from prior  
19  interactions?  Were you sort of invited because of a continuing relationship with them?

20           A    I mean, I knew them.  I believe my mother was -- or knew or was friendly  
21  with Don, Jr. From some charity or something.  But I knew them and I had met them  
22  beforehand.

23           Q    You were not there for any legal purpose.  It was just, you indicated, sort of  
24  a social gathering?

25           A    Yeah, when I first came in, it was just saying hello.

1 Q Understood?

2 BY [REDACTED]

3 Q And were they talking at all about what the President was going to say at his  
4 Ellipse appearance?

5 A No, I don't believe they were. I think he was sitting at a desk. He was  
6 sitting, you know, at the Resolute Desk writing or editing, or something like that. And  
7 they were just -- it was just social conversation that was going on.

8 Q Did they have any conversation related to the joint session of Congress?

9 A I don't remember them having any conversation about that.

10 Q Okay. So then you said, at some point, there's a telephone conversation  
11 between the President and the Vice President; is that correct?

12 A Yes. Well, I mean, I didn't know -- eventually, obviously, I figured out it was  
13 the Vice President.

14 Q Do you know how the call was initiated? Was it incoming from the Vice  
15 President or outgoing from the President?

16 A I think it was, get the Vice President on the phone, one of those yelling out  
17 to the outer Oval. And then someone would yell back, the Vice President's on the  
18 phone.

19 Q And could you hear the Vice President, or only hear the President's end?

20 A Only hear the President's end.

21 Q Okay. And what did you hear him say?

22 A Well, I guess from this, based on my understanding with Pat Philbin and Pat  
23 Cipollone -- I don't want to assert privilege on that as much as tell you that, at some  
24 point, it started off as a calmer tone and everything, and then became heated.

25 Q Okay?

1 A I should say more frustrated.

2 Q Frustrated. Obviously, you're referring to the President since you couldn't  
3 hear the Vice President?

4 A Right. And it was, you know, without any details, a discussion of the legal  
5 authority or obligation of the VP.

6 Q I'm sorry, could you repeat that?

7 A Sure. Without getting into the details, a general discussion about the legal  
8 and constitutional authority of the VP.

9 Q So others have told us that President Trump referred to the Vice President as  
10 being a wimp. Do you recall whether that's accurate?

11 A Without the details, I don't recall that statement.

12 Q Okay. Others have said that President Trump said, I made the wrong  
13 decision four years ago?

14 Do you recall that.

15 A Let me -- can we take a two-second break, so I get the privilege down in my  
16 head? Because if I don't recall something, I presume it's not invoking anything, right?  
17 So can we take a five-minute break, so I can get my own ground rules covered.

18 [REDACTED] Of course. Just go ahead and make sure you mute yourself and  
19 turn off your video. Not that we can read lips, but we'll go off the record now.

20 (Recess.)

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

22 BY [REDACTED]

23 Q Mr. Herschmann, how would you describe, overall, the President's tone or  
24 tenor in this conversation with the Vice President?

25 A Initially, it started off as a regular cordial conversation, and it became more, I

1 think, frustrating or heated, at least on the President's side of it. And then, as I told you,  
2 the discussions were regarding the legal and constitutional obligations of the VP on that  
3 day.

4 Q Is that --

5 A Sitting as the head of the Senate.

6 Q Is it fair to say that the President was asking the Vice President to do  
7 something that the Vice President was not willing to do?

8 A I think it's more fair to say that they got conflicting legal -- they've obviously  
9 got conflicting legal positions or views on the authority and the constitutional obligations  
10 of the VP.

11 Q And did you express a view on the authority of the Vice President?

12 A No.

13 Q Do you recall whether Ivanka Trump said anything to General Kellogg or  
14 others to the effect of Mike Pence is a good man?

15 A I don't remember her saying anything like that. I mean, I think most people  
16 would say Mike Pence is a good man. I mean, he's a consummate gentleman.

17 Q Roughly, how long did that phone call last?

18 A A few minutes. It wasn't a really long conversation. Let me put some in  
19 context.

20 I think until it became somewhat in a louder tone, I don't think anyone was paying  
21 attention to it initially, right, just talking to the VP. And obviously, when it became a  
22 louder tone, it caught people's attention.

23 Q When you say a louder tone, was the President shouting?

24 A The President tends to be pretty loud, so I don't know how to describe that.  
25 But, you know, it was at a louder tone, you know.

1

BY [REDACTED]

2

Q It sounds like when the conversation got more heated or frustrated, that drew attention in the room, people suddenly started noticed and people turned to his direction?

3

4

5

6

A I think there were a lot of side conversations that were going on while he was on the phone. And that tended to quiet down, I think, some of the side conversations. I mean, other people were speaking, but I don't recall what anybody said in the course of that.

7

8

Q Was he standing or seated during the conversation, the President?

9

A Seated.

10

Q Did he stay seated the whole time?

11

A Yes, as far as I recall.

12

13

Q Anything in his facial expression or his sort of gesticulation that suggested frustration, that you recall?

14

15

A I just think the tone of the conversation was clearly an indication that they had a disagreement.

16

I kind of lost you guys, by the way, on the screen.

17

Q There we are?

18

A I see Dan for some reason. There you go, you guys are back.

19

20

Q And our understanding is that very soon after the conversation, almost immediately after the conversation, the parties left for the Ellipse, that it took place very close in time to the departure of the party down to the Ellipse for the President's speech; is that correct?

21

22

A No, I don't know what you mean, immediately. Definitely not, because I know that Ivanka had left, I think, before the conversation was over. And I saw her in

23

24

25

1 Scavino's office, which is right outside the Oval.

2 And I don't remember what the details were in specifics, but I said to her, I think  
3 you should come to the Ellipse. It wasn't clear to me that she had planned on going or  
4 thought she wasn't going to go.

5 And then I went up to White House counsel's office. And I don't remember, I  
6 don't think Cipollone was in the office yet, but Philbin was. And I spoke with Pat. And  
7 then I don't remember the details, but it took at least some period of time. It wasn't  
8 immediately, like everybody got up and walked out.

9 And then I wasn't going to go. So then there had to be -- my name had to be  
10 added to some, you know, some security or Secret Service list to get in the car.

11 Q Did you talk to Ivanka about the conversation that you had both just  
12 witnessed that you said she left early? But did you reference that to her when you saw  
13 her in Scavino's office?

14 A No.

15 Q How about Pat Philbin? Did you talk to him about what you had just  
16 observed in the Oval Office?

17 A I don't remember the details in the conversation with Pat. I know we  
18 discussed whether I thought he should come to the Ellipse as well, and he did not come.

19 Q Why, Mr. Herschmann, did you think that Ivanka Trump and Pat Philbin and  
20 you should go to the Ellipse? Was it tied to what you observed with respect to the  
21 President's and Vice President's heated conversation?

22 A I always found Ivanka to be a positive influence on a lot of things. I thought  
23 Philbin, you know, would be in a good position if there was discussions about, you know,  
24 the VP's role or things along those lines, that he may be helpful as well. And Pat tends  
25 to be incredibly, incredibly calm. And so I thought maybe he would want to participate

1 and come. And he decided not to.

2 Q So it sounds like you thought both Ms. Trump and Mr. Philbin and yourself  
3 could play a calming role, potentially, if necessary, with the President at the Ellipse; is that  
4 fair?

5 A I don't know if calming is the right term, I would say, but I thought we could  
6 be helpful.

7 Q Yeah?

8 A That was my view.

9 Q Help on the issue on which he had a discussion with the Vice President?

10 A Just overall, the entire conversation that, in my view, as I've told you, I didn't  
11 think this theory would work. And I was trying to be forward-thinking as to, let's talk  
12 about what you've done and what's happened. I didn't think there was a pathway  
13 legally through the court system or otherwise. That anything was going to change and  
14 that Joe Biden would be President and inaugurated on the 20th.

15 Q I'll turn back to [REDACTED] I know he's going to walk you through the rest  
16 of that day?

17 BY [REDACTED]

18 Q Yeah, let's back up a little bit to where the President and Vice President  
19 complete their phone call. What happened after that?

20 A For me, or -- I mean, I walked out of the room. I walked out of the Oval.

21 Q Did you walk out as soon as that conversation ended, or was there any  
22 conversation within the room about what had just happened?

23 A I walked out as soon as it ended. I mean, I was not seated, I was standing  
24 the entire time I was there.

25 I walked out. Ivanka was in Scavino's office. I spoke with her. And I then



1 walked over to -- upstairs to White House counsel's office, spoke with Philbin. And then  
2 there were logistical things of how to get to the Ellipse. And I ended up in a van by  
3 myself going to the Ellipse.

4 Q What was it that prompted you to want to have Ivanka Trump, Pat Philbin,  
5 and then you go to the Ellipse? Was it a concern that the President would make public  
6 remarks regarding the role of the Vice President?

7 A I don't think it was that. It was just my view, nothing was going to  
8 practically change on the 6th, and that it should be a circumstance where let's look  
9 forward, not to be talking about the 2020 election that I thought was going to be resolved  
10 in a matter of, whatever, hours, obviously. So that was my predominant thought.

11 Q And so did you have any interactions with the President between when he  
12 finished that phone call with the Vice President and when he gave his remarks at the  
13 Ellipse?

14 A Let me give you some logistical understanding. So whenever the President  
15 got into the tent, the Secret Service tent, I don't know when it was. I got dropped off,  
16 walked across, and then there were people lingering around. You had a lot of Secret  
17 Service agents. I know there was, like, an observation post outside the tent and a lot of  
18 people there. There were monitors set up where you can see, I guess, the crowd that  
19 was there.

20 And at some point, I know Ivanka spoke to the President. She spoke with him  
21 alone. I don't remember -- I didn't hear what was said, so I don't know what was said.  
22 And then at some point, I spoke with him for a short period of time before he went out.

23 Q And was that in any way related to the role of the Vice President and the  
24 joint session of Congress?

25 A No, it was more generally along the lines of, you know, we accomplished

1 great stuff. Look forward, and that's it, and talked about the positive things that had  
2 happened.

3 Q Did he seem like he was in agreement with your advice?

4 A I don't know how to answer that. You know, I didn't stay for his whole  
5 speech and I couldn't hear the speech from being inside the tent. You know, and maybe  
6 Pat Philbin's words were prophetic in the sense that I remember, at some point, Don, Jr.  
7 Was holding a phone. The way he was holding the phone, I thought he was talking to  
8 his children. I never saw anybody livestream, maybe I'm just dating myself. And then  
9 all of a sudden, I saw like on the side of his phone like emojis start to roll up. And he  
10 said, "Say happy birthday, Eric."

11 And I started laughing because my birthday was like a week later. I know that  
12 Jared and I share the same birthday, different years, obviously, and it was Eric Trump's  
13 birthday. I remember I laughed. And I think, at some point, someone took a  
14 screenshot and somebody wrote an article, like we went to a pre-riot party. Some  
15 idiotic article that someone had published.

16 I said, okay, Philbin was right. Probably walking over there -- you know, the  
17 article versus the, at the time being, it wasn't worth it. But the general tenor was only  
18 positive.

19 Q And did the Vice President express any disagreement with your advice?

20 A I didn't speak to the Vice President.

21 Q I'm sorry, did the President express any disagreement with your --

22 A I don't recall what he said to me then. The whole idea that I thought was,  
23 we could be a positive influence as much as we can in that time period, obviously, when  
24 he's going out to speak at a rally. And I had never had a conversation with him before  
25 he spoke at a rally before, obviously.

1 Q Okay. So --

2 Ms. Cheney. [REDACTED] I've got a quick question.

3 [REDACTED] Yes, of course.

4 Ms. Cheney. Thanks.

5 BY MS. CHENEY.

6 Q Mr. Herschmann, what did you say to Pat Philbin when you went into his  
7 office?

8 A I don't remember exactly what I said to Pat, as much as I think I discussed  
9 with him that I thought he should come to the Ellipse as well, and he didn't want to do it.

10 Q Did you tell him why you thought he should come?

11 A I don't think so. I think I just said, you're White House counsel, come to the  
12 Ellipse. And on the cell phone, we would have jokes over, I'm technically not White  
13 House counsel, they are. So I thought he should come. But he was like, no, I'm not  
14 doing it.

15 Q And why didn't he want to do it?

16 A Hindsight being 20/20, he didn't want to have a picture of himself in the  
17 back there, when someone writes an idiotic article about it.

18 Q So he didn't -- you think he was concerned about press?

19 A I think that lawyers that worked in Washington that I had met were much  
20 more concerned about press than those of us that came from outside of Washington.

21 Q So --

22 A Sorry. I think that there seemed to be a lot of leaking that went on pretty  
23 regularly there. And I think that those were the concerns, that not to get caught up in  
24 something and be part of a media story.

25 Q So you don't think it was a concern about the substance of what was

1 happening or the legality of what was happening. You think that the White House  
2 counsel was just worried about bad press?

3 A Yeah, I believe that's accurate. I don't have any question that Pat was  
4 worried about the legality. I think he was going to end up in one of those "I told you so"  
5 when whoever wrote that article.

6 Q All right?

7 Ms. Cheney. Thank you.

8 The Witness. Sure.

9

BY [REDACTED]

10 Q Did you get the sense that Mr. Philbin was trying to distance himself from  
11 the event in some way?

12 A No. Just, I think -- I forgot who wrote who this article, but, like, I remember  
13 it was some comment about my having been at Kasowitz, and going to like a party before.  
14 And I thought, I'm sitting in a Secret Service tent for the first time in my professional  
15 career, going along with, you know, this. And it was anything but, you know, people  
16 celebrating.

17 I do remember -- at some point, I remember happy birthday. And I don't  
18 remember what Kimberly was doing. And I thought -- that's why I laughed. I was like,  
19 how does Don know it's my birthday? And I realized he wasn't talking to me -- or close  
20 to my birthday, I should say.

21 Q And did you stay for any of the President's remarks?

22 A I did.

23 Q Do you remember roughly how long?

24 A I don't remember. I remember walking out while he was speaking, people  
25 being surprised that, you know, I was walking by myself from the Ellipse back to the

1 White House. I literally had no inkling about how to get back into the campus and I  
2 ended up, I think, in the East Wing, and made my way across. But I am pretty certain I'm  
3 the only one that walked back in the middle of it.

4 Q Did you have any reaction to the parts of the President's remarks that you  
5 heard?

6 A I didn't, as much as -- I mean, I remember it not being -- covering in detail all  
7 the things that had happened in the past. But I just don't remember it. I just, at a  
8 certain point, realized that he was out there, and whatever I thought I could do, I had  
9 done. And then I walked back.

10 I mean, just to be clear, it was freezing and I had no coat. I remember walking  
11 back literally freezing.

12 Q Okay. I'm going to back up a little bit and show you Exhibit 39.

13 A Are you going to pull it up?

14 Q Yeah, we'll pull it up.

15 A Okay.

16 Q I know I asked you about the President's prepared remarks. This is entitled  
17 Save America March. It starts off, "I am honored to stand before tens of thousands of  
18 devoted American Patriots who are committed to the honesty of our elections and the  
19 integrity of our glorious Republic?"

20 So does this appear to be a draft of the President's remarks that he gave at the  
21 Ellipse.

22 A If you tell me it is, I accept that. I just don't remember.

23 Q Well, it was provided to us by the Archives, but it appears to be that?

24 And then you can see there's some in red, first edit there -- I assume it's an edit,  
25 because it's in red. It says, "12 million more votes than four years ago, a record. No

1 President has ever lost who got more votes than he did previously. We will not let them  
2 silence your voices."

3 Do you know whose edits those are.

4 A No, I have no idea.

5 Q Okay. If you go down to the bottom of the first page, in red, it says, at the  
6 bottom, "Today, we will see whether Republicans stand strong for the integrity of our  
7 elections, and we will see whether Mike Pence enters history as a truly great and  
8 courageous leader. All he has to do is refer the illegally-submitted electoral votes back  
9 to the states that were given false and fraudulent information, where they want to  
10 recertify?"

11 And then on the next page, at the top, it says, "With only 3 of the  
12 7 states in question, we win and become President and have the  
13 power of the veto."

14 My assumption is that, because that's in red, that that reflects an edit. Do you  
15 recall whether the draft of the remarks that you saw had that language in it.

16 A No, I don't recall.

17 Q Do you know who had input into the speech?

18 A I don't. I mean, I know that a lot of his speeches would be circulated pretty  
19 widely, within the White House, obviously. But I don't know who would have provided  
20 comment or feedback.

21 Q Okay. It's been reported that Ivanka Trump was upset about what Rudy  
22 Giuliani and others were advising her father. Does that sound like a fair  
23 characterization?

24 A No.

25 Q Do you disagree with that or just have no knowledge?

1 A No, I disagree with it.

2 Q Okay, explain that?

3 A I don't -- in my interactions, and I think I was pretty present for most of it, I  
4 don't remember Ivanka having any interaction whatsoever with anyone on election  
5 challenges. Not in a meeting, not in a telephone call, not in a discussion, nothing.

6 Q Okay. I would like to show you Exhibit 37, and this we'll put up on the  
7 screen.

8 From Maria Ryan, whose email address suggests that she was with Giuliani  
9 Partners, to Molly Michael, who was executive assistant to the President, Subject, Arizona  
10 House Letter to Pence. And it says, "Per Rudy, please print for POTUS to share with Vice  
11 President?"

12 And then if you see above that, it looks like Ms. Michael forwarded on to you and  
13 to Mark Meadows. Do you know why Ms. Michael sent that to you and Mark Meadows.

14 A Okay, if you'll just go to the bottom, so I can see the attachment for a  
15 second, and then I'll explain once I see what it is for a minute.

16 Q I don't think we have the attachment in the document, but the subject  
17 appears on a House letter to Pence?

18 A Just I'm saying on the left side, there's a bunch of PDFs. So I don't know if  
19 you have it or not. But I can tell you why she -- I'm sorry, [REDACTED] It doesn't matter.

20 Q Okay?

21 A Okay. What happened was, and I don't remember the exact date, there  
22 was a tremendous amount of information that was coming in to the President or coming  
23 to Molly to be delivered to the President from, I would say, lawyers and others, lawyers  
24 who had real resumes who were professional or, in my view, well recognized as  
25 attorneys.

1           And I felt, at a certain point, the amount of information that was coming in was, in  
2           essence, unfair to the President, because I didn't know who was vetting the information  
3           and what explanations were being given and what was happening.

4           So I told Molly that for certain groups of people or certain amounts of  
5           information, that she should not deliver it to the President until she sends it to me.   And  
6           then my view was 90-plus percent, 99 percent of the stuff, I wasn't going to have  
7           delivered to him.

8           Q    And that includes things from Rudy Giuliani?

9           A    It would include -- I don't know about this one.   I would have to see the  
10          attachment.   I don't know if it was public information or something, possibly, yes.   But  
11          by and large, it would include things from Rudy Giuliani as well.

12          Q    Why did you think there were some things from Mayor Giuliani that were  
13          not worth the President's attention?

14          A    It's not limited to Rudy.   It's -- my general view was the amount of  
15          information that was coming in, it was -- I thought it would be unfair to any client, let  
16          alone the President of the United States, to be getting inundated with information that  
17          supposedly tracked all types of wrongdoing when I couldn't tell how bad the information  
18          was or was not.   So I just decided, I'm stopping it.   And I told Molly, and eventually I  
19          told Meadows that that's what was being done.

20          Q    And what was Mr. Meadows' response?

21          A    He didn't overrule me.   But I don't think I put it out there as a question as  
22          much as just a statement of fact.

23          Q    I understand.   And was your concern not just with the volume of  
24          information coming in to the President, but with the reliability of some of the  
25          information?



1           A    I think it was volume, whether it had been vetted, certain positions or  
2 suggestions that people were making, certain things that I thought maybe DOJ could do  
3 or not do or -- I remember one, in particular, in which somebody recommended changing  
4 out Pat Cipollone as White House counsel.

5           And I believe the premise of it was there was a call in which he thought White  
6 House counsel had been rude or disrespectful to the President.   And it was actually a call  
7 in which I participated, and I was not disrespectful to the President.   I was disrespectful  
8 of the lawyer, and what they were proposing, derogatory towards their position.   And it  
9 was a subsequent memo that came in, and said, you should change out White House  
10 counsel because they were rude.

11           I was like, I'm going to tease Pat.   I think they're going to try to fire you because I  
12 tore some lawyer's head off, you know.   But that -- like, that memo, I just was like, okay,  
13 forget it.

14           Q    Do you recall who sent that?

15           A    Maybe it was an Olson, but not Kurt Olson.

16           Q    Bill Olson?

17           A    It may have been Bill Olson, and he was recommending Kurt Olson, or  
18 something like that.   And I had interactions, but it was -- that's my recollection, that  
19 there was that type of document.   I was like, okay, forget this.   And then they  
20 disappeared.   Bill Olson kind of fell off the radar after that.

21           Q    Bill Olson was recommending Kurt Olson to serve as White House counsel?

22           A    Yeah, I don't remember the detail.   I just remember something along the  
23 lines of, you know, since White House counsel was rude to the Office of the President and  
24 everything, if you want to considered changing, you should take Kurt Olson who has  
25 experience in doing it.

1           And I thought Pat wasn't even there, and I wasn't rude. I was rude to -- I  
2 wouldn't say rude to Bill, I just challenged what he was saying. And I think a lot of these  
3 people weren't expecting that type of response.

4           So, like, that's the type of stuff that I would be, like, forget about it. It just never  
5 went to him, meaning the President.

6           ██████████ I'll pause. Does anyone else have any questions? Do any  
7 Members have any questions?

8           BY ██████████

9           Q    What did you disagree with Mr. Olson about?

10          A    I have some recollection of his thoughts about DOJ, and DOJ could do  
11 something.

12          Q    And -- go ahead?

13          A    And I don't remember the details of it but, you know, I changed that pretty  
14 significantly.

15          Q    Was it related to an original jurisdiction action in the Supreme Court that  
16 would have been filed by the United States?

17          A    It may have been. I just don't remember the details, to be honest. I just  
18 remember the idea that people were calling up and saying DOJ should do something,  
19 right, pitching an idea of what DOJ should do, I thought was, in and of itself,  
20 inappropriate. As far as I could tell, they weren't talking to DOJ, or not to the Attorney  
21 General, and I thought that was inappropriate.

22                So I was like, no, that's not going to happen. If they want to bring a case over,  
23 bring their own case. And having been a prosecutor for years, the judicial system  
24 functions a certain way. The wheels of justice turn, they just tend to turn very slowly,  
25 right.

1           There was no way there was going to be a lawsuit filed or -- I mean, and at certain  
2 points, I said -- I don't remember to which lawyers, but the outside ones, let me explain  
3 how it works. Agents go out and investigate, they interview witnesses, they prepare  
4 302s, they come to an AUSA, they present it. The AUSA will run up to main Justice in  
5 this circumstance, and they will present a case to a grand jury. And maybe the grand  
6 jury will indict.

7           And then the whole process -- by that time, you know, this is way, way, way past  
8 January 20th. So the idea that all of a sudden, there was going to be some change, and  
9 what the lawyers were recommending to the President, I thought had no practical basis.

10          Q    Do you remember anyone specifically that you told that to?

11          A    Jeff Clark. But that was a much more -- if I was harsh to Eastman, then  
12 Clark was appreciably -- the conversation was appreciably worse.

13          Q    And we will definitely get to that. That's fair. I have a few other small  
14 questions?

15               First, do you know why Ivanka Trump left the Oval Office meeting during the call  
16 with the Vice President.

17          A    I don't. I mean, it was not the most comfortable of conversations to be  
18 around, but I don't know specifically why.

19          Q    Do you recall anything about her demeanor, either during the meeting or  
20 when you encountered her in Dan Scavino's office?

21          A    I don't remember, specifically. I mean, I think she was uncomfortable over  
22 the fact that there was obviously that type of interaction between the two of them.

23          Q    And, finally, do you recall any other phone calls involving the President  
24 during that Oval Office meeting?

25          A    I don't. Not when I was there.

1 [REDACTED] That's all I have.

2 [REDACTED] We've been going for over two hours. Do you want to take a  
3 five-minute break.

4 The Witness. Sure.

5 (Recess.)

6 [REDACTED] We're back on the record.

7 BY [REDACTED]

8 Q Mr. Herschmann, when you went back to the White House, what did you  
9 do?

10 A On the 6th.

11 Q Yes, on the 6th. So this is after the speech on the Ellipse, and you said you  
12 walked back to the White House. Tell us what you did next?

13 A Well, after finding my way through parts of the White House I had not seen  
14 before, I don't remember who I -- I remember seeing Tony Ornato at that point. And  
15 when I -- I probably went up to White House counsel, is my best recollection, but I don't  
16 remember what I discussed with Pat or Pat. But I think Cipollone was probably in by  
17 that time.

18 Q Do you recall whether you discussed anything related to the President's  
19 remarks on the Ellipse or the joint session of Congress that was about to start, or maybe  
20 even started by then?

21 A I don't recall that.

22 Q Okay. Do you know what the President did when he got back to the White  
23 House?

24 A I don't know, when he first got back, what he did. I was already back in the  
25 White House and I wasn't near the Oval when he -- when they first got back.

1 Q After you went to the White House counsel's office, what did you do?

2 A I think that's my recollection, I went there. I'm not 100 percent certain.

3 Q Okay?

4 A I mean, at some point, I was in the back dining room with Mark Meadows  
5 and the President, and I don't remember if Dan Scavino was there or not.

6 Q And what prompted you to go to the back dining room?

7 A I became aware that there was violence at the Capitol.

8 Q Okay. When you learned that there was violence at the Capitol, did you go  
9 see anybody else before you went to the President's dining room?

10 A I don't believe so.

11 Q Do you remember roughly what time that was?

12 A I don't. I mean, so in context, I was the first one back before anyone else  
13 got back. That, I'm certain of, or I'm pretty certain of. It was definitely before the  
14 motorcade came back. So I don't remember when they came back or when I learned  
15 that they were back, but at some point when I learned they came back, then I went  
16 down -- or up, because my office was on the first floor. And I use the term office very  
17 loosely.

18 Q Okay?

19 A My oldest son joked that there's a closet for shoes that was bigger than my  
20 office, with no air conditioning.

21 Q Did you go see Ivanka Trump before you went to see the President?

22 A No.

23 Q So you said you went in to see -- well, you went into the back dining room,  
24 the President was there, Mark Meadows was there, and possibly Dan Scavino. What  
25 were they doing?

1           A    They were talking. I don't remember about what.

2           Q    Okay. Did they appear to be following the news of what was happening at  
3 the Capitol?

4           A    At some -- I think they were at least learning of the news that was going on  
5 at the Capitol. I don't think at that stage -- I don't know how much detail they had or  
6 didn't have.

7           Q    Was the television on?

8           A    At least for -- I was in and out several times, but at least for part of it, I  
9 remember it being on.

10          Q    So do you recall, did you tell them what was happening or did they seem to  
11 already be aware?

12          A    I don't remember. I know I wrote out something, but I don't remember if  
13 they were aware when they came back or I told them when I came in. I just don't  
14 remember that detail.

15          Q    And why did you write something out?

16          A    I thought we should put out a statement.

17          Q    Okay. Do you remember what you wrote?

18          A    I don't remember the exact words, but I remember going down to Mark's  
19 outer office, chief of staff, and asking someone there to get me something to write on.  
20 And normally, if I had to -- if I was grabbing something, it would be the chief of staff.  
21 They have one of those cards, I don't know, it's a rectangular card that says chief of staff.

22          Q    So this was a handwritten note?

23          A    It was a handwritten note, yeah.

24          Q    Okay. Let's go -- we'll pull up Exhibit 11.

25                Is that the note you're referring to?

1 A That is the note.

2 Q Okay. And what did you do with the note?

3 A The actual physical note.

4 Q Yeah. Did you give it to the President?

5 A No, I didn't give it to the President. I may have given it to Meadows, but I  
6 didn't hand it to the President. I would have -- I think the reason I edited "illegally," is  
7 someone had a discussion, I don't remember who it was -- and it wasn't the President,  
8 but someone had the discussion, how do we establish it's illegally -- that they entered  
9 illegally? Which I thought, okay, I don't want to say overlawyering, but overlawyering, in  
10 my view. So I crossed out "illegally" and said "without proper authority." Okay, that  
11 solves that issue, right? And I thought we should put out the statement.

12 Q Did you tell the President that he should put out a statement?

13 A Generally, I had discussions with the President about putting out a  
14 statement. I don't remember if I read this or I handed it to Mark, or Mark and I  
15 discussed it in front of the President. I just don't remember that detail. But this was  
16 my first reaction to seeing the violence and what I thought the White House should do.

17 Q Did the President have a reaction?

18 A I don't recall his reaction, but obviously he didn't put out this statement.

19 Q Do you know why he didn't put out that statement?

20 A I don't. I don't remember what the issue was with -- I don't know, the  
21 wording or whatever, but he just did not put out the statement. That, I know.

22 Q Do you remember anybody pushing back on this proposed statement?

23 A Somebody pushed back on "illegally," right, as to questions of whether  
24 somebody had let them into the Capitol and were people there not illegally. Am I  
25 making a judicial determination along those lines, which I was like, okay, fine. All right.

1 Q Do you remember who that was?

2 A I don't.

3 Q Okay. So I'm more interested, though, in the "should leave immediately"  
4 point which the President didn't say in his ensuing tweets. Did anybody push back on  
5 your suggestion that the President should say that the people who entered the Capitol  
6 should leave immediately?

7 A No, nobody pushed back on that.

8 Q Do you have any idea why the statement didn't go out?

9 A Why what I wrote didn't go out.

10 Q Yes?

11 A I don't. I mean, he decided not to issue this statement and issued one  
12 when Ivanka went back there.

13 Q Okay. Do you know who made the decision not to issue this statement?

14 A I do not. I don't think there was an issue of an idea that someone would be  
15 saying you shouldn't leave immediately. I think it was presumed that that was the point  
16 of a statement, of any statement, was, no violence, leave the Capitol. But I don't  
17 remember a discussion about that topic individually or particularly.

18 Q You made reference to talking about Ivanka going back. Tell us about that?

19 A At some point, I remember walking out of the dining room. And I had not  
20 seen Ivanka from the time we were in the tent, Secret Service tent, until we had come  
21 back. I had not seen her near the Oval at all, and her office was near White House  
22 counsel's.

23 I went upstairs, I don't remember which assistants were there, and her door was  
24 closed. And I said, is Ivanka in there? And I walked in.

25 And I remember she was sitting. She tended to sit in a seat that was on the left



1 facing the conference room table facing the wall. And at least when I walked in, I don't  
2 think she had any idea what was going on. And I don't remember what exactly I said to  
3 her, but, do you know what's going on, and turned on the TV, so she could see it. And I  
4 don't remember if I said, come downstairs with me or what, but she came with me.

5 I walked her into the dining room through a side door, not through the Oval.  
6 And I brought her in to the President, and I walked out. I don't know if Meadows was  
7 there. He may have been. I just remember bringing her in, leaving her there, and  
8 walking back out. And that was probably just around Jared's office, which was just right  
9 next door. And she came out a few minutes later and he had issued a tweet.

10 Q And which -- do you recall which tweet that was?

11 A If you show them to me, I'll recall them.

12 Q Okay. So the first tweet that I'm aware of the President issuing was at 2:24  
13 p.m., and that's Exhibit 41, which we'll put up?

14 A Let's see.

15 Q Again, that's 2:24 p.m. It says, "Mike Pence didn't have the courage to do  
16 what should have been done to protect our Country and our Constitution, giving States a  
17 chance to certify a corrected set of facts, not the fraudulent or inaccurate ones which  
18 they were asked to previously certify. USA demands the truth!"

19 A This is the second one. This is definitely not the one that she did. I don't  
20 remember this one, but hers was definitely not this. So if this is the first one, she would  
21 have gone in after this.

22 Q Okay. But Exhibit 11 was -- we don't have to bring it back up, I'll just read it  
23 again -- what you wrote out. "Anyone who entered the Capitol without proper  
24 authority should leave immediately?"

25 That's very grammatically different from, "Mike Pence didn't have the courage to

1 do what should have been done to protect our Country and our Constitution."

2 Do you have any idea how the tweet regarding Mike Pence came about.

3 A No. Looking at this, my guess is my note would have been subsequent to  
4 this, but I just -- I would have to have a better timeline. As I heard afterwards, there was  
5 at least -- I don't know if it's a breach of the Capitol, but violence had started before the  
6 President finished speaking, and then subsequently things got worse. But I don't  
7 remember this tweet, and it was not put out when I was there.

8 Q Okay. So that's -- just in case the timeline is off on this, this tweet is at  
9 2:24. The next tweet that President Trump put out, which we believe is the one that  
10 Ms. Trump advised on, is at 2:38, so 14 minutes after this one. Maybe it would be  
11 helpful, for me at least, to take a step back?

12 So do you recall around what time you first became aware that there was unrest  
13 at the Capitol in any way.

14 A I don't. I mean, it's -- I just don't recall the time. If you tell me what time  
15 the President got back, then I would tell you I got back before he did and before the  
16 motorcade got back. So I don't remember exact times, but if they got back around 2:00,  
17 right, at some point, obviously, after 2:00 or so, I would have learned about what was  
18 going on. So I was not aware at the time about this tweet.

19 Q So our understanding is the President got back to the White House around  
20 1:19?

21 A Okay.

22 Q And then there's the 2:24 tweet about the Vice President. We understand  
23 that at 2:26, the President called Senator Tuberville, but actually through Senator Mike  
24 Lee's phone. And then 2:38 is when he did his next tweet, which is probably what  
25 you're referring to, and that's Exhibit 42?

1           A    So I would say this is the tweet that he put out with Ivanka being in the  
2 dining room with him.

3           Q    Okay.  But if that's the tweet that Ms. Trump worked with the President on,  
4 and you said previously that you went into the dining room, handed that handwritten  
5 note, which was Exhibit 11, then went to see Ms. Trump, doesn't that suggest that your  
6 handwritten note was before the tweet about the Vice President at 2:24 p.m.?

7           A    No.  Looking at what you showed me, I would say it's actually -- my note  
8 would have been in between -- what time was the first tweet.

9           Q    The first was 2:24.  And then at 2:26, he had a call with Senator Tuberville.  
10 So do you think it was between the call with Senator Tuberville and the 2:38 p.m. tweet?

11          A    I think my best guess on this would have been, based on what you're  
12 showing me -- I don't have a recollection, obviously, sitting here, but it would be  
13 somewhere between 2:24, and say it took me three minutes to go up, get Ivanka, and  
14 come down, 2:35, in which I probably would have handed that note.

15                I don't remember, and I think it would have stood out in my mind if I handed  
16 Meadows a note and put it and said, here's what I think should be done, and that first  
17 tweet came out in response.  That would surprise me.

18          Q    Were you following the President's tweets pretty carefully?

19          A    No.  No, I think -- I don't do any social media at all.  I think at one point,  
20 somebody set up Twitter for me on my cell phone, government cell phone, so I -- and the  
21 only tweets I would ever see is if it was from the President.  Otherwise, I don't do any  
22 social media.

23          Q    So when you went and got Ivanka Trump and you went down to the dining  
24 room, did you stay in there for any discussion, or did you leave immediately when Ivanka  
25 went in?

1           A    I think -- I don't remember staying for any part of the conversation.  I  
2   remember bringing her in, right?  I don't even remember what I said to her going down,  
3   other than saying, come down with me.  And she was in there for a few minutes, and  
4   then came out and he had issued a tweet.

5           Q    And why did you think it was important to get Ivanka Trump?

6           A    I thought Ivanka, in my interactions with her, was a calming influence.  And  
7   predominantly she always tried to do the right thing, having been through a lot of stuff in  
8   her role, and I thought she would be helpful.

9           Q    Did you think she would be supportive of the President issuing something  
10  along the lines of what you had proposed in Exhibit 11?

11          A    I thought it would be pretty clear that Ivanka would immediately condemn  
12  the violence and, you know, say what's been written here:  Support our police, Capitol  
13  Police and Law Enforcement.

14          And I remember Ivanka put out a tweet, and there was some criticism of her  
15  tweet.  I think I read it and understood what she meant, but it was obviously  
16  contentious times.  But -- and I think she also condemned the violence and said, this is  
17  not how Trump supporters behave, or something along those lines.

18          Q    I want to focus on this 2:38 p.m. tweet from President Trump, which does  
19  say, "Support our Capitol Police and Law Enforcement," and then "stay peaceful."  But it  
20  doesn't say anything along the lines of what you had suggested about leave the Capitol?

21          Do you know whether -- do you know why what you suggested didn't get in.

22          A    I have no idea.  I mean, I never did a tweet in my life.  I don't know at  
23  what -- you know, what goes in or doesn't go in.  I mean, that was my reaction and  
24  response, but -- and I just -- I don't know.  I don't know what level of breach or what was  
25  going on at 2:38 in that sequence.  But I don't think there was a question about leaving.

1           I mean, but let me be clear. If by posing the question, you're suggesting that he  
2 wanted the people -- the President wanted the people to stay in the Capitol and continue  
3 what they were doing, I don't believe that's accurate.

4           Q    No, and I wasn't suggesting that he necessarily wanted people to stay in.  
5 I'm questioning more why your proposed statement of he should ask people to leave  
6 never ended up -- or it didn't get -- it did not get made until after 4:00 p.m. when he did a  
7 video, which we'll get to later?

8           But I guess my next question would be, when Ivanka Trump left the dining room,  
9 did you see her immediately after she left.

10          A    I did. I remember that particularly well.

11          Q    Why?

12          A    Because Ivanka was in the back, and one of her assistants came down  
13 holding her cell phone and she asked me, "Where is Ivanka?" I said, "She's tied up.  
14 What's up?" And she said, "It's Senator Graham," and I said, "Okay. Give me the  
15 phone."

16          And I knew Lindsey from beforehand. I don't remember what exactly he said,  
17 but he wanted, I think, a statement to go out. I said, "We're doing it, it's being done,  
18 working on it." Something along those lines.

19          And when Ivanka came out, I handed her her phone and I said, "Lindsey called, but  
20 I spoke with him." And she had kind of an incredulous look that I would take her phone.  
21 Anyway, and I said, "Okay." And she took the phone and looked at me.

22          That's why I remember that in particular. She was surprised that I would go that  
23 far.

24          Q    Do you remember anything else about the conversation with Senator  
25 Graham?

1           A    No.  It was -- he obviously wanted a statement to go out, and that was it.  
2   It was a short conversation.

3           Q    And did Ivanka Trump say anything about the meeting she had just had with  
4   her father about the tweet?

5           A    No, she just came out and said he issued a tweet.

6           Q    Did she say anything else that you can recall?

7           A    No.  I mean, as far as I recall, when I went up there to her office, she had no  
8   idea what was going on, literally had no idea.  She was working with her door closed,  
9   having zero idea until I came through the door.

10          Q    Okay.  So one of the witnesses we spoke to seemed to recall that you were  
11   in the dining room for a conversation about preparation of that 2:38 tweet.  Is that  
12   incorrect?

13          A    The 2:38 tweet is the first one.

14          Q    Not the one about the Vice President, but the one after that.  We can pull it  
15   back up?

16          A    I'm sorry.

17          Q    Yeah, 2:38 --

18          A    I was not in the back with Ivanka at that time.

19          Q    And when you say the back, does that refer to the dining room?

20          A    Yes.

21          Q    Did you ever have any conversations with anybody about that 2:24 p.m.  
22   tweet, which was the one about Vice President Pence?

23          A    Not that I recall.

24                ██████████  I'll pause to see if anybody has any questions.

25                   BY ██████████

1           Q    Yeah.  There's just been a lot of testimony developed or information  
2 developed in criminal cases, Mr. Herschmann, that people in the crowd saw that 2:24  
3 tweet about Mike Pence and it, frankly, motivated their conduct, it motivated their  
4 aggressive and violent attack on the Capitol?

5           I'm just wondering whether there was any internal discussion at the White House  
6 about the possible negative effect of that direct criticism of Mike Pence in the middle of  
7 an insurrection at the Capitol.

8           A    In light of that question, I'm not going to debate armed insurrection and all  
9 that stuff.  I'm leaving that aside.

10          I didn't have, and I was not privy to any conversations about that first tweet.  I  
11 don't know anyone that discussed it.  I will tell you that overall -- and I mean, across the  
12 board, for anyone I interacted with -- there was a complete and utter state of shock.  I  
13 mean, and I've been in -- I was a prosecutor and issues where police are shot and agents  
14 are shot, and people have died.  And it's been chaotic.

15          But there was a complete and utter state of shock.  And I spent, you know -- later  
16 on, I mean, I had dinner with Dan Scavino that night.  And I know I've read some of the  
17 stuff that people think, but then there is no question in my mind that it had a significant  
18 impact on people what had happened.  And people thought very much that the  
19 violence, you know, was a terrible way to end what a lot of people had committed  
20 themselves to public service for.

21          Q    Look, I completely appreciate that.  I'm not suggesting otherwise.  I guess  
22 my precise question is that that 2:24 tweet is issued after violence had begun.  And we  
23 have information that Mr. Meadows was aware of that and then conveyed that to the  
24 President, when the "Mike Pence is a coward" tweet was issued.  We have also  
25 developed evidence that people in the crowd saw that tweet and it further motivated

1 violence?

2 And my question is whether that was -- it sounds like it wasn't, but that was  
3 something that the White House, folks in the White House were aware of and maybe  
4 motivated the subsequent tweets: We have to put out -- you know, walk back or put  
5 out things to calm violence, because the first tweet had exacerbated it.

6 A No, I don't think that's accurate, [REDACTED] I will tell you that, I mean, no one  
7 was tracking in realtime what people are saying there. I mean, I will -- if you want me to  
8 jump ahead, I'll jump ahead for a minute.

9 But I knew Jeff Rosen from before I came into the White House. And I had  
10 obviously dealt with Jeff and with Bill Barr previously. At one point, I was privy to a  
11 conversation between Pat Philbin, Pat Cipollone, Jeff Rosen, General Milley, and others.  
12 And in my experience as a prosecutor and in government, when there's a crisis and  
13 there's an -- if an officer gets shot and someone calls in a 10-13, the Army shows up, and  
14 there's no hesitation as to who's getting there when. You know, an officer's been shot.

15 When I listened to part of the phone call with them, I thought the urgency, at least  
16 from getting the National Guard there or getting people there, was not sufficient, in my  
17 mind. So I stepped out. I think I called Donahue, because I think Jeff was on the phone  
18 call. I said, "You have the full authority of the White House to do anything you need to  
19 do to get people out of that building. I don't care which law enforcement agency it is, I  
20 don't care who is in charge. I don't want to hear about logistics and going back to  
21 get -- people get their equipment. Just get them out of there."

22 And it was -- he said, "Okay."

23 So I don't -- I can't imagine that there was anything along the lines being discussed  
24 that, oh, this is going out, okay, and that's what's happening. That was not -- I mean,  
25 there was a lot of logistical things happening. White House counsel was dealing with, I



1 want to say, the jurisdictional issue. But my view was just to get these people out of  
2 there.

3 Q Okay. My last question before we walk back through the timeline is, it was  
4 your decision to go get Ivanka because of her unique possible ability to get through to or  
5 persuade the President, or was it sort of the 10-13 situation, it's a crisis, and we need all  
6 hands? In other words, was there a particular reason that you thought she would be  
7 useful in that situation, or was it more of a, hey, this is a crisis, we need all hands on  
8 deck?

9 A I think it was probably more of a crisis. I mean, I got Ivanka and I also got  
10 White House counsel, right, and said, "Let's go." You know, it's -- I thought we would  
11 get people that are saying we need to get this over with and quell the violence as quickly  
12 as possible.

13 Q Yeah?

14 A And obviously, we're not law enforcement and sitting there, but the  
15 directions and the directives were, in my view, as clear as humanly possible: Get them  
16 out now.

17 Q Yeah?

18 A I didn't care about, you know, who is holding jurisdictional control and  
19 logistics and who on the ground is dealing with it.

20 Q Yeah?

21 A It was far from being my concern over how anybody -- who got arrested,  
22 who didn't get arrested. I just wanted them all out of the building, no matter what.

23 Q Well, when you read that 2:38 tweet, you could read that as an  
24 encouragement to stay, right? Stay peaceful, respect law enforcement. There's no  
25 reference at all to leaving the Capitol. It sounds like that wasn't your intention or

1 Ms. Trump's?

2 A Let me say this. If this was -- I want to be really clear.

3 If I had dreamt or interpreted that tweet as meaning stay there, right, I would  
4 have been extremely, extremely vocal about it. I couldn't have been more clear than I  
5 was to Donahue. I was like, I don't care what happens, get people out right now.

6 So I don't think it was, like, stay there and be peaceful, because watching it on TV,  
7 it was not peaceful.

8 To the extent that when the -- I think it was an Air Force Reservist was killed in the  
9 Capitol, you know, I either spoke -- it would have been either Rosen or Donahue, I don't  
10 remember which one, but I heard somebody had been killed. I said, "Call me  
11 immediately and give me the details of exactly who the person is." I said, "I want you to  
12 cover every detail."

13 So we didn't go in and someone said it was someone else. So it was obvious, I  
14 think, by when they called me, they had already called up Facebook and other things to  
15 show that this was a Trump supporter had been killed. And I thought having that  
16 information was a sobering reality for people.

17 Q Okay?

18 A You know.

19 Q I appreciate that?

20 A I mean, just to be clear. I can't -- it's not a circumstance where whether it's  
21 Philbin, Cipollone, myself, Ivanka, Mark, or anyone would have, in any way, let go forward  
22 that statement, Stay in the Capitol. That's impossible for me to accept.

23 BY MS. CHENEY.

24 Q Mr. Herschmann, I've got a question?

25 A Sure.

1 Q Did you ever hear the President say, "Get people out now"?

2 A Those exact words? I don't remember him saying, "Get people out now."  
3 But without getting into too much detail, there was discussion about getting law  
4 enforcement and getting people there to get people out of the Capitol, yes.

5 Q Did you hear the President call the Department of Justice and convey the  
6 message you conveyed?

7 A I didn't hear him do that, but I don't think in that situation, he would have  
8 been. I mean, it was the -- without knowing the protocol of how they actually did it,  
9 there was a conference call from different agencies and discussing who's responsible for  
10 what.

11 Q Did you hear him call the Department of Defense?

12 A I did not hear him call the Department of Defense.

13 Ms. Cheney. Thank you.

14 [REDACTED] Do any other Members have questions?

15 BY [REDACTED]

16 Q Okay, just briefly. I made reference earlier to the 2:26 p.m. call that  
17 President Trump had with 7Senator Tuberville. Were you with the President when he  
18 had that call?

19 A I was not. I don't remember that call. I remember there's some news  
20 reports that it was a wrong phone number that went to someone else, I think to Mike Lee  
21 or something.

22 Q I think that's correct. Other than through the media, have you heard  
23 anything about that phone call?

24 A No. I don't remember who put it through and who did all that stuff. I just  
25 remember hearing it was a wrong phone number.

1 Q Okay. But did you hear anything about the substance or the content of  
2 that call?

3 A No.

4 Q So you were saying that Ivanka Trump went in to the dining room. The  
5 2:38 p.m. tweet which we just talked about came out. Ms. Trump came out of the  
6 dining room. You talked to her about Senator Graham's phone call. What happened  
7 next?

8 A I think she went back upstairs, is my recollection. I don't know if she  
9 stopped -- because where I was standing was -- you guys are familiar, I presume, with the  
10 layout of where everybody sat. Okay.

11 So Jared's office was the next one after the dining room, so we may have spoken  
12 there for a minute. And then I was up in White House counsel's. And in that time  
13 period would have been the phone call with everybody on the law enforcement side, and  
14 what was happening, and getting logistics about how you get -- who's going there, who's  
15 taking charge, and all of that stuff.

16 And then I know there was a subsequent tweet, and then there was discussions  
17 about whether he should do a conference from the press room or put out a videotaped  
18 statement, and that took some discussions amongst people and timing. And then he did  
19 a statement in the Rose Garden.

20 Q So let's walk through that in some detail. So you had a conversation with  
21 Ms. Trump about Senator Graham. Then your recollection is the next thing you did is  
22 you went to the White House counsel's office; is that correct?

23 A That's my recollection.

24 Q And what did you discuss with either Mr. Cipollone or Mr. Philbin, or both?

25 A It generally would have been getting people -- you know, where law

1 enforcement stands, what's going on, getting control of the Capitol. I don't remember  
2 any other details about it.

3 Q Okay?

4 A And I probably -- I probably told them that he put out a tweet, right?

5 Because neither one of them were there downstairs at the time.

6 Q Okay. Do you remember anything that you said about the tweet?

7 A No, I don't recall that. If you tell me -- I know there was, I think, another  
8 tweet that went out afterwards, and then the video.

9 Q There was another tweet. But do you think that that tweet was -- I'm  
10 trying to go somewhat chronologically. Do you think that tweet was before or after the  
11 call you had with the Justice Department and General Milley?

12 A So let me be clear. On the General Milley call, Pat was in his office, with  
13 Pat Philbin on a conference call. He waved me to come in for part of the call, just  
14 listening in on part of the call. But in my experience, I didn't think I heard what I viewed  
15 as the urgency of what needed to be done, and there were discussions about logistics and  
16 stuff.

17 I walked out of Pat's office and then called or -- I remember someone got Donny  
18 on the phone for me, "What happened?" And then I had a call with Rich.

19 Q When you say you didn't hear the urgency, was there something about the  
20 plan they were discussing that you didn't think was sufficiently expedited, or was it more  
21 their tone that didn't sound urgent?

22 A The impression I had was there were discussions about the Guard having to  
23 go back and pick up their equipment, and how long it was going to take. And, you know,  
24 who should take the lead, and things along those lines that struck me as not, whatever  
25 you need, we've got it. Done.

1           And listening to that for a few minutes, I decided to, what I would say, cut to the  
2 chase and say, "I don't care about jurisdiction, I don't care about logistics. I don't care  
3 about people going back. Get people there now."

4           Q    Just so I understand it, you said that on the conference call --

5           A    No.

6           Q    -- or just in the call with Donahue?

7           A    No. On the conference call, I didn't say a word. I just listened, and then I  
8 walked out. At some point afterwards, I'm certain I spoke to Jeff Rosen, and told him I  
9 thought that was BS on what was going on. But that's just my personal assessment.

10          Q    And why did you talk with Rich Donahue from the Justice Department on a  
11 matter involving the National Guard? Was there was a legal issue or a jurisdictional  
12 issue?

13          A    No, there were a lot of parties on the call. It wasn't just, you know, Milley  
14 and Rosen. There were others on the call. I just don't remember who else was on the  
15 call, right.

16                I just remember listening to part of it and thinking, I don't hear the urgency of  
17 solving this issue immediately, so I decided that maybe I could help resolve the issue.  
18 And I had dealt with Rich beforehand. And Rich was a New York prosecutor. It was, I  
19 hate to say this, I don't know who's a trial lawyer out of this group, but trial lawyers are  
20 cut from a certain cloth, and we act a certain way.

21                It was obvious to me Rich Donahue was a trial lawyer. It was obvious to me that  
22 Jeff Rosen wasn't a trial lawyer, Right? But I felt that Rich would have the personality to  
23 do and act with what I thought was the authority he needed or got.

24          Q    So I certainly understand your view of Mr. Donahue, and I likewise hold him  
25 in very high regard. But I guess what I was getting at is, why would you call DOJ? Is it

1 just more you had the relationship with him? Why wouldn't you call somebody at DOD?  
2 Why did DOJ have is it lead?

3 A I don't know if DOJ had the lead yet or not at that stage. It wasn't clear to  
4 me who had the lead. I knew Rich and I knew Jeff. And coming out of being a  
5 prosecutor, I thought I understood how the process works. And there are a lot of law  
6 enforcement agents from different agencies that you can send.

7 I'll give you the 10-13 example. This, to me, was I don't care about anything, I  
8 don't care who takes the lead, and I don't care about -- can't even care about arrests,  
9 either. That can be solved, as they are now, later on. But it was obvious. Just get  
10 them out of the building. I don't care what you do.

11 Q And what was Mr. Donahue's reaction?

12 A Got it.

13 Q Did he say what he was going to do?

14 A No, I think he -- I think after our Jeff Clark, you know, interactions, Rich and I  
15 were -- I don't want to say, a more aggressive tone of getting things done, but I had total  
16 confidence that Rich would put things in gear.

17 Q And you mentioned a call with Jeff Rosen. Was that also on the 6th?

18 A No, I had spoken to Jeff at different times. I think I spoke to Jeff on the 7th.  
19 I just don't recall. I mean, I had spoken to Jeff over different issues over time, I mean,  
20 including I invited Jeff to one of the Middle East peace ceremonies, because I saw him and  
21 he said, "I didn't get an invite," and I said, "I'll get you an invite."

22 Q Okay?

23 A That type of stuff. But I don't think I would have spoken to Jeff. Just very,  
24 very different personalities.

25 Q I understand. And when you spoke to Jeff Rosen on the 7th, was that a

1 discussion about what had happened on the 6th?

2 A I think it was some -- I may have told him about my chewing out Eastman,  
3 and saying he's F'ing out of his mind. But I don't remember, specifically.

4 Q Do you remember whether Acting Attorney General Rosen expressed an  
5 opinion about what Mr. Eastman had done?

6 A I don't recall. I mean, the real -- there was a group that was trashing DOJ  
7 from some point after November 3rd onward. I was a very large defender of DOJ. So  
8 the interactions would have been along those lines. And we'll cover the Jeff Clark  
9 meeting at some point, but I was very much a supporter of Bill Barr and, through Bill, Jeff.

10 Q So after the conference call that was going on where you stepped in to Mr.  
11 Cipollone's office, heard part of it, did you then immediately call Mr. Donahue?

12 A Immediately.

13 Q And after you talked to Mr. Donahue, what did you do?

14 A I don't recall exactly. I mean, people were discussing different things. At  
15 some point, I remember talking to Kayleigh McEnany about her putting out a statement,  
16 but I don't remember the details of that.

17 Q Was that a statement about the National Guard deployment?

18 A I don't remember. Whatever she put out, I spoke with her that day, and I  
19 think the following day, she went for a press briefing. And she asked me my view of it.  
20 And I told her she should do it. And then she went out and did a brief -- I believe a  
21 briefing on the 7th.

22 Q Do you know why she asked your view of whether she should do the briefing  
23 on the 7th?

24 A I'd interacted with her on different things, and I think she trusted my  
25 opinions.



1 Q Was she expressing some uncertainty as to whether she should do it?

2 A I don't know if it's uncertainty as much as she wanted to go ahead and do a  
3 briefing on her own, and having a relationship with reporters and the press pool and I  
4 remember she asked me, and I said, "Go, do it."

5 Q We understand that she did not ask Chief of Staff Mark Meadows before she  
6 gave that press briefing. Do you have any knowledge of that?

7 A I have no idea. I can only tell you that she came and asked me, and I said,  
8 "You should go do it."

9 Q Did she indicate that anybody was suggesting that she should not do it?

10 A No, I found her to be extraordinarily, extraordinarily responsible. I mean,  
11 she was very bright. I can't separate Philbin from Kayleigh, because I think Kayleigh was  
12 very bright. And I think Philbin, candidly, I used to tease him, kind of sat in a different  
13 category than most.

14 But I think she felt that she should do it, morally, having had the interaction, and  
15 she was troubled by it. And she went out and did it.

16 Q So we understand that President Trump spoke with Congressman Kevin  
17 McCarthy over the phone at some point between 2:24 p.m. and 3:05 p.m. Were you  
18 present for that call?

19 A No. So 2:24 and 3:05. No, I was not.

20 Q Okay. Did you hear anything about that call, other than through the  
21 media?

22 A No.

23 Q Okay?

24 [REDACTED] Ms. Cheney, did you have any questions?

25 Ms. Cheney. Yeah, I just wanted to ask Mr. Herschmann just to understand.

1 BY MS. CHENEY.

2 Q You said having had the interactions, Kayleigh was troubled by it, morally,  
3 and thought she should do it. I was just wondering if you could explain that a little bit?

4 A Yeah, I think Kayleigh, since she had interacted with the press for an  
5 extended period of time, she had a rapport with them. She was not comfortable not  
6 going out there and addressing what happened.

7 And she said, what do I think? And I said, "I think you should go out there and do  
8 what you think is right." And my view was if there was any blow-back, I would deal with  
9 whatever blow-back came.

10 But I thought if she wanted to do it, she should do it. And she earned the right,  
11 in my view, 200 percent to go do it.

12 Ms. Cheney. Okay, thank you.

13 The Witness. Sure.

14 [REDACTED] Does anybody else have any questions?

15 I think the Members have a meeting at around 1:30, so maybe 15 minutes, and  
16 then take a lunch break, so that that can coincide, at least in part, with the Member  
17 meeting.

18 The Witness. And, [REDACTED] just to keep timing, I don't know how long we're going  
19 to go. I'm flying out of the country tonight, so I've got to be done by 7:00 to go to the  
20 airport. And I did put on a jacket and tie for you guys, which I would not do -- other  
21 than going into the White House and having to wear it, and a lot of times I did not, I  
22 haven't worn one since.

23 So if you could just factor that in, that I'm flying out of the country with my family.

24 [REDACTED] We appreciate that, and we'll try to move as quickly as we can.

25 BY [REDACTED]

1 Q Do you have any knowledge of President Trump on January 6th attempting  
2 to reach out to Senator Josh Hawley?

3 A No.

4 Q Do you know how the President became aware that Ashli Babbitt, who is the  
5 Reservist you were mentioning earlier, was shot?

6 A I don't remember who actually said it. I don't think -- I don't think I told  
7 him that she was shot, but I do remember being one of the first people that conveyed,  
8 maybe it was to Meadows or to others, that it was definitely a Trump supporter that had  
9 been killed.

10 Q Okay. And do you know whether the President was there when you did  
11 that?

12 A I don't recall.

13 Q What was their reaction?

14 A I think people were kind of shocked that somebody had been killed. It  
15 just -- John, let me put it in context.

16 100 percent, I wanted people out of the building, right? Make no doubt about  
17 that. Some of the people looked to me like goofballs. Watch a video and you're like,  
18 what is going on here? Like, you've got people dressed up in costume and walking  
19 through the Capitol.

20 So the -- there was -- I think some people said this is about as serious as you get  
21 when watching it. And some stuff you're watching, like, what in the world are these  
22 people doing? And who are these people.

23 So just a general observation to think about. I remember the picture of the guy  
24 walking around with a Viking hat. I'm like, after everything we've been through with  
25 Eastman, I'm positive he wasn't thinking about guys walking through the Capitol with

1 Viking hats.

2 Q Okay?

3 A So.

4 Q So let's look at Exhibit 43, a handwritten note on White House stationery.

5 "1 x Civilian Gunshot Wound to Chest @ Door of House Chamber?"

6 Do you know whose handwriting that is?

7 A No, I don't.

8 Q Okay. Let's go to Exhibit 44.

9 This is a 3:13 p.m. tweet from the President. "I am asking for everyone at the  
10 U.S. Capitol to remain peaceful. No violence! Remember, WE are the Party of Law &  
11 Order - respect the Law and our great men and women in Blue. Thank you!"

12 So it's another tweet from the President. I would characterize it as somewhat  
13 similar to the 2:38 p.m. tweet, in terms of praising law enforcement. I think the other  
14 one said "stay peaceful," this one says "remain peaceful."

15 Do you remember anything about the circumstances of why the President issued  
16 another tweet that seems pretty similar to the first one.

17 A I don't remember, in particular, but there would have been discussions  
18 about putting out another tweet. My presumption is the first tweet didn't stop the  
19 violence, right? And then there was discussion about putting out a second tweet, but I  
20 don't remember the details.

21 Q Were you involved in discussions about putting out this tweet?

22 A Probably, but I don't recall it.

23 Q Do you know who wrote it? So, for example, was it President Trump, Dan  
24 Scavino, somebody else?

25 A I think -- I don't know who wrote it. I mean, a lot of times Dan would type

1 up what the President might have dictated, and he would send. It's a Twitter from an  
2 iPhone, so I don't know what that means, but I presume it went out from an iPhone. I  
3 don't know, maybe I'm wrong. I don't know what that means. But I would say a lot of  
4 times, Dan would be typing up tweets, and then they would be read back, and then it  
5 would be sent out.

6 Q Did you make any kind of suggestion along the lines of what was in your  
7 handwritten note that we covered a while ago, Exhibit 11, about saying people should  
8 leave the Capitol?

9 A No. And honestly, until you guys pointed this out about leaving, I didn't  
10 even focus on the difference in the language.

11 Q Did you have any conversations about the language "remain peaceful"?  
12 Because at this point, it must have been clear that at least some of the people were not  
13 peaceful?

14 A I don't remember any conversations about it.

15 Q Do you recall whether there was anything that anyone was asking the  
16 President to say or do in the tweet that he was reluctant to do?

17 A No, I don't remember any conversation in which it was, like, "Let's tell them  
18 to leave," and he's saying "no." I don't remember anything even remotely like that.

19 Q Was anybody encouraging him to make any kind of stronger statement than  
20 what he made?

21 A I don't recall as it relates to the tweets.

22 Q Let's look at Exhibit 45.

23 I think you referenced earlier, Kayleigh McEnany having done a tweet. This one  
24 was 3:36.

25 "At President @realDonaldTrump's direction, the National Guard is on the way,

1 along with other federal protective services.

2 "We reiterate President Trump's call against violence and to remain peaceful."

3 Were you involved at all in the preparation of that tweet.

4 A I don't recall being involved in that. I mean, I can tell you that I was in the  
5 back dining room a pretty large amount, in and out. I remember at some point, Kayleigh  
6 coming. I remember obviously Ivanka coming. Scavino was there, Pat and Pat  
7 eventually came, Mark Meadows was there. I don't remember anyone else coming in to  
8 the back. I think that would stand out in my mind if they did, but I don't remember  
9 anyone else being back there.

10 Kayleigh came, I think, with one or two other women with her at one point, but I  
11 don't remember who they were.

12 Q Okay. We understand that an original draft of Ms. McEnany's tweet  
13 included language that said "those," referring to the National Guard, "were deployed  
14 immediately and have been in place for more than 24 hours at the Mayor's disposal," and  
15 then that was edited out. Do you recall anything about that?

16 A I don't. I remember there being some discussion about the National Guard  
17 being available, and I presume the mayor, not Giuliani, you're talking about the mayor of  
18 DC.

19 Q Right, Mayor Bowser?

20 A Mayor Bowser not wanting them deployed.

21 Q Do you remember anything else about that?

22 A I don't, just at a general discussion. But I wasn't involved in any of the, you  
23 know, security-related issues associated with the Ellipse or the rally or anything else.

24 Q So we've been told that Mr. Cipollone at some point entered the room and  
25 said that he had heard that the National Guard had not been deployed, and that Mark

1 Meadows disagreed because he had heard contrary information. Did that -- do you  
2 recall whether you were there when that happened?

3 A I think I was there whenever Pat was there, but I don't recall that  
4 conversation.

5 Q We understand that at some point on the afternoon of the 6th, you called  
6 Jared Kushner. Do you recall that?

7 A Yes.

8 Q Why did you call Jared Kushner?

9 A It was -- it must have been some point after. It must have been after the  
10 tweets, because I definitely called him after Ivanka. That, I'm positive of.

11 Q I'm sorry, after Ivanka what?

12 A After Ivanka went into the dining room. At some point, it would have been  
13 after the first tweet. That, I'm sure of. And there was obviously a lot of chaos going  
14 on, you know, with people trying to figure out what should be done and all types of  
15 logistical things that were transpiring. And I just thought to myself, "Where is Jared."

16 And I called him and I said, "Where are you?" And I remember him saying he's in  
17 the air. And I don't remember what exactly I said to him, but it was obvious to me he  
18 didn't really know, he was flying. Either I said there was violence at the Capitol or a riot  
19 at the Capitol or something along those lines and, "I'll talk to you when you land."

20 I don't remember if he told me when he was going to land or not, but I knew he  
21 was working on Middle East peace, and I was intimately aware of.

22 Q Okay. And did he then write some proposed language and send it to you?

23 A He didn't send it to me. I think he wrote something. You know, I  
24 remember that Jared wrote something, I don't remember the details of it. And then I  
25 know he worked -- he definitely worked on the January 7th speech.

1 Q So on January 6th, if we could look at Exhibit 47.

2 This is a text that I believe was from Jared Kushner to Dan Scavino, 3:50 p.m. is the  
3 time stamp. I don't know if that's exactly accurate because, as you mentioned,  
4 Mr. Kushner may have been flying, so I don't know what time zone he was in?

5 But either way, it says, "I urge all my supporters to do exactly as 99.9% of them  
6 have already been doing -- express their passions and opinions peacefully. Let me be  
7 perfectly clear. Trump supporters have a right to be angry. They have a right to have  
8 their voices heard. Especially by a media that considers any gathering of 10 Trump  
9 supporters to be a 'riot,' while a hundred nights of fires, looting, and deaths by antifa is  
10 always called a 'peaceful protest.' But make no mistake -- NO ONE should be using  
11 violence or threats of violence to express themselves. Especially at the U.S. Capitol.  
12 Let's respect our institutions. Let's all do better."

13 So as far as we know, you were not on that text message. But do you recall ever  
14 seeing this language proposed by Mr. Kushner?

15 A I don't remember this text at all. I do remember at some point -- I don't  
16 remember who put it together, the 99 percent of them. You know, I remember that,  
17 you know, statement, but I don't remember where it originated. But this, I wasn't  
18 copied on.

19 Q Right. I didn't know if it was ever shared with you?

20 A No.

21 Q As far as you recall?

22 A As far as I recall, no one shared this with me. And I didn't ask Jared to put  
23 out and put together a statement. He may have done that on his own, but I don't recall  
24 asking him that.

25 Q Okay.



1 All right. If we look at Exhibit 46, you'll see there's some similarity. This one is  
2 just called Remarks, and I believe this was produced to us by the National Archives?

3 "I urge all of my supporters to do exactly as 99.9% of them have already been  
4 doing - express their passions and opinions PEACEFULLY.

5 "My supporters have a right to have their voices heard, but make no mistake - NO  
6 ONE should be using violence or threats of violence to express themselves. Especially at  
7 the U.S. Capitol. Let's respect our institutions. Let's all do better. I'm asking you to  
8 leave the Capitol Hill region now and go home in a peaceful way."

9 Do you know what this document is.

10 A Can you go back to the top for a second.

11 I think -- I'm not positive, because I don't remember the exact words, this was the  
12 card that the President had when he went out to the Rose Garden. I can't be certain of  
13 it. There was a group of people that were involved in putting together, you know, a  
14 statement or something he could work off of during the videotape statement.

15 Q Were you involved in preparing his remarks?

16 A I was involved in discussions about it. I don't remember what input I gave  
17 to them, but I do remember definitely being in discussions about it.

18 Q Okay?

19 [REDACTED] So it would probably make sense to pick this issue up of the  
20 videotape statement after the lunch break. Before we do that, I just want to see if any  
21 staff or Members had any questions.

22 [REDACTED] Just quickly, Mr. Herschmann.

23 BY [REDACTED]

24 Q At any point in the events that we've discussed, was there any discussion of  
25 the Vice President and his safety, where he was or whether he was in a safe place?

1           A    I don't remember any discussions about the Vice President. My only  
2 conversation with the Vice President on this topic was a few days later. I don't  
3 remember exactly what date, but subsequent to that.

4           Q    I understand you didn't call the Vice President. I'm just wondering whether  
5 inside the White House, with any of the folks you discussed, there was any concerns  
6 expressed or questions raised about the Vice President's safety?

7           A    I don't remember any discussions about the Vice President not being safe.  
8 I just don't remember any discussions about the Vice President having any issues.

9           Q    It just didn't come up?

10          A    As far as I know, with anyone I spoke to, including White House counsel or  
11 anyone else, no one was aware of any issues with the Vice President or his safety.

12          Q    Okay?

13          ██████████ Do any Members have any questions? Okay. Why don't we take  
14 a break for lunch and resume at 2:00. Will that work, 45 minutes?

15          The Witness. I can do shorter if you want, as long as you tell me we're going to  
16 be done, so I can get out of a jacket in time and put on 12-hour flying clothing.

17          ██████████ We'll do 2:00.

18          The Witness. Thank you.

19          (Whereupon, at 1:36 p.m., the testimony in the above-entitled matter was  
20 recessed, to reconvene at 2:00 p.m., this same day.)

1 AFTERNOON SESSION

2 (2:01 p.m.)

3 EXAMINATION BY COUNSEL FOR COMMITTEE (RESUMED)

4 [REDACTED] Let's go back on the record.

5 BY [REDACTED]

6 Q Mr. Herschmann, when we left off, we were just starting to talk about the  
7 President's videotaped statement which was released at 4:17 p.m. on January 6th?

8 A Right.

9 Q What do you know about how that videotaped statement came about?

10 A I don't remember who else was involved in putting it together, but I believe  
11 it was Meadows, maybe someone from White House counsel, myself, had put together a  
12 statement or potential remarks. I thought it was on a card that he had, but I didn't -- if  
13 you guys have it, I haven't seen it. I --

14 Q Sorry to interrupt. That Exhibit 46 which we showed you, that was, I think,  
15 produced to us electronically. So I don't know whether that was on a card or on  
16 letter-sized paper or what?

17 A Just the way it's printed, it doesn't look like it's -- the card from, like, the  
18 chief of staff. I think there was a card like that. I don't remember him walking  
19 around -- this looks like an 8-1/2-by-11 piece of paper. I don't remember him having  
20 that.

21 I don't know if this is the remarks. I don't think so, but it's possible. I just don't  
22 recall specifically, but I remember there being, like, one of those long index cards.

23 Q Is it possible that this was an initial draft of his remarks?

24 A I don't know. I just don't remember it. I just remember there being a  
25 card, so --

1 Q Do you know how the idea of doing a videotaped statement originated?

2 A I don't. I remember there being a discussion that whatever statements he  
3 had issued, that people thought there should be a videotape as well, and then discussions  
4 about what would be said and where it would be done.

5 Q And then, again, I think you just mentioned the people, but who was  
6 involved in the discussion about what would be said?

7 A I don't remember. I mean, it could be White House counsel, it could be  
8 Kayleigh McEnany, Meadows probably would have been involved, I was involved. But I  
9 don't remember the details.

10 Q One witness told us that he or she thought that edits were made in a  
11 computer in the outer Oval at Austin Ferrer's computer. Does that ring a bell with you?

12 A That would be surprising to me. I mean, Austin was younger than my kids.  
13 Not all my kids, but the older ones. I would be surprised if that's what happened.

14 Q The suggestion was not necessarily that Mr. Ferrer himself was making the  
15 edits, but that given the, you know, proximity of his desk to the Oval Office, that maybe  
16 that's just where the group assembled to edit?

17 A That's possible. I just don't remember that part in any detail. I know that  
18 there was at least proposed statements or a card made up. I don't remember if there  
19 was a teleprompter that was set for what he was going to be saying, but I don't think  
20 there was. I think it was, here's a card. And he would very often tape proposed  
21 statements or discussions and then go out and deliver it the way he wanted.

22 Q Do you know whether the President made any edits to the draft before he  
23 went out to give the statement?

24 A I don't recall.

25 Q Do you know whether he ended up reading whatever was prepared for him?

1 A He did not read from anything.

2 Q In general, or just for that particular --

3 A I mean, a lot of times, he didn't read from anything. Sometimes he would  
4 read. I would say more often, as I guess any President has a prerogative to do, they can  
5 ad lib as they go along. But plenty of times, he would just look at a card, go up and do a  
6 videotaped statement of some sort and that would be it.

7 Q So do you recall whether the President was involved in any of the  
8 discussions about the draft before he went out to the Rose Garden?

9 A I don't recall.

10 Q Did you go with him to the Rose Garden?

11 A I did.

12 Q Who was there for the recording?

13 A The people from the White House.

14 Q We can show you --

15 A I'm not -- let me see.

16 Q Let's go to Exhibit 48.

17 These are not great photos, so I'm not sure how much they'll help you.

18 A No, the back -- the person in the back is Nick Luna.

19 Q Okay?

20 A Don't put him in the senior category.

21 Q The next one?

22 A Me. The guy on the right is a junior guy who did videography type of stuff.  
23 I think he was part of the impeachment, helping with video. That's how I knew him.

24 Q Do you remember his name?

25 A No, he was a junior. I mean, the guys that came out, the people that you

1 see -- let's go back to the other one -- and the people on the right are junior people that  
2 work on the video stuff.

3 Q Okay?

4 A All right.

5 Q So who do you remember being there?

6 A The only I would say senior person that went out that was near the President  
7 was me. I think Scavino went out, but he was on the other side of the Rose Garden. I  
8 don't remember what he was doing, taking pictures or something, but there was no one  
9 else outside, other than me.

10 Q Do you know why not? Why not people from the communications or press  
11 office, other than, I guess, Dan Scavino who oversaw communications?

12 A That weren't outside.

13 Q Why were they not -- why was there not a larger group of communications  
14 people going with him?

15 A I don't understand, what do you mean? Maybe I can make it easier.

16 Q Yeah?

17 A He was going to videotape and record a statement. The statement was  
18 going to be sent out. That was it. So there wasn't -- there were other people that  
19 came out from the video crew, or on the technology side, but not from the  
20 communications side. He was going to record a statement. The statement was going  
21 to be issued publicly.

22 Q Okay. So when he got out there, was there any discussion about what he  
23 would say?

24 A No, I'm pretty certain he had a card or some suggested remarks.

25 Q But then I think you said he didn't read from the cards. Did he seem to ad

1 lib?

2 A No, I think he would look at -- my experience, he would look at a card, get it  
3 in his own head how he wanted to say it, then say it.

4 Q And did he say -- did he do more than one take?

5 A I don't remember, but it wouldn't surprise me if he did two. This is all -- I  
6 mean, it could be -- understanding you're standing outside, it could be a take because  
7 someone says your tie blew away or whatever else, that type of stuff can go on. Or he  
8 can himself decide, I want to redo it. And he had experience, obviously, doing television  
9 far beyond probably anyone else that was around, so he had his own perception and  
10 image of how things would come out.

11 Q Did he do any kind of practice of it before it was videotaped?

12 A I don't believe so.

13 Q So we've heard that after the President did one take, you encouraged him to  
14 be more forceful than what he initially said. Is that accurate?

15 A I don't recall that. I mean, I just don't recall that.

16 Q We also had heard that the President rejected your advice, and said  
17 something to the effect of, these people are in pain, meaning his supporters are in pain.  
18 Does that sound correct to you?

19 A I don't recall that, either. And just -- I mean, there's no doubt in my mind,  
20 the only senior person out there at a certain level was me. The other people -- I mean, I  
21 would not put Nick Luna in the senior person category. And Dan wasn't within even  
22 earshot of what was -- of hearing what was said.

23 And the other people are just the junior video people, or some may be senior  
24 video people. I don't want to be derogatory to videographers who are doing this, but  
25 they are not the type that would be weighing in on what the President would be saying.

1           Q    Do you remember, though, about whether you weighed in at all about what  
2 the President was saying?

3           A    I don't. I mean, I just don't remember if it -- if he did another take or  
4 something just to go smoothly. That's possible. I just don't recall.

5           Q    Do you know whether any editing was done to the video?

6           A    I don't believe there was any editing done at all.

7           Q    Was there any discussion about the President releasing a second video that  
8 day?

9           A    Not that I recall. When he finished his video, I think everyone was, like,  
10 day's over. People were pretty drained.

11          Q    Were pretty what?

12          A    Drained.

13          Q    When you say the day over, there were still people in the Capitol at that  
14 point, weren't there?

15          A    There were people in the Capitol, but I believe by this stage, you know, law  
16 enforcement -- I'd have to go back and look, but I believe law enforcement was either  
17 there or moving in, or going to take charge. I don't think there was anything else to do.  
18 I'd just say people were emotionally drained by the time that videotape was done.

19          Q    Did you have any concerns about what the President said or what he didn't  
20 say? I recall he said something to the effect of, "We love you, you're special?"

21                Did you have any concerns about either the tone or the content of his videotaped  
22 statement.

23          A    I don't know if I had concerns or not. I mean, he made his statement. I'm  
24 not the President of the United States, and he would say it the way he wanted to. But  
25 he made his statements and that got put out, as far as I know, exactly the way he said it.



1 Q So our understanding is that at 5:45 p.m. on the 6th, the police announced  
2 that Ashli Babbitt had died. Do you know whether you were with the President when he  
3 was told that Ms. Babbitt died?

4 A I don't believe I was with him.

5 Q Do you know what the President was doing at the time?

6 A I don't.

7 Q Did the President ever say anything about the Vice President while the  
8 violence was going on?

9 A I don't recall.

10 Q So, as I said, that was 5:45 p.m. that the police announced that Ashli Babbitt  
11 died. At 6:01 p.m., the President issued another tweet, and this is Exhibit 49, and we'll  
12 put it up on the screen.

13 At 6:01 p.m., and it starts with, "These are the things." And as far as I know, the  
14 "these are the things" is not necessarily specific to Ashli Babbitt's death, but to the attack  
15 on the Capitol more generally?

16 "These are the things and events that happen when a sacred landslide election  
17 victory is so unceremoniously & viciously stripped away from great patriots who have  
18 been badly & unfairly treated for so long. Go home with love & in peace. Remember  
19 this day forever!"

20 Were you involved in the preparation of that tweet.

21 A No.

22 Q Do you know who was?

23 A I don't know if anyone was.

24 Q So it's possible the President just typed it up and sent it on his phone  
25 himself?

1 A Yeah, it's possible. I don't know anyone that was involved in it.

2 Q Do you recall seeing that tweet?

3 A I did not see that tweet at the time, that I know of.

4 Q Okay. When you eventually saw it, what was your reaction to it?

5 A The President issued a tweet. I don't remember my reaction to it, per se.

6 Q Do you know whether President Trump spoke to Mayor Giuliani at all on the  
7 6th?

8 A I don't know. I mean, it wouldn't surprise me, but I don't know.

9 Q Do you know if he spoke with any other members of the outside legal team  
10 during the day?

11 A Not when I was around him.

12 Q Were you involved in any discussion about whether or not Members of  
13 Congress would or should continue to object to certification of electors after the violence  
14 started at the Capitol?

15 A No, no. I know that there was -- I may have read in the media later on  
16 about something that people suggesting that they should stand up and still, you know,  
17 object or whatever. But I don't remember. I wasn't aware of that at the time, would  
18 be a better way of putting it.

19 Q Okay. It's been reported that Rudy Giuliani was calling Senators as late as  
20 7:00 p.m. encouraging them to slow down the certification of proceedings by objecting.  
21 Do you know anything about that?

22 A I don't. I remember hearing about it in the media, but I thought there was  
23 some voicemail that was left for the wrong person, something along those lines.

24

BY [REDACTED]

25 Q Before we move on, I have a few other questions about the video

1 statement?

2 So you mentioned that there was discussion at some point that another statement  
3 could be made, in addition to the tweets that President Trump had already issued earlier  
4 that afternoon.

5 Was there a sense that after the tweets, the ones that we have discussed earlier  
6 today, that something more was necessary, that the tweets were insufficient in some  
7 way, or that certain circumstances required more be done.

8 A I don't think it's that. I think there was just a discussion about whether he  
9 should put out a videotaped statement. And he said, yeah, he put out a videotaped  
10 statement, and went from there.

11 Q Do you know around what time people started discussing the possibility of a  
12 videotaped statement? Was that before the tweets, after the tweets?

13 A I don't remember. I mean, there was conversation about if he should do  
14 something from the press briefing room and stuff, but I just don't remember who  
15 discussed what. I just remember tweet, you know, tweet, and then we did a video.  
16 And then people who went later on at night, and started working on a January 7th  
17 speech.

18 Q Do you remember any reaction from President Trump about the idea of  
19 doing a videotaped statement, positively or negatively, or any reaction at all?

20 A On the 6th or the 7th.

21 Q On the 6th?

22 A I don't recall. I just recall there being discussion and getting to the point  
23 where he said, okay, and so he went out and did it. I just don't remember the details of  
24 that.

25 Q Do you know around what time he agreed to do the video statement?

1 A What time was the videotaped statement.

2 Q Sorry, I can actually walk you through that timeline?

3 A Okay.

4 Q I think our understanding is that he left for the Rose Garden at 4:03, the  
5 taping happened from 4:03 to 4:07. And then the statement was released at 4:17 p.m?

6 A Okay.

7 Q I mean, maybe if you don't recall an exact time, did he agree to do the video  
8 statement sort of immediately before going to do it, or sort of did he agree to do it and  
9 then there were preparations that had to take place to set it all up?

10 A Well, there had to be preparations to set it all up. Because once he agreed  
11 to do it, then you've got to get the video crew out and down, and figuring out where  
12 you're doing it, and get some general agreement about what's going to be said overall.  
13 And then people discuss it. Then where, and then who went out, and all that stuff.

14 So somewhere between the tweets and the video, all of that would have  
15 happened.

16 Q And did President Trump say, okay, let's do a video statement, and then you  
17 set to work on preparing what the draft remarks would be? Or had you already gotten  
18 those and started working on them before he agreed to do the video statement?

19 A I don't recall that detail.

20 Q The other thing I wanted to ask about is your statement earlier, that by the  
21 time of the video statement, people were emotionally drained. Can you tell me a little  
22 bit more about --

23 A I said after the videotaped statement, people were emotionally drained.

24 It was a day that I think shocked everyone around. People were literally, literally  
25 shocked. And I think people react to shock differently. Some people get very reactive

1 and some people get frozen and some people linger. Different things happen.

2 But I think watching what was unfolding, and by a certain point of the day,  
3 everybody had the TVs on and everybody was seeing what was happening. It was a  
4 tough day. I mean, there's violence at the Capitol. What am I going to tell you.

5 I can tell you, for myself, I was shocked, right? And I was candidly shocked how  
6 long it took to get people out of the Capitol, right.

7 But, you know, people were just drained. I had dinner with Dan Scavino that  
8 night and, you know, he was completely, completely drained and fried from the whole  
9 thing.

10 And I think also, people felt, candidly, they put a lot of time and effort into public  
11 service, you know, I quasi came out of retirement to go into public service, and who  
12 needs to end your public service with this hanging over.

13 Q That's very interesting, actually, especially your comments about how people  
14 react to stressful circumstances like that?

15 Do you have a sense of who that day was more active in response to stress, who  
16 was freezing? How were people reacting to events as they unfolded.

17 A I think some people lingered around. I mean, I read the stuff about General  
18 Kellogg and what he said. That is not consistent with my memory. I don't remember  
19 him at any point sitting in the back with us and having any conversations with the  
20 President. I don't remember him ever suggesting -- and I was there enough to hear him  
21 say it.

22 I remember Kayleigh McEnany coming in and wanting to get stuff going. I  
23 remember Meadows in there. I remember Scavino feeling physically ill over watching  
24 what was happening, right? You know, Pat and Pat were working on logistical, practical  
25 things that were happening. I don't know what the speech writers were doing or not.

1 And some people were just staring at the TV.

2 Q Who were those people?

3 A I mean, you have junior people sitting at the TV and looking and talking with  
4 each other, and realizing that it's the worst possible scenario you could be watching,  
5 right? And then it just -- go ahead, I'm sorry.

6 Q No, I don't want to interrupt?

7 A No, and I'm not saying insurrection as a legal definition. I don't want to get  
8 into that. Violence at the Capitol, I thought was a horrific situation for us to be in.  
9 Terrible. Go ahead.

10 Q What was President Trump's temperament like during this time? What  
11 was your sense of how he was reacting to all of this?

12 A It's hard to describe. I think some of it was shock, literally shock  
13 over -- like, we have prided ourselves on being the law and order and super supportive of  
14 law enforcement and trying to quell the violence dealing with Portland and everything  
15 else in a certain way. And, I think somewhat shocked over, this is what it's deteriorated  
16 to, right.

17 Q You mentioned General Kellogg and that you took issue with something that  
18 he's reported to have said. Can you expand on that a little bit?

19 A Yeah, I -- so I was in the White House pre formally starting, dealing with  
20 impeachment and other things I got on. There are times in which somebody could walk  
21 in the back of the Oval. You're sitting in the Oval, you're in a meeting, and you come out  
22 and see the media already. It's pretty easy to figure out who had walked in and walked  
23 out, and it hit the media before you ever left the room, right.

24 There were things in which I never saw him participate or argue or articulate or,  
25 you know, telling Ivanka stuff that I heard about, or even saying it to the President. I

1 didn't witness any of that at any point, and I was around enough that I think I would have  
2 witnessed it.

3 Q And we just want to make sure we have as accurate a record as possible.  
4 So what is it that you recall General Kellogg reportedly having said or done that you take  
5 issue with?

6 A I take issue with the fact he at some point -- at least it was reported that he  
7 had said to Ivanka, "Go in the back and talk to your father," after the phone call. I don't  
8 think that ever happened. I'm almost 100 percent positive that never happened,  
9 because Ivanka left and sat in Dan Scavino's office. And she didn't go into the back at all  
10 to talk to him then. So I don't know how that could have happened, right.

11 I understand that there were statements made that Ivanka -- let me say, I'm only  
12 basing it on -- I didn't read any of these books, only about reporting of the books, that  
13 Ivanka felt this way or that she had to go in there multiple times. I got her. I'm the  
14 one who took Ivanka and brought her to the dining room. Ivanka walked in and a few  
15 minutes later walked out, and he issued a tweet. So there was no going back and forth  
16 trying to convince him. That just didn't happen. And I think I would know that as well  
17 as anybody.

18 So that, I take issue with that. I'm not saying anything is intentional, but I don't  
19 think those are accurate descriptions. Maybe people remember things differently, but I  
20 think it's -- I obviously remember going to get Ivanka, and bringing her down. And I  
21 remember the Lindsey Graham phone call. There was not an extended period where  
22 she was going in and out. That much, I will tell you.

23 Q You made reference to there having been a suggestion that the President  
24 give a statement from the White House press room. Do you know why he didn't end up  
25 doing that?

1           A    I don't remember. I just remember discussions. People were discussing it  
2 and saying they didn't think it was a good idea.

3           Q    Do you recall who said it wasn't a good idea and why?

4           A    I don't. I just remember that being a discussion.

5           Q    Did anybody express a concern that the President, if he were to give a live  
6 statement, might not be on message?

7           A    I don't know -- not that. I don't know if it's on message or not. I think it's  
8 just more of a live thing in front of the press pool. And I've watched those during  
9 COVID, you know, and they can kind of deteriorate pretty quickly. And I don't think that  
10 would be necessary as it related to trying to get people out of the Capitol.

11          Q    So was there a sense that a videotaped statement was more of a controlled  
12 environment?

13          A    Well, it was to the extent of, here's the statement, put it out, it's out, we're  
14 done, in that type of situation.

15          Q    So after the President gave his videotaped statement from the Rose Garden,  
16 what did you do?

17          A    Going in, I think Jared had shown up at that point. And candidly -- he  
18 traveled. It was obvious that he had traveled long and, you know, looked tired, you  
19 know. And I probably spoke with him a little bit about it's been, you know, chaos today.

20                I don't remember much else going on. I think people really started to wind down  
21 of maybe getting things done. And then I think -- I don't know if I was still in the White  
22 House. If you show me that last tweet was 6-something, I may have been gone by then.

23          Q    Was the White House staff asked to leave?

24          A    No, no, no.

25          Q    Okay. Just the reason I'm saying that is some -- the mayor of DC had issued



1 a curfew. And so my understanding is some people left because they wanted to comply  
2 with the curfew?

3 A That's possible, but I don't believe that to be applicable to the senior staff.  
4 I mean, when -- after January 6th, when the city shut down, but we were able to get to  
5 where we needed to go. And I didn't have a security detail. I didn't really have much  
6 of a question that -- with your ID and credentials, you're going to get to where you  
7 needed to go in the city. So I don't think it was that.

8 Q At least one person has told us that there was at least discussion of the  
9 possibility of dropping the challenge to the election after the attack on the Capitol,  
10 meaning asking Members of Congress just to stand down and not object?

11 Were you involved in any of those discussions along that line.

12 A I don't recall that.

13 Q Did you personally have a view at that point as to whether Members of  
14 Congress should continue to object?

15 A Let me say this. If objection meant what I thought it was going to be, that  
16 they were going to stand up and make a little speech and then sit down and we were  
17 going to continue with the process, that didn't bother me. It didn't bother me from the  
18 beginning, because I remember, historically, people had made speeches at the time.  
19 That's what I thought was going to happen on the 6th.

20 After that, my view was Members of Congress could do what they want. That's  
21 their decision to make.

22 Q Do you know what the President did after he filmed the 4:17 videotaped  
23 statement?

24 A I thought, at some point, he went back to the residence. I don't remember  
25 what time, but I would have guessed that, based on the tweet you showed me, and if he

1 was down in the Oval still, I don't know who was around. I know Scavino wasn't,  
2 because he left with me.

3 Q So our understanding is that the President went to the residence around  
4 6:27 p.m., so a little more than two hours after the videotaped statement. Do you know  
5 what he did during those two hours?

6 A I don't. I just don't recall.

7 Q You may have seen in the media --

8 A I'm sorry. I know, at some point, there were discussions about giving a  
9 more detailed speech the next day. And I believe Pat Philbin -- I think he's the one that  
10 took -- he wrote a draft of, like, National Healing. And we discussed that at some point,  
11 probably later that evening before we left, that he was going to go home and work on  
12 that. And I'm sure there were discussions with speech writers and others that we were  
13 going to need to do a more detailed address to the nation.

14 Q Was the President involved in those discussions?

15 A I think only to the extent that we were going to do a more detailed one the  
16 next day, but I don't believe in the details of what would be drafted initially.

17 Q Did he express a view, one way or the other, as to whether he thought he  
18 should do a more detailed statement the next day?

19 A I don't recall. I mean, I know he did one. I remember there not being an  
20 argument or discussion about it, or disagreement about it in any way. I just don't  
21 remember. At some point, there were drafts going around either late, late that night or  
22 the next day. And then eventually he went over to, I think, the Dip room to do it.

23 Q So I know Mr. Philbin is a very talented brief writer, but he was not on the  
24 speech writing staff. Why was Pat Philbin the one to write it?

25 A I don't think Pat wrote it. Let me be clear. I think Pat went and wrote

1 what he thought should be said. White House counsel, a lot of times, have weigh-ins on  
2 speeches, and would review speeches, you know. So that I think he went home and  
3 expressed what he thought should be said, right? I don't want to say that he did the  
4 speech writing. He expressed what he thought should be said, and somewhere that gets  
5 merged with the speech writing team.

6 Q Thanks for clarifying that. Was there any expression by anyone of the view  
7 that the President needed to do something more detailed on January 7th, because what  
8 he said on the 6th was not sufficient?

9 A I don't think it's that. I just think that once everything settled down, then  
10 people thought he should address the nation.

11 Q Do you know what the President did after he went back to the residence?

12 A No.

13 Q You may have seen in the media, stories about there being gaps in some  
14 White House call logs and the President's official diary. Do you know anything about  
15 why there would not be the usual detail for January 6th that there were for days before  
16 January 6th?

17 A I don't know for certain. I mean, my general belief would be Molly Michael  
18 wasn't in for the majority of that entire day. And it was somebody else covering the  
19 desk that would normally not be sitting out there. And it could be as simple as that,  
20 right.

21 But, you know, at a certain point, things became -- once Rudy was in charge, there  
22 was a flow of people coming in and out of the Oval at different times that were not on  
23 schedules, you know, and a lot of lawyers in that category. So that's a possibility.

24 But there was definitely never a discussion about not keeping the records of  
25 January 6th, like, look what happened, don't do it. That type of thing never happened.

1 I think, candidly, if anyone even suggested that, White House counsel, my head would  
2 have popped off our shoulders and gone crazy, you know. So that was definitely,  
3 definitely not a conversation that occurred.

4 Q And why would you have gone crazy? Is there any -- obviously, the  
5 Presidential Records Act requires keeping records that are created, but there's no  
6 affirmative obligation to create records, is there?

7 A I agree. I'm saying if somebody had suggested, don't keep records,  
8 because this is happening, we would have gone crazy. I mean, come on, it's, like, you've  
9 got to be kidding me. It would never -- I can't imagine that discussion even taking place,  
10 let alone who would the discussion be with.

11 Q And there have been reports that the President did make some phone calls,  
12 for example, the one I referenced earlier to Congressman McCarthy. It doesn't show up  
13 on logs. Do you know, was he borrowing somebody's cell phone, was he using a land  
14 line? Do you know anything about how he was communicating with people outside the  
15 White House?

16 A I don't remember that he called McCarthy. I thought McCarthy called in.

17 Q Either way?

18 A So my belief is, not surprisingly, people's phones were ringing, family  
19 members were calling. You know, you have all that stuff going on. I don't know if  
20 McCarthy called in to someone else, and it just got transferred in the back, right? And  
21 that's how it happened, right? But I don't think -- I don't remember anyone passing  
22 around cell phones, not at least any time I was there.

23 But if you called -- if you called in to Meadows' office, and Meadows' office could  
24 then transfer it either to that -- the Oval or maybe to the back where they were. I mean,  
25 that's what you'd find. But I can't conceive of phone records not being available.

1 Q When we were talking about one of the tweets, I think it may have been the  
2 6:01 tweet, when you said it's possible that the President just did that himself, do you  
3 know, was the President carrying his own cell phone on the 6th?

4 A I don't recall. I mean, he had a cell phone. I just don't recall him, at any  
5 point, really on it, ever.

6 Q Do you know, when we're talking about a cell phone, do you know if that's a  
7 White House issued cell phone versus a personal cell phone?

8 A I have no idea.

9 Q Okay. Do you know whether he had both, a White House issued cell phone  
10 and a personal cell phone?

11 A I have no idea.

12 Q Okay. So implicit, I think, in you saying you have no idea, do you know  
13 what a personal cell phone number was for the President at that time?

14 A No.

15 Q Do you happen to know the number for his White House cell phone?

16 A I reached the President only through the switchboard. I don't remember  
17 ever calling him on the cell phone. I mean, I get -- you know, you get a phone call from  
18 the White House, I forget what number comes up, and they say, "You know, is this is  
19 so-and-so?" You say, "Yes," and, "Hold for the President."

20 Q Got it?

21 BY [REDACTED]

22 Q So whenever the President called you, it was through a White House  
23 operator or Molly Michael, or somebody like that, as opposed to him just calling you  
24 directly?

25 A I don't remember him calling me directly. I mean, it's possible. I mean, it

1 stands out when the White House operator calls up and says, you know, "Is this  
2 Mr. Herschmann?" You know.

3 Q Okay. Let's go to Exhibit 36.

4 This is the President's Daily Diary. On, I guess it's the third page out of 5, we can  
5 see at 4:07 p.m., the President returned to the Oval Office. So that's after filming the  
6 videotaped statement we talked about.

7 So, again, you don't know anything about what the President was doing in the  
8 Oval Office between 4:07 and 6:27.

9 A I don't recall.

10 Q Okay. Do you remember whether you went into the Oval Office after he  
11 videotaped his statement?

12 A It's possible, but I just don't recall. I remember there were a group of  
13 people waiting in the outer Oval when we came back in, but I just don't remember  
14 details. And I do remember, I think around that time, Jared had just shown up.

15 Q Do you remember who was waiting in the outer Oval, I think you said?

16 A I think Meadows. I don't remember if White House counsel was there. I  
17 remember Jared. I think by that time, maybe Molly Michael had shown up, but I just  
18 don't recall.

19 Q So then the diary there at the bottom of page 3 says, 6:27, the President  
20 went to the second floor residence?

21 A By the way, I don't remember seeing these documents. I don't remember  
22 this.

23 Q You mean in preparation for this?

24 A No, just overall. No, I mean, ever.

25 Q Would it be normal --

1 A I don't think I ever saw a daily diary.

2 Q Okay?

3 A But are these done after the fact? They must be, right.

4 Q You know, I don't know the detail. You might know, [REDACTED] the detail of how  
5 they're prepared?

6 [REDACTED] I can represent to you, based on my limited understanding, that  
7 they are prepared after the fact, based on records that are provided to a detailee from  
8 the National Archives to the White House. I don't know if, after the fact, they are  
9 prepared.

10 The Witness. Derek Lyons was gone by the 6th, so I don't know whether things  
11 continued differently or similarly before he left.

12 BY [REDACTED]

13 Q If we go to page 4 out of 5, it seems to pick up or resume some level of detail  
14 at that point on the President's calls. He made a call with Dan Scavino, Pat Cipollone,  
15 Dan Scavino again. Do you know anything about the President's calls with either Dan  
16 Scavino or Pat Cipollone?

17 A I don't recall.

18 Q Okay. At 7:16 p.m., the President talked to a White House switchboard  
19 operator who informed him of pending calls from Kurt Olson, Mark Martin, Senator Bill  
20 Hagerty, Senator Josh Hawley, and Cleta Mitchell. The President instructed the operator  
21 to call back with Mr. Olson, Mr. Martin, and Ms. Mitchell?

22 I can go through individually, but first, I would just ask, do you have any  
23 knowledge of any of that.

24 A No.

25 Q Okay. So it looks like he then talked to Kurt Olson twice, and Mark Martin

1 once?

2 We haven't asked you about Mark Martin. My understanding is he's a retired  
3 North Carolina Supreme Court Justice. Does that sound correct.

4 A Yeah, generally.

5 Q Do you know what his role was with regard to either representing the  
6 President or the campaign?

7 A I'm not certain he had represented either one. I know he was advising, I  
8 think, some of the other attorneys, people were calling him. I don't recall if he knew  
9 Mark Meadows or not, but I just remember him being a retired judge.

10 Q Okay. And when you mentioned Mark Meadows, is that just because  
11 they're both from North Carolina?

12 A That's why I have that vague recollection.

13 Q Okay. Do you know anything about what the President talked to either  
14 Kurt Olson or Mark Martin about on the evening of the 6th?

15 A No.

16 Q Okay. 7:55 p.m., the President talked with lawyer, Cleta Mitchell. Do you  
17 have any idea what he talked to Ms. Mitchell about?

18 A No, it looks like it's two minutes. I have no idea.

19 Q 8:39 p.m. to 8:48 p.m., he talked to Rudy Giuliani. Do you know anything  
20 about that call?

21 A No.

22 Q Okay. 9:14 to 9:14, the President talked with a switchboard operator who  
23 placed a call to Kayleigh McEnany. And at 9:42, it looks like the President ended up  
24 talking to Ms. McEnany for about 11 minutes. Do you know anything about that call?

25 A No.



1 Q Okay. Going back one, 9:32 to 9:41, he talked to Jason Miller. Do you  
2 know anything about that call?

3 A No.

4 Q Okay. Then later, there are calls again with Dan Scavino, and then with  
5 Mark Meadows. Do you know anything about those calls?

6 A I think I was with Scavino during those calls or maybe earlier ones. I just  
7 don't recall what the topics were, or if he walked away.

8 Q Were you at a restaurant?

9 A I think we were, if I remember. I remember eating together.

10 Q Okay. But you don't remember anything about Mr. Scavino reporting on a  
11 call he had with the President that night?

12 A No, I remember Dan being pretty depressed that night.

13 Q Okay. Did he seem disappointed in any way with anything that the  
14 President had done?

15 A I think he was disappointed in the entire situation. This is what it had to  
16 come to.

17 Q Okay. But did that include also being disappointed with anything the  
18 President had done?

19 A Not that he expressed to me. I think he was just, like, upset about what  
20 had transpired.

21 Q Okay?

22 A And he really, really took it hard.

23 Q At 10:19 p.m. to 10:26 p.m., the President talked with Stephen Bannon,  
24 former staff member. Do you know anything about that call?

25 A No.

1 Q Okay. Then 10:50 to 10:55, the President talked with you. Do you recall  
2 that phone conversation?

3 A Some of it.

4 Q What do you recall?

5 A I'm going to assert --

6 The Witness. Or, Dan, you can assert on this.

7 Mr. Benson. We assert executive privilege on the question.

8 BY [REDACTED]

9 Q Can you tell us, was it, in general, about the events that had transpired that  
10 day?

11 A I don't know. That's too open of a topic, I think. It was generally about  
12 what would be -- what would we be doing going forward, and somewhat about what had  
13 transpired that day. But not -- not beyond that part.

14 Q What was his mood?

15 A It's hard to describe his mood. I think that -- without getting into detail of  
16 the substance of the conversation, I think he was -- well, actually, once I get into the  
17 mood, it may be more -- too difficult not to describe what was actually said. So, for  
18 now, let me assert on this. And I'll talk with Dan, my Dan, Benson, offline and then we  
19 can talk about it.

20 Q Do you want to just pause here for a minute or two?

21 A No, we can come back to this later.

22 Q Okay?

23 A You know what? I take that back. Can we take a couple minutes.

24 [REDACTED] Let's take a couple minutes.

25 (Recess.)

1 BY [REDACTED]

2 Q Mr. Herschmann, what was your view on the evening of January 6th about  
3 what the President should or shouldn't do going forward?

4 A I thought we should give the statement on the 7th, and obviously move  
5 forward on transition.

6 Q And by move forward, does that mean that it was time to stop talking about  
7 the 2020 election?

8 A I don't know how to answer that, [REDACTED] He was going to talk about it the  
9 way he wanted to talk about it. And my view was there were two weeks left in this  
10 position, let's get done what we can get done, let's get our house in order, and we're  
11 moving out on the 20th, and it's time to move forward.

12 Q So some witnesses have told us that they thought it was important after  
13 January 6th for the President to focus on touting his accomplishments. And in order to  
14 do so, he should stop talking about the 2020 election. Do you recall any people having  
15 that point of view?

16 A Generally, I thought people had -- a lot of people had that point of view.  
17 Some people did not. I think a lot of people thought it doesn't make a difference any  
18 longer, nothing is changing, you know, let's move forward. Let's get things done.

19 I know there was Middle East peace, pardons, a lot of other things that he wanted  
20 to get done, and obviously get things in order and put together for the next  
21 administration.

22 Q Who was not of the view that it was time to move on and stop talking about  
23 the 2020 election?

24 A I think Peter Navarro was still talking about it, at least when I would hear him  
25 or occasionally see him. But I kept my interactions with Peter to a very, very small

1 amount.

2 Q Okay. Anybody else aside from Mr. Navarro?

3 A Not that I recall.

4 Q What about Rudy Giuliani?

5 A I don't remember anyone having any conversations with Rudy after the 6th.  
6 I don't even remember him coming back to the White House after the 6th.

7 Q Okay. And I know you've already told us about the conversation you had  
8 with John Eastman. Other than that, do you have any knowledge of whether  
9 Dr. Eastman was advocating that the President continue to focus on the 2020 election?

10 A Other than him raising to me whether they should preserve some appellate  
11 issue in Georgia, I don't recall any others.

12 Q What about the President's family?

13 A I think it was, uniformly, move forward.

14 Q Does that include his kids who are not in the administration, so Don, Jr. And  
15 Eric?

16 A I believe so.

17 Q Is that speculation, or do you know?

18 A No, I had some interactions with them, and I think it was clear they were of  
19 the move forward category.

20 Q Okay. Going back to that exhibit that we were just on, Exhibit 36, after he  
21 talked with you, he talked -- the President, that is -- talked to Sean Hannity from 11:08 to  
22 11:16. Do you know anything about that conversation?

23 A No. I remember there were some comments somewhere in the media that  
24 Hannity had said to move on and stop talking about 2020. But I don't know if that was a  
25 topic of conversation at that time.

1 Q Okay. And then from 11:23 to 11:41 p.m., the President talked with John  
2 McEntee, Assistant and Director of Presidential Personnel. Do you know anything about  
3 that conversation?

4 A No, I don't even think Johnny was in the White House on January 6th.

5 Q So we understand that the President and Mr. McEntee talked about  
6 resignations. Do you know anything about people resigning on January 6th or in the  
7 immediate aftermath because of what happened on January 6th?

8 A I remember people resigned. I don't -- the only person that stands out is  
9 press, one of the press people who is now on CNN a bunch. I think she may have  
10 resigned and made a statement about it, but I'm blanking on her name.

11 Q Sarah Matthews?

12 A No.

13 Q Stephanie Grisham?

14 A No, I think Stephanie was gone before that.

15 Q This would have been before January 6th, but maybe --

16 A I think it was Alyssa Farah, who resigned at some point around that time  
17 period. But she's the only one that I remember resigning.

18 Q Did you have any conversations with her about her resignation?

19 A No, I had very little interaction with her.

20 Q Matt Pottinger, the deputy national security advisor, also resigned. Did you  
21 have any conversations with him about his resignation?

22 A No. I knew Matt, but I didn't have any.

23 Q Did you have any conversations about anybody who was considering  
24 resigning because of what happened on January 6th, but ultimately did not?

25 A I think White House counsel considered resigning at some point after

1 January 6th, I don't remember the exact date, but they did not.

2 Q When you say White House counsel, is that Pat Cipollone himself?

3 A Yes.

4 Q What about Pat Philbin?

5 A I believe it was a package deal.

6 Q Okay. What do you mean --

7 A They obviously knew each other very well, and worked together previously.

8 Q Okay. What about anybody else in the White House counsel's office?

9 A Not that I recall.

10 Q What's your understanding of why Pat Cipollone and Pat Philbin considered  
11 resigning?

12 A I don't recall. I really don't. You'd have to really talk with them. You  
13 know, just -- you know, Pat Cipollone had had certain run-ins with the President at  
14 different times.

15 Q Okay. What run-ins did he have related to the 2020 election or challenges  
16 to the election?

17 A I don't even think it's in that category. I just mean generally speaking. I  
18 thought Pat at times took some grief unnecessarily that had nothing really to do with him.  
19 But I think you would have to ask Pat why he considered, and I think at a certain point,  
20 everyone considered whether they should resign or not resign, depending on what would  
21 happen. There was two weeks left, you know.

22 Q Did you consider resigning?

23 A I considered it. I thought -- you know, I thought I was in somewhat of a  
24 different position. I wasn't looking towards the next career, I wasn't worried about  
25 business or clients or really doing much of anything, to be honest. I had run a

1 publicly-traded company, sold the company, had done financially well, which is one of the  
2 reasons I thought about going full circle in my professional career in going back public  
3 service.

4 So I didn't have the same concerns about what was going to happen to me with  
5 clients or whatever else.

6 Q And so are you suggesting, though, that other people being concerned about  
7 their future would make them more likely to resign or less likely to resign?

8 A I heard people had lost jobs. You know, they had contracts or offers for  
9 positions, and after January 6th, they lost their positions or their offers, right, and not  
10 surprisingly, people had a hard time finding jobs.

11 Q So why did you think about resigning at all?

12 A Just a question of what was going to get done in the last two weeks. And it  
13 was -- I came at it doing this job for, like, completely altruistic reasons of saying, I've gone  
14 full circle with my professional career. I'm in a financial position where I can come back,  
15 I can try to help. And the end was stressful and chaotic, and I think people were  
16 concerned.

17 And then, a long time ago, I was a very aggressive, tough prosecutor. I never  
18 thought in my professional career, I would be dealing with pardons and looking at things  
19 from another side of the coin. And then you're sitting there, and you get to really look  
20 at cases individually. I thought it would almost be selfish of me to walk out the door and  
21 not give someone a chance that -- that, but for my being there, would never occur. So  
22 predominantly towards the end was that, and Middle East peace, obviously, I wanted to  
23 see come to fruition.

24 Q When you refer to pardons, was the issue of pardons a reason you thought  
25 about leaving or you why you thought about staying?

1           A    Staying, staying, I'm sorry.

2           Q    Because of the importance of pardon work that would be done?

3           A    Pardon work.  And out of the people that were looking at it, I didn't think  
4 there were a lot of line prosecutors who had started their careers as trial lawyers, and  
5 had advanced up to understand what really went on in a case and could articulate, this is  
6 what happened in a case, this is what transpired.  So there was that level of detail.

7           Q    So your answer focused more on why you did not end up resigning.  But  
8 why did you consider resigning at all?

9           A    I don't know how to articulate it.  It's more emotional of watching, you  
10 know, an attack on the Capitol, sitting there in disbelief.  And then I think the decision  
11 was, all right, we're going to stick this out, and we're going to finish this through.

12           And it's also -- I mean, very honest, there were also very young people there, and  
13 there were a few people, I was like, they're starting their careers and this is how they're  
14 ending their government service?  And then some of it, I also felt like, you don't leave  
15 the kids here by themselves, you know, who aren't going to have an opportunity to get  
16 another job somewhere and need help managing their way through stuff.

17           Q    Did you consider resigning, in part, because you felt that the President bore  
18 some responsibility for what happened on January 6th?

19           A    No, it's to say that -- no, I didn't.  Let me just leave it at that, [REDACTED]

20           I don't think -- when I say to you that there was a complete state of utter shock  
21 over the violence, I mean, there was a state of shock.  The younger people sitting  
22 around, like, you walk by them and they're crying.  It was not what people thought their  
23 last days in the administration would be.  Most people thought, oh, we work in the  
24 White House, you transition into another job somewhere.  And a lot of people were  
25 looking around saying, how am I going to get a job now.



1 Q Do you recall anyone crying?

2 A I don't recall, specifically. I just remember the younger group -- the  
3 younger group of people, and there were a lot of young people in the White House.  
4 They were -- and keep in mind, they had been through harassments and problems getting  
5 into work and all types of chaos that was going on. This was just another layer of, you  
6 know, what else are we going to deal with.

7 And I don't think these kids were ready or equipped to deal with what actually  
8 was going on. Not in a bad way, they're just -- I don't know how old you are, so I  
9 apologize -- but younger than my children. I put them in the kids category.

10 [REDACTED] I'm not going to state my age for the record.

11 [REDACTED] Anything else on that? We'll go to Exhibit 50.

12 This is called Joint White House Switchboard Shift Change Checklist.

13 A Just -- I've never seen this before at any point.

14 Q Okay. If you go down to 12, it's called miscellaneous. Four pending  
15 POTUS calls, Pastor Darrell Scott, Mr. Dan Scavino, Leader Mitch McConnell, Senator Josh  
16 Hawley?

17 First of all, do you have any idea whether pending calls means calls coming in to  
18 the President that were pending for him to return, or calls that had been placed that were  
19 pending a return call.

20 A I have no idea.

21 Q Do you know why Pastor Darrell Scott wanted to talk to the President, or  
22 whether the President wanted to talk to Pastor Darrell Scott?

23 A No idea.

24 Q Do you know who Darrell Scott is?

25 A No.

1 Q Dan Scavino, obviously you know who he is. Do you have any idea why  
2 there was a pending call involving him?

3 A When is this? What time is this.

4 Q We don't know on the basis of the --

5 A I mean, the only thing I can think of is whether Dan was -- he was trying to  
6 reach Dan or Dan was calling him back.

7 Q Okay. Leader Mitch McConnell. Do you know anything about why either  
8 Mitch McConnell wanted to talk to the President, or the President wanted to talk to  
9 Mitch McConnell?

10 A No.

11 Q Okay. The same question for Senator Josh Hawley?

12 A I don't know.

13 Q So Senator Hawley was the first Senator to announce that he was going to  
14 object to electors. Do you know anything about how that came about?

15 A No.

16 Q Okay. And the next line on this document, it says, two pending POTUS  
17 calls, Senator Josh Hawley and Senator Doug Mastriano. Do you know anything about  
18 the pending call between the Vice President and Josh Hawley?

19 A No.

20 Q And then Senator Doug Mastriano. Do you know who Doug Mastriano is?

21 A I remember him being, I think, in the Pennsylvania legislature and having  
22 signed some documents or some letter or something. That's all I recall.

23 Q Okay?

24 A I mean, the state legislature.

25 Q Yes?

1 A And I think it's Pennsylvania. I can't be certain, but I think so.

2 Q I think you're correct?

3 Did you ever talk to Vice President Pence about what happened on January 6th.

4 A Yes, after.

5 Q Do you recall when that was?

6 A It would have been a few days, maybe a couple days after, I don't  
7 remember. What day of the week was the 6th.

8 Q Wednesday?

9 A Wednesday. So whenever the VP was back in the office, I sat with him  
10 alone.

11 Q How did that come about?

12 A I heard he was in the White House, and walked in and said, "Can I see you."

13 Q Why did you want to see the Vice President?

14 A To have a one-on-one conversation about how I felt for him and his family.

15 Q What did you tell him?

16 A I really don't want to get into it. It was completely personal, nothing to do  
17 with his rights or authorities or whatever else. Just, I expressed my belief in him being a  
18 consummate gentleman. And I had the utmost respect for him. And the rest of the  
19 details are just 100 percent just personal between the two of us.

20 Q Well, but did you discuss your view of what he actually did on January 6th?

21 A No, it was more of my expressing sadness over the fact that he went through  
22 it.

23 Q Okay. And what did he say?

24 A He was unbelievable in how he handled it. I mean, he has a very, very  
25 strong moral composition and a very, very strong religious belief and overall in mankind.

1           Beyond that, I really -- I don't think it's relevant at all to any of this. It was the  
2 two of us really expressing emotions on anything. And I thought I owed it to him to go  
3 in and express my feelings. And he was kind enough to listen and express back how he  
4 felt.

5           Q    And did the Vice President say anything about the President's conduct  
6 related to January 6th?

7           A    Nothing at all.

8           Q    Looking back on it, is there anything you wish the President had done  
9 differently on January 6th or leading up to January 6th?

10          A    Leading up to January 6th? I mean, I don't know. You know what? I  
11 don't know if -- let me say it this way.

12                Rudy's resume -- and I mean Rudy Giuliani's resume, was far superior to anyone  
13 else's around, a senior in DOJ, U.S. Attorney for the Southern District. I was a  
14 prosecutor at the time. He cleaned up New York, he was mayor of New York, you know,  
15 he got us through 9/11. He had a unique resume of stuff.

16                Whether Rudy was at this stage of his life in the same abilities to manage things at  
17 this level or not, I mean, obviously, I think Bernie Kerik publicly said it, they never proved  
18 the allegations that they were making, and they were trying to develop. But at a certain  
19 point, obviously the litigations were not successful, and I'm not certain what got  
20 accomplished by bringing all of them the way that they were brought.

21                In my -- as I told you, I thought there was some litigations that I had literally no  
22 problem with whatsoever. I think bringing a original jurisdiction case was a good thing  
23 because that eliminated whether the President could bring one. DOJ, I thought that was  
24 a positive thing, original challenges. The thing with the Secretary of State of  
25 Pennsylvania kind of going against Alito, I thought all of that was appropriate.

1 I thought the Dominion stuff was -- I never saw any evidence whatsoever to  
2 sustain those allegations, right.

3 So, you know, hindsight 20/20, I wouldn't be talking to you.

4 Q Is there anything you wish the President had done differently on January 6th  
5 itself?

6 A I don't know how to answer that. He's the President, or was the President,  
7 of the United States. I don't think it's my place to be saying what he should or should  
8 not be doing as President.

9 [REDACTED] Okay. I'll pause to see if you have anything? I don't think we have  
10 any Members on right now. Mr. Aguilar is on.

11 Do you have any questions.

12 Mr. Aguilar. I don't, guys. I'm good. Thank you.

13 I do have one.

14 BY MR. AGUILAR.

15 Q Mr. Herschmann, I think you talked a little bit about pardons in the broader  
16 context. Were there any discussions related to pardons regarding individuals, Members  
17 of Congress, or individuals who attended the Capitol riots?

18 A Individuals who attended the Capitol riots, no. There was a discussion that  
19 I recall with a Member of Congress about potentially pardons for himself and potentially  
20 others.

21 Q Who was that Member?

22 A Matt Gaetz.

23 Q Was this between -- was this after January 6th?

24 A I believe so.

25 Mr. Aguilar. Thank you. Yield back, guys.

1

BY ██████████

2

Q Was that a conversation directly with Matt Gaetz that you had?

3

A It was more than one conversation. But directly, yes, directly with Matt

4

Gaetz.

5

Q Was anybody else involved in those conversations?

6

A In the first time he reached out to me, and I didn't know him, it was just

7

Matt. And then Pat Philbin and I engaged in a -- at least one other phone call with him.

8

Q And was Representative Gaetz requesting a pardon?

9

A I believe so.

10

Q And a pardon to cover what?

11

A He wanted it to cover everything.

12

Q So a broad pardon that would cover any criminal activity that he may have

13

engaged in?

14

A I don't know if it's criminal conduct that he would have engaged in. He

15

wanted a pardon, as I recall it, from the beginning of time up until that day for anything.

16

And the discussion was whether he would be prosecuted or others would be

17

potentially prosecuted for things that they had done in relationship to statements dealing

18

with challenging the election. We had discussions about speech and debate

19

protections, and what was he -- what was the possible concern. And he asked for a

20

very, very broad pardon.

21

Q A pardon that would be broad enough that it would also cover the ongoing

22

sex trafficking investigation?

23

A He didn't mention anything about a sex trafficking investigation at that time.

24

The pardon that he was discussing, requesting was as broad as you could describe.

25

From the beginning -- I remember from the beginning of time up until today, for any and

1 all things.

2 And I mean, Philbin and I had a conference call with him. And I believe Philbin  
3 may have memorialized, made some note about it. And I remember saying that's -- I've  
4 never heard of that. It's unprecedented. It would have to go through a process. He  
5 mentioned Nixon. And I said Nixon's pardon was never nearly that broad.

6 And then Pat said, you know, if he has a lawyer, that lawyer should contact White  
7 House counsel. Because when I first got the call, it came out of the blue. And I was  
8 like, we'll call you back. And I went up to White House counsel, got Philbin, told Philbin  
9 what's happening. And then we called him back. But it was -- I remember him saying  
10 from the beginning of time up until today.

11 Q And regardless of whether Congressman Gaetz specifically referred to the  
12 sex trafficking investigation, is it your understanding that the pardon he was requesting  
13 would have covered that investigation?

14 A I believe the pardon he was requesting and wanted would have covered, in  
15 his words, everything that ever happened. I mean, at a certain point, we're just posing  
16 questions. You mean it would cover this and this and this? You know, how are you  
17 ever going to articulate that? How was the pardon office going to write this? What  
18 would we conceivably do? And he was -- I think he was a little frustrated with the  
19 amount of questions and pushback we were giving him.

20 Q Were you aware at the time that there was a sex trafficking investigation of  
21 Congressman Gaetz?

22 A I was not. I just -- if the issue was potentially having -- and I don't want to  
23 get into my views of DOJ, and what happened during the Trump administration, because  
24 there were things that I feel strongly about. But if there was a view that there was going  
25 to be retaliation by DOJ or the incoming administration for things that he had done, we

1 believed he had speech and debate clause protection. I thought this request was way  
2 beyond what made any sense at all.

3 Q Did he give a reason why he thought he should get a Presidential pardon?

4 A Other than potential protection for some type of retaliation for his, you  
5 know, supporting the challenges.

6 Q So were these conversations both after January 6th, 2021?

7 A I believe so. I don't recall exactly, but I believe there was some written  
8 document that was memorialized when the calls came in.

9 Q Did Congressman Gaetz argue that the President should pardon him because  
10 Congressman Gaetz had been very supportive of the President or done anything in  
11 particular for the President?

12 A I don't remember that as much as it was a very, very, very broad request. I  
13 don't know how to say it. I mean, say from the beginning of time up until today, for  
14 anything that could potentially exist. I mean, I don't even know how we'd begin to write  
15 a pardon along those lines, or how anyone could ever due diligence it.

16 Q Did you discuss the possibility of giving him a narrower pardon?

17 A I don't think so. I think that we were -- to be clear, we didn't understand  
18 how this could possibly happen, what the basis was. And then Pat said, if he had  
19 counsel, the counsel should contact White House counsel to try to talk it through. I  
20 think that's -- it was pretty clear to me that he wasn't getting the pardon.

21 Q Did Congressman Gaetz's counsel ever contact the White House counsel's  
22 office?

23 A I don't know if he did or didn't.

24

BY [REDACTED]

25 Q Mr. Herschmann, do you know if there were other Members of Congress



1 who raised the same issue, a concern about subsequent prosecution for making claims of  
2 election fraud and sought pardons? Whether you spoke to them or not, do you know  
3 others --

4 A I don't want to say it's like dealing with election fraud, in support of that. I  
5 think it's a general view that they had defended challenges, you know. I think -- so just  
6 to clarify, [REDACTED] I remember someone else called, who wanted to be, like, put into a  
7 bucket of getting a pardon. I don't remember who it was any longer. But it was -- it  
8 was clear to me that that person knew that we had a conversation with Representative  
9 Gaetz.

10 Q I see?

11 A And, like, there's not going to be any pardons along those lines.

12 Q Okay. And there's been reporting that Congressman Gosar, Congressman  
13 Brooks, Congressman Biggs may have also sought pardons for this kind of, as you put it,  
14 being supportive of claims of election fraud. Do you have any recollection of other  
15 Members of Congress, beyond Mr. Gates, that were --

16 A I don't think Gosar, I don't believe. It's possible that Representative Brooks  
17 or Biggs, but I don't remember. I can just remember that it -- the general tone was, we  
18 may get prosecuted because we were defensive of, you know, the President's positions  
19 on these things. Wanting a pardon, asking for it, and asking it -- and broader than the  
20 Nixon pardon, you know, that we would be dealing with. And then Pat and I deflecting  
21 it to get your counsel to call, and that type of thing.

22 Q So it sounds like it didn't really get serious vetting or consideration inside of  
23 the White House, the prospect of pardons along the lines that Mr. Gaetz requested. Is  
24 that right?

25 A I don't know how to answer whether anyone else did. I think it's pretty

1 clear that Pat Philbin and I did not believe that it was a possible scenario where he would  
2 get a pardon along those lines.

3 [REDACTED] I understand. Thank you.

4 BY [REDACTED]

5 Q Did anybody within the White House advocate that such a pardon should be  
6 granted?

7 A Not that I recall. I'm just saying that it seemed pretty clear that he realized  
8 we were not going to put this forth, unless there was some precedent that we had never  
9 heard of, nor did I think the pardon office would have -- or anyone at DOJ would have said  
10 yes to this.

11 Q Do you know whether any consideration was given to pardoning the White  
12 House staff, generally?

13 A I don't recall that.

14 Q Do you know whether any consideration was given to pardoning members of  
15 the President's family?

16 A I mean, I don't remember the details. There was general discussions about  
17 people saying, oh, there's going to be full-blown pardons for everybody for everything  
18 and all that. And that really went nowhere.

19 Q So back to the question, though, about the President's family. Was there  
20 any discussion of a pardon for members of the President's family?

21 A Generally -- I remember generally there being a discussion, but it was never  
22 going anywhere.

23 Q Okay. Who was involved in those discussions?

24 A I don't remember. I just remember that it was a discussion. And then it  
25 was clear the family didn't want pardons. And there wasn't going to be pardons. And

1 if anyone -- I just don't remember the details of this, but general discussions about  
2 whether people wanted pardons or needed pardons. And there was a determination,  
3 that was not going to happen. It wasn't wanted, and it wasn't going to happen.

4 Q Are you aware of any conversations about whether the President could  
5 pardon himself?

6 A I remember publicly some discussions about that type of stuff, but I don't  
7 remember it ever being anything serious.

8 Q Was it, to your recollection, ever discussed, whether seriously or not, within  
9 the White House?

10 A I don't recall. I just -- it's a topic that if it was discussed, I wouldn't have  
11 taken it seriously.

12 Q Why not?

13 A I don't think it would have been done. I just didn't see a scenario where  
14 that was going to happen, whether the authority technically exists or didn't exist. I just  
15 didn't see that happening.

16 [REDACTED] Okay. I'm going to switch topics unless anybody has anything on  
17 that.

18 Q So leading up to the 2020 election, a lot the President's messaging  
19 concerning the integrity of the election, and particularly focused on mail-in ballots. Do  
20 you know how that originated?

21 A Which part.

22 Q The President's focus before the election on election integrity?

23 A No, I don't know how the messaging originated. I mean, I know there were  
24 discussions about the amount of mail in or mail out ballots that were going out to people  
25 in different jurisdictions who had not asked for them. You know, not put in a request to

1 get a mail-in ballot.

2 Q Do you remember any conversations about the possibility that there would  
3 be a so-called blue wave, meaning that the earlier returns on election day would be  
4 favorable to President Trump because in-person voting would be likely skewed towards  
5 President Trump, whereas in some states, the mail-in ballots would be counted later, and  
6 those would skew towards Vice President Biden?

7 A I don't remember that. I mean, I know in the media, there were  
8 discussions, but I just don't recall those -- that reporting.

9 Q Were you involved in any conversations about election fraud before the  
10 election?

11 A No, I don't remember any conversations of that before.

12 Q Okay. Let's look at tab 2.

13 This is entitled Draft Executive Order, Election Integrity for November 2020. As  
14 far as we know, this was never actually signed or executed. Do you know who wrote  
15 this?

16 A No. I remember there was one draft executive order dealing with Sidney  
17 Powell that referred to a female special counsel. But -- can you go down or up? There  
18 we go.

19 Q And I think this was a different document. There was a document that was  
20 a draft order that would allow the Department of Defense to seize voting machines, and  
21 that also would call for the appointment of a special counsel, and use the female pronoun  
22 for that. So that's a different document, which we'll get to later. So this document,  
23 does this look familiar? Do you think you saw it?

24 A No, I don't remember this.

25 Q In advance of the election, was there a contingency plan for different

1 scenarios, such as whether to bring lawsuits or seek audits or recounts, or anything like  
2 that?

3 A I don't know. You're asking me.

4 Q Yes?

5 A I mean, about whether I knew about it? I don't know. I mean, I presume  
6 the campaign did whatever normal things. Like, I knew that they were tracking, at some  
7 point, Mark Elias's lawsuits in different parts of the country. And they would intervene  
8 or join in them, or something along those lines. But other than that, I have no idea.

9 Q Okay. Were you at the White House on election night?

10 A Yes.

11 Q Do you remember where in the White House?

12 A For a while, in the outer Oval. My oldest son came. I don't know if he  
13 had been to the White House beforehand. So he was -- just I was walking him around  
14 some for most of that night. And then eventually went over to, let's say, the residence  
15 side.

16 Q Okay. And why did you go to the residence?

17 A I didn't go to the residence itself. I mean, down through the Rose Garden.  
18 And that's where everyone else was. We were -- I think Austin Ferrer was sitting at his  
19 desk, and my son and Austin -- I think my son was older, actually. And so they were  
20 talking for a little while. And Austin was watching the results. And eventually, I just  
21 walked my son over, and introduced him to people.

22 Q Okay. What about later in the evening as the returns were coming in?  
23 Were you watching those from the White House?

24 A I was watching them from the White House. And at some point, I ended up  
25 in the map room.

1 Q And what was going on in the map room?

2 A It was later on, the President had come down, I think with the family. And  
3 they were monitoring results or feedback, you know, and what was happening.

4 Q Do you recall if you were with the President when Fox News called Arizona  
5 for Biden?

6 A I don't recall if I was with him or not.

7 Q We've been told that President Trump asked Jared Kushner and Hope Hicks  
8 to reach out to contacts at Fox News regarding Fox News calling Arizona for Biden. Do  
9 you know anything about that?

10 A No.

11 Q Did you interact with Rudy Giuliani on election night?

12 A No.

13 Q We've been told that Mr. Giuliani wanted the President to simply declare  
14 victory that night. Do you know anything about that?

15 A No.

16 Q What was the president's mood like on election night?

17 A I don't know. I didn't see him that much. He came down and I remember  
18 things were positive for a while. And then, you know, the numbers started to change.  
19 And then I -- at some point, I ended up leaving. At some point after he came down, I  
20 was in the map room with others. I ended up leaving with my son who had come up.

21 So I didn't have many conversations with almost anybody. The only person I  
22 really remember that night was Austin sitting out in the outer Oval, and watching things.  
23 And it was a quiet place to go. I think my son took pictures in the Oval that night.

24 Q At 1:46 a.m., the President gave a speech in which he declared victory and  
25 said there was widespread election fraud. Were you involved at all in preparing his

1 remarks?

2 A No.

3 Q Were you involved in any discussions about what he should or should not  
4 say that night?

5 A I don't believe so.

6 Q Do you know who wrote his remarks?

7 A I don't know.

8 Q So what about in the immediate aftermath of the election? Were you  
9 involved in any discussions about election fraud in the first few days after the election?

10 A No, I went to -- I forgot who asked me. Someone asked me to come to the  
11 campaign headquarters. I had never been there before. I didn't even know where it  
12 was. And that was maybe a couple days after. I don't know, maybe I went with Derek.  
13 I just don't remember who I went with. But at some point, I remember being in  
14 campaign headquarters with a bunch of lawyers.

15 Q And why did you go?

16 A I don't remember. Someone asked me, do I want to go, will I come along,  
17 or will I go. And I said okay.

18 Q So we understand from public reporting that there was a meeting at  
19 campaign headquarters on Saturday, November 7th, which I believe is also the day that  
20 most of the major media outlets called the campaign for Biden. Does that sound like  
21 the meeting you're referring to?

22 A No. I don't think it was November 7th.

23 Q Was it earlier or later?

24 A Probably had been earlier. I don't think I was there on the 7th. It would  
25 be surprising to me.

1 Q Do you know what the purpose of the meeting was?

2 A I don't remember there being a meeting. I remember going -- my  
3 recollection of the whole thing was, there were a lot of lawyers running around. Rudy  
4 was there with. I think DiGenova, his wife, was there. That's the first time I ever saw  
5 Sidney Powell in person, whatever date that was.

6 And the only reason I remember it is, I was talking to somebody on the phone.  
7 And I walked through the conference room. And Rudy kind of yelled, you know, Eric, I'm  
8 just sitting here. It's like, why are you even telling me this, Rudy? I don't know what  
9 you're talking about. I don't work for you, type of thing. But that's what I recall.  
10 That's the first time I had ever been to the campaign.

11 Q Okay. And then we've been told that -- so anything else you can recall from  
12 that visit to the campaign headquarters?

13 A No. Just -- that's my recollection. I think Derek was there also.

14 BY [REDACTED].

15 Q Can I ask a quick question? So one thing that we've heard about this  
16 meeting, if it's the same visit to the campaign headquarters that I'm thinking of, we've  
17 heard that Rudy Giuliani made an argument for pursuing a post election strategy by  
18 comparing it to his time as a U.S. Attorney and a RICO prosecution investigating organized  
19 crime, sort of building a case from the bottom up. Do you recall him saying anything like  
20 that?

21 A I don't recall. I wasn't in the room that often with Rudy. The only thing I  
22 recall, at one point -- and this is the first time I probably ever heard of Dominion, or  
23 whatever, was Sidney talking about computers and flipping votes. And I don't  
24 remember what it was. But it was, you know, as far as I was concerned, it wasn't  
25 something that I paid the slightest bit of attention to. How could you have any inkling



1 about that in the time period? You know, from whatever it was, November 3rd until she  
2 was there, but --

3 Q Is it fair to say that at least on the basis of the interactions you had with  
4 Rudy and Sidney that day, that they didn't really present sort of hard evidence of election  
5 fraud or irregularities or were they coming to you with data?

6 A They didn't come to me at all. I'm sorry, let me put in this in context.

7 Q Yeah, I'm not trying to overstate it?

8 A No, there was a conference room. And I remember it was -- if I'm facing  
9 the conference room, Bill Stepien and Justin Clark's offices were down to the left. I had  
10 never been there beforehand. I had no idea what I was even walking into. I just come  
11 along and said, okay, you know, discussions about whatever potential legal issues.

12 And they were -- Rudy and Sidney and them, if I'm facing the conference room,  
13 they're sitting off on the left. And a lot of people are milling around. I had never been  
14 involved in elections, so I had no idea what to expect an election headquarters looks like.

15 And I just remember being on the phone with somebody, and walking through.  
16 And Rudy yelling at me like, Eric, I'm sitting here all this time, and no one's coming to me.  
17 And I gave a quasi wise ass response to him. I don't work for you, Rudy. I don't know  
18 what you're doing here. And I walked out the other side.

19 And then they sat in the room, as far as I knew, for a long time by themselves.  
20 And I don't remember any discussions with them at all. That may have been a different  
21 time or whatever. I just remember, at some point, Sidney talking about voting  
22 machines, you know. But this was early on. There was no -- I can't even conceive of  
23 there being any evidence by the time this happened. I don't even know if the election  
24 was called by this time.

25 Q It sounds like, based on your experience with Rudy, that at that point in

1 time, you didn't understand him to have any sort of formal role in the post election  
2 effort?

3 A As far as I knew, he had none, that it was being handled by, you know, the  
4 campaign legal team, the Matt Morgans and Justin Clark, but mainly, I think Matt.

5 Q Okay. Did you go back to the campaign headquarters at any time after  
6 that?

7 A I may have. Probably yes. I just don't recall when.

8 Q We understand there was a meeting the next day, so if the conversation you  
9 were just describing happened on the 6th, we understand that the next day, on the 7th,  
10 which was a Saturday, that there was a meeting that involved Jared Kushner, Hope Hicks,  
11 Jason Miller, Justin Clark, Dave Bossie, Matt Morgan, and others. Do you recall whether  
12 you attended that?

13 A I don't recall that. I know I met David Bossie at some point, but it was after  
14 November 3rd. I had never met him before.

15 Q We understand that there was discussion at that meeting about how to  
16 convey to the President that he would lose the election, and that Hope Hicks reportedly  
17 said something like, why don't we just tell him the truth. And there was a way to  
18 shutter things with dignity. Does that sound familiar to you?

19 A I don't remember that conversation. I remember Hope's belief that -- but I  
20 thought I had the conversations with her. They weren't at the White House, that the  
21 election challenges, she didn't think were going to work. And that's it.

22 Q Okay. Do you know whether she told the President that?

23 A I don't know.

24 Q We've also been told that -- or it's been reported that at that same meeting  
25 on the 7th, Jared Kushner said, there's a time for a doctor and a time for the priest. The

1 family will go in when the family needs to go in, but it's not time for that. Does that  
2 sound familiar to you?

3 A I don't recall that. I like the line, but I don't recall it.

4 Q Do you recall any sort of discussions more generally about the campaign or  
5 the White House doc being the first, you know, advanced to communicate to the  
6 President what might happen in the election and then the family holding back in any  
7 way?

8 A No, I don't recall that.

9 Q I asked you earlier about the role of several different people on the outside  
10 legal team, but there are a few that we didn't cover. What's your understanding of  
11 what role, if any, Jay Sekulow had?

12 A De minimis.

13 Q Well, what was it?

14 A I remember having some calls with Jay, because we had done impeachment  
15 together. And I knew him from beforehand. But I don't remember him having any  
16 involvement. I think he was distanced from it pretty significantly.

17 Q Do you know why?

18 A Either he wasn't involved, or he didn't have belief in it. I don't know. But  
19 he just was not -- definitely not the one handling it. I mean, once Rudy got put in  
20 charge, Rudy was in charge.

21 Q What was Christina Bobb's role?

22 A I had no idea what her role was, except I remember, at one point, seeing  
23 some document from her, I thought with an OAN email address. And I thought, what in  
24 the world is going on? And she was like, I don't know, part of Rudy's team, or something  
25 dealing with data. But I saw the email address. And I thought, that raised privilege

1 issues for them.

2 Q What was Jojo Janna's role?

3 A Other than my seeing him, I think, once in the campaign headquarters, and  
4 watching him on TV, I don't remember him having any role.

5 Q And the same question for his wife, Victoria Toensing?

6 A As far as I recall. I just remember them -- whenever they had a press  
7 conference of whatever term of art Jenna had to come up with as the elite strike force, or  
8 something like that, that they all stood there at that press conference.

9 Q What about Kathryn Frieze?

10 A I don't remember her. I remember the name, but I don't remember what  
11 she did.

12 Q Did Phil Walgren have a role?

13 A I remember his name as coming up with some report or some position, or  
14 something, but I never dealt with him.

15 Q What about --

16 A Somewhere in -- he has a colonel title, or something like that. I don't  
17 remember.

18 Q I think that's right. What about Bernie Kerik, what was his role?

19 A I only saw Bernie when he was with Rudy. And he didn't really say much,  
20 except he was working closely with Rudy. But obviously, I knew Bernie from back in the  
21 New York days.

22 Q We've heard that Mr. Giuliani and Mr. Kerik met with President Trump in the  
23 Oval Office on November 10th, 2020. I believe Pat Cipollone was there. Were you  
24 there for that?

25 A What was the topic? You've got to give me more detail.

1 Q For Mr. Giuliani and Mr. Kerik to brief the President on allegations of  
2 election fraud?

3 A What day of the week is that.

4 Q Tuesday, so --

5 A I don't recall that. I know there was reporting of some call between Rudy  
6 and Justin Clark having a fight over the phone or some yelling, but I wasn't in that  
7 meeting, as I recall.

8 Q Okay?

9 A If it was that day, then I wasn't there.

10 Q Did you meet with the President at all about the original jurisdiction case  
11 that was filed in the Supreme Court by Texas? We lost the audio?

12 A I'm sorry about that. I'm certain, at some point, I had discussion about the  
13 original jurisdiction. They were prior to -- I don't remember when Texas filed a lawsuit.  
14 Prior to that time, there were discussions amongst people trying to advocate that a  
15 President could potentially bring a claim himself directly in the Supreme Court, that DOJ  
16 can bring one, and they could compel DOJ to do it, things that I thought were not legally  
17 possible.

18 And at some point, when Texas brought it, I thought, okay, now you have your  
19 original jurisdiction case. Let the Court decide what they want to do. You know, that  
20 would help resolve some issues.

21 Q Do you remember having conversations with Pat Cipollone about whether  
22 the President or the United States could file an original jurisdictional suit in the U.S.  
23 Supreme Court?

24 A Generally, but I don't remember the details, but generally both thought no.

25 Q Did you talk to anybody at the Department of Justice about that?

1           A    I don't remember if -- I don't remember.  If I did, it would have been that  
2 the Department of Justice is not bringing a case before the Supreme Court.

3           Q    Do you know whether Jeff Clark had a view on that?

4           A    I don't recall what Jeff Clark's view were on many things.  I knew I didn't  
5 have a lot of respect for Jeff Clark's qualifications and ability to articulate what could or  
6 could not be done in any potential litigation dealing with the election.

7           Q    Okay.  Well, we'll cover that more in a few minutes.  So separate from the  
8 litigation, as we understand there's sort of a track going on concurrently to advocate that  
9 state legislatures change their electors.  Were you involved in that in any way?

10          A    No, I wasn't involved in it at all.  I had heard that there were discussions  
11 about -- this is going back to the Eastman conversation.

12          Q    Yeah, or even earlier?

13          A    No, I don't remember that.  I remember maybe a general discussion as to  
14 whether or not states wanted to change, you know, their slate of electors, but I don't  
15 remember any details about it.

16          Q    Okay.  Let's go to Exhibit 13.

17                And this is an article by, I think, Barton Gelman in the Atlantic called The Election  
18 That Could Break America.  It's dated September 23rd, 2020, so about a month and a  
19 half before the election.  On page 24 -- while Grant looks for you, I'll just start reading.

20                Mr. Gelman wrote, "According to sources in the Republican Party at the state and  
21 national levels, the Trump campaign is discussing contingency plans to bypass election  
22 results and appoint loyal electors in battleground states where Republicans hold a  
23 legislative majority.  With a justification based on claims of rampant fraud, Trump would  
24 ask state legislators to set aside the popular vote and exercise their power to choose a  
25 slate of electors directly."

1           Leaving aside whether you saw this particular article, were you aware of any such  
2 discussions about having state legislators send a different slate of electors than that  
3 chosen by the popular will.

4           A    No.  I mean, definitely, at some point, I don't remember when it was, I  
5 know that there was a discussion about to preserve some legal challenge, somebody had  
6 to have potentially an alternate slate of electors.  But it's later on in time.  And I don't  
7 remember the details of it.  I just remember someone making that comment.

8           Q    Do you remember who made that comment?

9           A    I don't.

10          Q    Okay.  Do you remember anything about discussions about alternate slates  
11 of electors?

12          A    No.  Other than the Eastman concept of, you know, this delaying so they  
13 can come back into session, and you know, vote an alternate slate.  Other than that  
14 conversation in the very beginning, when there was talk about the strategy, I don't  
15 remember anything else.

16          Q    Do you have any knowledge about Trump electors getting together and  
17 meeting and casting their votes as alternate electors in certain disputed states?

18          A    No.  At least I don't recall any.

19          Q    I understand.  It's been reported publicly that you met with President  
20 Trump and Vice President Pence on November 11th to discuss outreach to state  
21 legislatures.  Does that sound correct?

22          A    I don't recall that.

23          Q    Okay?

24          A    I know I was in meetings with the President and the Vice President, but I  
25 don't recall that.

1 Q Okay. Let's look at Exhibit 14.

2 This is an email from Jenna Ellis dated November 28th, 2020, to Molly Michael and  
3 Mark Meadows. Presumably when she sent it to Molly Michaels, that's so it could be  
4 given to the President, as further indicated by the text of the message, which says, "for  
5 POTUS." The subject is "the constitutional authority of state legislatures to choose  
6 electors." And attached is an article from John Eastman called The Constitutional  
7 Authority of State Legislatures to Choose Electors. Have you seen this document before,  
8 other than preparing for this interview?

9 A I remember that -- and this is actually because you raised Jay Sekulow a  
10 minute ago. I remember that Jenna Ellis was trying to get something in to the President,  
11 and couldn't. And I remember because I blocked it or at certain points. And then she  
12 had sent it to Mark Meadows, maybe even asked Jay to send it, or something along those  
13 lines. But this would be the type of thing that I just would block. Did you mention the  
14 date.

15 Q Yeah, this one was fairly early on, and you were not on it, so --

16 A Yeah, but that -- so that wouldn't have made a difference. Before things  
17 used to come in, and Molly used to call me, and tell me, you know, can you come up?  
18 And I would look at it, and I would say, no. I just don't remember if this was one of  
19 them. But let me see the document again. I don't remember the document per se,  
20 but if it's something that dates November 28th -- when was Thanksgiving.

21 Q I can figure it out for you?

22 A Sorry. Can you go up and look? I apologize. That will tell me -- I don't  
23 remember if I went out of town for Thanksgiving, but I think so.

24 Q Thanksgiving would have been November 27th that year?

25 A Okay. So that can't be. Yeah, that's the 26th. Okay. I don't remember



1 if I went over or not. But I don't remember seeing the document, but this would be in a  
2 category of documents that I would be like, no.

3 Q So Rudy Giuliani and his team testified at some hearings before state  
4 legislatures in battleground states. Do you know anything about that?

5 A I remember watching some of it on TV.

6 Q Okay. Did you have a reaction?

7 A I thought there was a woman that got up that sounded drunk, blonde haired  
8 woman, as I recall. I remember Jenna -- I think there were different places that they  
9 went to. Jenna was sitting next to Rudy, and handing him documents, and whispering  
10 things to him about, I guess, questions to ask. And at one point, at one of these things,  
11 Jenna held up her cell phone. And the President was on the phone.

12 Q Okay. That may have been November 25th. Actually, in a hotel ballroom  
13 in Gettysburg, Pennsylvania, Pennsylvania legislators, I believe. Do you know anything  
14 about how that came about?

15 A No idea.

16 Q Okay. Let's look at Exhibit 15.

17 This is an email from Doug Mastriano -- down below is an email from Doug  
18 Mastriano who we talked about earlier, who at least at the time was a member of the  
19 Pennsylvania State Senate, to Molly Michael. "Dear President Trump, the hearing in  
20 Gettysburg changed everything." And I think that's probably the event you're talking  
21 about, where the President called in. "The hearing in Gettysburg changed everything,  
22 and thank God the eyes of the nation are being opened to what happened not only here  
23 in Pennsylvania, but also in many other states across the nation. One of the positives is  
24 the attached letter signed by eight Pennsylvania Senators and 70 Pennsylvania House  
25 members, including Cutler and Benninghoff, asking that Congress reject our electors in

1 January as a result of the compromised election results in Pennsylvania." And then it  
2 continues on?

3 And Molly Michael, on December 5th, forwarded that to you and Mark Meadows.  
4 Do you recall reviewing that.

5 A Generally, I remember. Can you just go down the letter for a minute?  
6 There's a bunch of signatures on it. Yeah, generally, I remember this.

7 Q Do you recall whether you shared it with the President?

8 A Most definitely not.

9 Q Why not?

10 A My view is that it legally had no meaningful value. What's the difference.

11 Q Is that because it did not represent official action by the Pennsylvania  
12 legislature?

13 A Just regardless of what they signed or said, I didn't think it made any  
14 difference. How was this going to have, in any way, be outcome determinative of  
15 anything? So I just didn't think it had -- well, from what I saw, any legal weight for any  
16 litigation.

17 Q So on January 2nd, 2021, the President had a phone call with Georgia  
18 Secretary of State Brad Raffensperger and several other people that turned out to be  
19 recorded. And then the audio recording was released to the media. Were you with  
20 the President when he had that phone call?

21 A No, I didn't know about the phone call at all. And that -- the 3rd is the Jeff  
22 Clark meeting.

23 Q Yes, so this was -- the call was the day before the Jeff Clark meeting, but I  
24 think that the recording was released on the 3rd, which was the Jeff Clark meeting day?

25 A Yeah. No, I wasn't in DC that weekend.

1 Q Okay. And you didn't phone in to the call either, I assume?

2 A No, I didn't even know there was a call until after the fact.

3 Q Do you know anything about that call, other than what you've learned in the  
4 media?

5 A Nothing.

6 [REDACTED] I'm going to pause here and see if anybody has any questions.

7 BY [REDACTED].

8 Q Mr. Herschmann, were you familiar with any of the campaign's sort of after  
9 action assessment of the results in particular states after the networks had called the race  
10 for President Biden?

11 A I don't understand the question.

12 Q So like any campaign, after it's over, there's an attempt to kind of  
13 reconstruct what happened. And we've developed information that Bill Stepien, and  
14 Justin Clark, and Jason Miller, and a guy named Oz, who was the campaign's sort of  
15 internal data guy, put together a kind of an assessment of the battleground states, and  
16 what occurred. I'm just wondering if you're familiar with that assessment or any  
17 discussions about sort of breaking down the numbers, what happened and what  
18 informed the President's loss?

19 A I'm not aware of that. I mean, I heard the name Oz once, and I don't  
20 remember where.

21 Q Okay. Well, we've obtained a document that sort of reflects their findings.  
22 And it essentially, you know, summarizing, says it was really in urban and suburban areas  
23 where the President's margins were substantially lower than they had been in 2016.  
24 And it sort of posits that the reason for the losses in Georgia and Wisconsin and  
25 Pennsylvania were because of that, the difference in his -- the turnout for the President

1 versus his opponent in those general areas. Do you remember any discussion of that,  
2 any loss in the suburbs or he lost these urban cores, and that explains the result?

3 A I don't remember anything, in particular. I remember, generally, a  
4 discussion of, you know, COVID and suburban housewives. And I mean, that's just  
5 general public consumption. I don't remember it in any detail with the campaign  
6 people.

7 Q Okay. So beyond sort of the public speculation, you're not familiar with the  
8 campaign's own -- sort of the campaign professionals' assessment of looking hard at the  
9 numbers, and what the difference was from four years prior?

10 A No, I had no -- I don't remember having any involvement with them on any  
11 of that stuff.

12 Q Okay?

13 A That just wasn't an issue that I dealt with.

14 Q Do you know whether or not the President was aware of that assessment?  
15 Did you ever either from him or from others get a sense that that had been conveyed to  
16 President Trump directly?

17 A Not when I was around.

18 Q Okay. All right. Thank you?

19 The Witness. Sure.

20 [REDACTED] Just, Mr. Aguilar or any other Members that might be on, do you  
21 have any questions at this time?

22 BY [REDACTED]

23 Q Going back to the claims of fraud involving Dominion voting machines, as I  
24 understand it, some of those allegations involve foreign interference. Do you know  
25 anything about the federal government's investigation of potential foreign interference in

1 the 2020 election?

2 A The federal government's investigation.

3 Q Yes, or review?

4 A I don't recall any.

5 Q Okay. Do you know Chris Krebs, who at the time was at the Department of  
6 Homeland Security?

7 A I never met him, as far as I recall.

8 Q Okay. Probably seen him on television?

9 A Probably. I don't recall him at all, to be honest.

10 Q Do you recall him being fired by the President?

11 A I don't recall that. I didn't know him.

12 Q Okay. On November 19th, there was a press conference that you may have  
13 referred to earlier at RNC headquarters, where Rudy Giuliani, Jenna Ellis, Sidney Powell  
14 spoke. Do you recall that?

15 A I don't remember it being at RNC, but I remember there being a press  
16 conference. They were all lined up together.

17 Q Yeah, so there were a couple press conferences. There was the one at Four  
18 Seasons Landscaping. And then there was one that I believe was at the RNC  
19 headquarters. This one at the RNC headquarters was November 19th. And Sidney  
20 Powell made a number of claims about Dominion voting systems. Do you remember  
21 that?

22 A I don't remember the press conference, but I remember Sidney talking about  
23 Dominion.

24 Q Okay. Did anybody talk to you in advance about what they were planning  
25 to say at that press conference?

1           A    I don't remember. I think -- I remember, at some point, somebody sending  
2 something around. And I'm responding, I mean, this is real? Are they really going to  
3 say this stuff? But I don't remember if it was that press conference or something else.  
4 I just remember questioning, like, are people serious about this.

5           Q    And you wrote that, you believe?

6           A    I think so. I don't recall. But I have a recollection of someone sending me  
7 something. And it could have been talking points or something. I just don't remember  
8 what it was. I remember questioning whether, like, who is saying this? Who is putting  
9 this out or writing this.

10          Q    Do you remember who you sent that to?

11          A    I don't. I have some vague recollection that, at some point, somebody was  
12 articulating that -- maybe it was Jenna even, that the campaign had evidence of Dominion  
13 involvement in altering votes or something like that. And based on my interactions with  
14 them, I thought that was impossible. At some point, I remember calling up somebody  
15 there, and saying, hey, is there any possibility that this is accurate? You'd better make  
16 certain that it's clear, this is not what happened.

17                But I don't remember who I spoke with at the campaign, but it was something  
18 along those lines, that they were representing the evidence was sitting in the campaign,  
19 which I was convinced they had no evidence of it, nor were they arguing it.

20          Q    Why were you convinced of that?

21          A    Because I had spoken to Justin Clark and Matt Morgan, as to what I thought  
22 was her processes to -- or the election challenges, like, what normally would happen.

23                And I remember them being pretty clear that they didn't know anything about  
24 Dominion, or even understood the theory. You know, I do remember, I had a -- I think a  
25 specific call with Matt Morgan, where there was an issue of in one jurisdiction, they had

1 not updated Dominion's software, so there was a glitch. And there was actually a  
2 change of votes between the President and Biden. They had fixed it. It had been  
3 corrected. And then they had been certain that they updated -- the software was  
4 updated throughout the state.

5 Q Was that Antrim County, Michigan?

6 A That sounds like it. Yeah, because I think that's the county in  
7 which -- Sidney was in the Oval that day, she was arguing that.

8 Q And was it your understanding that that allegation had been debunked?

9 A My belief was that there was no one associated with the campaign. I  
10 mean, the Matt Morgans, Justin Clarks, and others, that in any way supported the  
11 Dominion claim.

12 Q Did you convey that to the President?

13 A I don't know if I conveyed it, or they had conveyed it. I just don't know.  
14 Real discussions about Dominion was in the crazy Sidney meeting. And I don't even  
15 know if I would call those discussions.

16 Q Okay. Was anybody supporting Sidney Powell's allegations about  
17 Dominion Voting Systems?

18 A I thought Jenna did initially when she articulated it, and said, like, the  
19 campaign had evidence to support it. So I don't remember if Boris Epshteyn supported  
20 it. You know, General Flynn supported it, based on that meeting I was in. And the  
21 Overstock guy, Patrick Burn, seemed to support it. I don't know how he would ever  
22 know, although he claimed to have done so. And then there was a young attorney  
23 there, a woman. I forgot her name. Emily something, I think.

24 Q Emily Newman?

25 A Newman, yeah. And that was the first time I met her. And she seemed to

1 support it.

2 Q So at some point in, I think, probably late November or probably before  
3 Thanksgiving, the President recorded a video statement, where he made a lot of claims  
4 about election fraud. And I think it was then released after Thanksgiving. Were you  
5 involved at all in the preparing of his remarks for that?

6 A No. I don't recall the video at all, or being involved in the preparation.

7 Q Okay. We understand that Derek Lyons raised a concern to you that he  
8 thought the video should not be released, because it wasn't sufficiently supported.  
9 Does that sound familiar to you?

10 A I lost you guys on video, by the way. So I don't know if it makes a  
11 difference.

12 Q Did you hear the question, though?

13 A I heard the question. Yeah, I don't remember the video. Derek and I sat  
14 relatively near each other, and we spent a decent amount of time talking about some of  
15 these allegations that were made, and whether they were sustainable. I don't  
16 remember the video per se, but it wouldn't surprise me at all if Derek raised that with me.

17 Q Do you remember what, if anything, you did with that information, or that  
18 concern that he raised?

19 A If the video was out, I may not have done much, right? But normally  
20 speaking, if allegations came in, and I didn't understand them or I didn't know the basis, a  
21 lot of times, I would try to figure out whether it was sustainable at all, or sometimes call  
22 the campaign, maybe Matt Morgan, or probably more often Matt Morgan than Justin  
23 Clark, and say, is this accurate? Is this possible? And I tend to get information back  
24 that I would then use either in the White House or outside of the White House to fight  
25 with some of the lawyers.



1           Q    And did the campaign lawyers that you just referred to, Justin Clark and Matt  
2 Morgan, generally say that the allegations were or were not supported?

3           A    I don't believe they -- I don't think that they felt -- let me be more articulate.  
4 They did not support the position or did not believe they could support the position,  
5 some of the allegations or a lot of the allegations that were being made.

6           Q    Do you remember which allegations?

7           A    I don't. But I think it became a regular circumstance in which they did not  
8 believe -- I know the Dominion things for certain, they didn't believe those allegations to  
9 be correct. I don't know anyone who -- that I dealt with, other than the people that  
10 were making them, thought they were legitimate.

11           As far as, you know, the amount of dead voters or things like that, and I forgot  
12 there was -- I forget who the expert was. Somebody testified that X amount of dead  
13 voters had voted. And whoever was questioning the expert said, there were 20 that  
14 were in my district. And I happened to call, you know, the first group of them. And I  
15 spoke to six of them and they're surely alive, right.

16           Q    Who was that?

17           A    It was -- I mean, you can search it. But it was some -- at some hearing,  
18 there was a question and testimony that someone on this team was putting forth as  
19 to -- maybe it was Lin Wood, right, as saying that X amount of dead people were voting  
20 and they gave a listing of people.

21           And one of the elected officials had the list in front of her, and she's like, I called  
22 this group of people. And they seemed to me to be very much alive, right? You know,  
23 and that debunked it. And there was things where they were doing juniors or seniors or  
24 change of addresses, in which somebody had gone on to military service. Just mistakes  
25 along those lines. And the campaign people were somewhat, I think, incredulous.

1           Q    So what did you do with this?  If you talked to Justin Clark and Matt  
2 Morgan, and they thought all of these allegations were not supported, what did you then  
3 do with that information?

4           A    I would either sometimes discuss it with Derek, sometimes discuss it with  
5 Pat or Pat.  A lot of times, take on the lawyer who was putting it forth, in any  
6 circumstances.  Either a document came in, and I would challenge it, and not let it go  
7 forward, or like in the Sidney circumstance of that meeting, I had already known that the  
8 statements that they made were off.  They were just wrong.  So I was already aware of  
9 that data.

10          Q    Did you ever get overruled, meaning did the President ever end up making  
11 remarks about some of these allegations, where you thought they were not supported by  
12 facts?

13          A    I don't know if overruled is the right term.  I think that a lot of the times, I  
14 would say, who has verified that this is accurate or sustainable?  And then the fact  
15 checkers would be coming back.  Sometimes they would come back to me and tell me  
16 who the purported source was.  And I'd say, well, that's not a valid source, or that  
17 expert's been already, you know, proven to not be reliable.  It would be things along  
18 those lines.  I mean, a lot of it was kindling for my own information, that if somebody  
19 came in and tried to raise an issue in the White House, I was prepared to fight it.

20          Q    But were you ever unsuccessful in fighting it?

21          A    I don't know what unsuccessful means, but I spoke my mind pretty bluntly.

22          Q    Well, unsuccessful meaning your view did not carry the day, and the  
23 comments ended up in the President's remarks?

24          A    I mean, there are -- I am not going to tell you I went through every single  
25 speech and every single statement of fact, and said, no, let me validate this or challenge

1 it. Some of them, I just said, I don't see the basis for these, and they may have taken  
2 them out. Others, I think I was challenging -- I was successful in Sidney Powell not  
3 getting appointed, right? And that was, I think, helpful in ensuring Jeff Clark to not  
4 become Acting Attorney General. But that data that I had, you know, accumulated,  
5 some of it from my own information was helpful in arguing against them.

6 Q Were there times when you raised the concern that proposed statements  
7 were not supported by evidence, but the statements ended up staying in the President's  
8 remarks?

9 A I don't remember that.

10 Q Did you ever read the Navarro report?

11 A No. I think at one point, I skimmed through it, but --

12 Q Okay. And what was your view of it?

13 A I didn't have a lot of faith in stuff that Peter had put out.

14 Q Why not?

15 A There was some other thing that I had read early on when I had started,  
16 someone gave me about something totally unrelated. And I thought the analysis was  
17 lacking. I don't remember what that topic was, but eventually, someone told me it was  
18 written by Peter. And I thought it's -- it would not stand up to scrutiny. A lot of, you  
19 know, hopeful leaps of faith to get to where he wanted to get to.

20 BY [REDACTED]

21 Q Mr. Herschmann, on the subject of the President's remarks, it sounds like  
22 you indicated that there were times when you pushed back on or suggested the removal  
23 of the inclusion of certain facts in remarks that the President was scheduled to give that  
24 came across your desk; is that right?

25 A I think -- so there are people that got copied on every speech, right? I was

1 not one of those people. At some point, I would get copied on it, and I would question  
2 whether certain facts were sustainable.

3 Q Okay?

4 A And who's verifying it. I mean, it may have even been on the January 6th  
5 speech, like, what's the factual basis? What's the entry basis for this allegation.

6 Q Yeah, you're anticipating my next question. On January 6th, in his speech  
7 at the Ellipse, he goes state by state, through a whole litany of claims that had been  
8 rejected by courts, that had been rebutted by news outlets, yet he persisted in  
9 articulating them to the crowd as bases to challenge the election?

10 I'm just wondering if you ever reached a point in listening to his remarks that you  
11 were concerned that he continued to put forth these allegations that you didn't think had  
12 evidentiary foundation, or courts had rejected.

13 A So let me break down the courts one first. A lot of the court stuff was lost  
14 on jurisdictional grounds. So I don't remember people getting into putting on evidence  
15 in many courts, right? I thought that while -- someone said, well, here is an expert  
16 report that says X, and this happened, right? Or here's -- that didn't mean to me that  
17 that was, you know, verifiable until someone went and drilled down into the details.

18 So someone being able to say, we're a fact checker, we have this in a published  
19 report that says X, that didn't mean to me as a lawyer that it meant X. So my view was  
20 to flag things. And I really don't remember going line by line through speeches, as much  
21 as reading something to say somebody needs to verify this fact. I haven't seen the  
22 factual basis or evidentiary basis for it.

23 Q And my point isn't to go through all of the claims in the January 6th speech,  
24 or other speeches, and ask you about the foundation. I'm just wondering if there was  
25 ever a time when you heard the President say something that you believed didn't have an

1 evidentiary basis, something that you specifically had looked at, and didn't think there  
2 was support?

3 A I don't remember anything, in particular. I remember not having any faith  
4 that the Dominion allegations were valid. But any particular -- I don't remember any  
5 particular facts or allegations. Again, I can't say I paid enough attention to those details,  
6 that it was -- would have mattered to me.

7 Q Like the Antrim County thing, [REDACTED] was asking you about, there was  
8 some stuff about a suitcase full of ballots in Fulton County, things that he kept talking  
9 about, even after -- even people within the Executive Branch and the Department of  
10 Justice or the Department of Homeland Security had rebutted. Do you remember ever  
11 having any concerns about him continuing to make claims --

12 A I'm sorry. I don't remember -- I remember the video of them taking  
13 suitcases out, and then the water main break. And they stopped counting. And things  
14 along those lines that were discussed. But I never saw the longer video that supposedly  
15 shows it all coming in and no issues, right.

16 But I don't remember, number one, tracking it that closely, on what he was saying.  
17 It just wasn't something I was dealing with. But my general view was, as an attorney,  
18 this is -- legal challenges are not going to result in any court determination that's going to  
19 change these results. So my view is, none of this -- I don't want to say it doesn't matter,  
20 practically, but from a legal standpoint, I didn't see how that changed anything.

21 Q I completely take that point. I guess my question, though, is more to what  
22 the President was telling America, right? The suit case one, his own U.S. Attorney and  
23 his own FBI in Georgia had looked at that very carefully and had conveyed that there was  
24 no basis to it, yet the President all the way through the Georgia special election continued  
25 to say publicly that there were suit cases full of ballots in Fulton County, alleging that

1 there was fraud that his own Justice Department had rebutted. And it sounds like you  
2 just weren't following these allegations?

3 A I wasn't following them. I remember Bill's comment about -- his public  
4 statement, which it was -- I mean, Bill Barr, that there was not -- that DOJ had not seen  
5 sufficient evidence to be outcome determinative or on a scale large enough to change the  
6 results, right? Not that they had not seen fraud. But I don't remember the details of  
7 what was said about the suit cases or not the suit cases. My attitude was, does it make  
8 a difference? I mean, the observers not being able to watch counting, right? Whether  
9 it's inappropriate or improper or whatever, it didn't change -- it's not going to change the  
10 results or anything.

11 Q I understand it's not going to change the legal result, but it might change the  
12 result in terms of public opinion, right? If the President is out there continuing to talk  
13 about these things?

14 A And to -- I'm sorry, I'm not going to get into whether I think he should  
15 say -- what he should say as President. So I lived through a bunch of things that, you  
16 know, leaving aside the special counsel investigation and everything else. My view was,  
17 he's the President, he's going to say what he wants to say as President. And that is  
18 clearly the President's prerogative, right? And I wasn't going to come back and tell him,  
19 don't say this or don't say that. I didn't believe that to be my role or my position or  
20 appropriate, to be candid.

21 Q Okay. Thank you?

22 BY [REDACTED]

23 Q Do you have any familiarity with Mayor Giuliani calling the Antrim County,  
24 Michigan prosecuting attorney to request that he turn over the county's voting  
25 machines? And this goes back to the issue we talked about before, where there was a

1 human error in the programming of some machines in that county?

2 A Just publicly. The public disclosure of it, not anything besides that.

3 Q We understand that Kathryn Frieze visited Antrim County in late November  
4 2020 in an attempt to collect data from voting machines. Do you know anything about  
5 that?

6 A No.

7 Q Let's look at Exhibit 17.

8 This is the Antrim County report. First, it will be an email attaching the Antrim  
9 County report from the Allied Security Operations Group. So the email, if you look sort  
10 of towards the bottom, it's from Sidney Powell to Molly Michael, dated Monday,  
11 December 14th. It looks like Molly Michael sent it on to Nick Luna and Austin Ferrer.  
12 Subject, "do we do another rule 23?" First of all, do you know what that refers to, "do  
13 we do another rule 32"?

14 A No.

15 Q And then if we scroll down to the first page of the report, this is, as I said, a  
16 report on Antrim County, Michigan by the Allied Security Operations Group, sometimes  
17 referred to as ASOG. Do you know anything about ASOG?

18 A I remember hearing the name. I think Russell Ramsland that I see here, I  
19 think he was the expert that admitted his data was wrong.

20 Q Do you know anything about that, other than what you may have seen in  
21 public reports, media reports?

22 A No.

23 Q Do you remember whether you ever saw this report?

24 A Can you go down a little bit? I may very well have seen it beforehand, but I  
25 don't remember it in detail.

1 Q Do you know whether it was shared with the President?

2 A I don't know. But if it made its way to me, probably not.

3 Q Okay. From the email, it looks like it was Molly Michael sending it on to  
4 Austin Ferrer and Nick Luna. I don't know if that's because one of them was with the  
5 President and could share it with him?

6 A No, it's -- I would be surprised at that.

7 Q Okay?

8 A I can't imagine that Molly would have done something like this, and I didn't  
9 see it.

10 Q Do you know anything about President Trump discussing with Attorney  
11 General Barr whether the Justice Department could seize voting machines?

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

13 Q Okay. Let's look at Exhibit 18.

14 And this may be the draft executive order that you were referring to earlier that I  
15 believe has reference to the appointment of a special counsel, uses the feminine  
16 pronoun. But this, among other things, would provide the Department of Defense, I  
17 believe, with authority to seize voting machines?

18 A Yes.

19 Q Do you recall whether you ever saw this?

20 A I want to jump ahead for a second. In the meeting with Sidney and General  
21 Flynn, no pieces of paper went from Sidney or anyone on Sidney's team to the President.  
22 That I'm positive of, in that meeting. So this I saw at some point later on, but it may  
23 have been even after January 20th, when it was public. But I'm positive she did not  
24 hand him this piece of paper. I'm positive she didn't hand him any pieces of paper when  
25 I was there.



1 Q Okay. Do you know whether this circulated within the White House?

2 A I think, at some point, it was -- I don't know if it got circulated, but I think, at  
3 some point, it made it into the White House, but I don't remember how they got it in.

4 Q If we go to the last page, there is a Post-It note, and I'm not sure whose  
5 handwriting that is. And it says, "from the VP to Pat C." Do you know anything about  
6 why this would have gone to the Vice President, and then from him to Pat Cipollone?

7 A It wouldn't surprise me if a draft EO went to Pat Cipollone to keep a copy. I  
8 don't know why it would go to the VP.

9 Q Do you know who wrote this document?

10 A I don't know who wrote it, but based on my reviewing of it at some point, it  
11 was consistent with what Sidney was trying to propose with General Flynn.

12 Q Do you know whether this was ever shared with the President?

13 A I don't -- I could tell you in a meeting with Sidney, not one piece of paper  
14 that she had sitting on her lap was given to the President.

15 Q You said, was given?

16 A Let me -- nothing. Nothing was given to the President. Not one piece of  
17 paper that she had on her lap was handed or given to the President at all.

18 Q Okay. Do you know anything about any inquiries that the President made  
19 to Ken Cuccinelli regarding whether the Department of Homeland Security could seize  
20 voting machines?

21 A I don't.

22 Q Okay. Do you know anything about President Trump directing Rudy  
23 Giuliani to ask the Department of Homeland Security to seize voting machines?

24 A I don't.

25 Q Do you know anything about Johnny McEntee reaching out to Acting

1 Secretary of Homeland Security Chad Wolf regarding voting machines?

2 A No.

3 Q Do you know anything, other than this proposed order that we just showed  
4 you, do you know anything about conversations about potentially seizing voting  
5 machines?

6 A No, the only thing I know about is -- I guess it was a hand count audit,  
7 comparing the ballots to the actual Dominion returns. And that they had validated the  
8 results from the Dominion machines.

9 Q Was that in Georgia?

10 A I believe it was in Georgia. I have some recollection of that.

11 Q And did you have a view as to what that said about the Dominion voting  
12 machines, if the hand recount was consistent with what the electronic count was?

13 A For that jurisdiction, it clearly seemed to have functioned correctly.

14 Q Do you remember anyone telling the President that the hand recount in  
15 Georgia would be the gold standard?

16 A I don't remember that term.

17 Q Or do you remember anything to that effect being told to the President?

18 A I don't remember. I mean, obviously, the hand recount compared to  
19 machines, they'll give you a definitive answer, one way or the other.

20 Q So tell us about the meeting you were referring to earlier with Sidney Powell  
21 and others with the President. We understand that to be on the evening of December  
22 18th. Do you know --

23 A Before we do that, could we take a two-minute break.

24 [REDACTED] Of course. Let's take five minutes.

25 (Recess.)

1 [REDACTED] We're back on the record.

2 BY [REDACTED]

3 Q Mr. Herschmann, do you know how the December 18th, 2020 meeting in the  
4 evening with Sidney Powell, General Michael Flynn, Patrick Burn, Emily Newman, the  
5 President, and others came about?

6 A They were -- a group of us walked out of the Oval. It was Friday, already  
7 late. And they started walking in.

8 Q Do you know if this was a scheduled meeting or how they managed to make  
9 their way to the Oval Office?

10 A I don't know how they got in.

11 Q Okay. Were you present for the meeting?

12 A Yes.

13 Q Who else was there? Well, first, is it correct that Sidney Powell, General  
14 Flynn, 7Patrick Burn, Emily Newman, and the President were there?

15 A Oh, the President was in the Oval Office. I mean, Flynn I had never met  
16 before, but I recognized him. Burn, I had never seen before, and I didn't know who he  
17 was. And Sidney. And I had had some interactions with her, which were normally  
18 confrontational. They went in to the Oval. Sidney was all the way on the right, Flynn  
19 next to her, then Patrick Burn. And I remember Emily Newman was on the couch or at a  
20 chair. And I sat initially in the back.

21 Q Was anybody else there that you can think of?

22 A No, not at that point.

23 Q What about later? Did Mark Meadows, Pat Cipollone, anybody else from  
24 the White House staff join?

25 A No, later on, initially, Pat Cipollone, I told someone to get Pat to come down.

1 Then Matt Morgan was -- got him on the phone. Then Robert O'Brien was on the phone  
2 for a short period of time. And then Derek Lyons came in. I don't remember the  
3 sequence when Derek came in. But Derek came in at some point.

4 And I remember it was his -- it was his resigning, I think as of midnight that night.  
5 And he had gotten a job somewhere in, I think, Kentucky. And he was moving. And  
6 they were having his farewell celebration that night.

7 Q So what do you recall from the meeting?

8 A A lot of this obviously has been reported in whatever article that got written.  
9 They went in. And the general discussion started off about Dominion voting machines,  
10 and overturning the election, and foreign interference in it. And she had affidavits that  
11 reflected foreign government interference. And, you know, Venezuela, Hugo Chavez,  
12 and who knows what other stuff she was saying.

13 They were arguing that everyone was quitters, they used Antrim County as an  
14 example of proof of fraud, even though it was a county that we had won. And in short  
15 order, I realized Sidney was making a play to appoint herself as special counsel with  
16 pretty broad powers.

17 And it kind of escalated pretty quickly, you know, first with me before anyone else  
18 came in the room. And initially, I sat down, just sitting in the back watching. And then  
19 I jumped in, and I cut off Sidney. Hold on a minute, hold on. What in the world are  
20 you talking about? Rudy's been promoting that Democrats change the rules, there was  
21 election fraud, no observers, invalid ballots. And now you're talking about a completely  
22 different theory, that there's foreign interference that changed the whole thing. And  
23 they obviously can't be one and the same.

24 And I was asking, like, are you claiming the Democrats were working with Hugo  
25 Chavez, Venezuela, and whomever else? And at one point, General Flynn took out a

1 diagram that supposedly showed IP addresses all over the world, and who was  
2 communicating with whom via the machines. And some comment about, like, Nest  
3 thermostats being hooked up to the internet.

4 And then it became very, very, very contentious. I mean, I think the article is  
5 pretty accurate. There's other details that I don't know how relevant they are. I think  
6 where people was standing was wrong, while we were in the meeting, but I had it out  
7 with Flynn, definitely had it out with Patrick Burn. Sidney tried to more funnel her  
8 communications directly to the President, trying to convince him that he should appoint  
9 her in the capacity as special counsel with broad powers to seize machines and do other  
10 things.

11 Q And you were opposed to that?

12 A I think I was opposed to pretty much every single thing that they said in that  
13 meeting.

14 Q Why were you opposed to Sidney Powell being appointed special counsel?

15 A I thought that what she was proposing and alleging was ridiculous.

16 Q Why?

17 A Because I didn't see sufficient evidence to say it. She was taking her belief  
18 and putting herself in a position where she and the group and others would get top secret  
19 clearance, and immediately be able to jump in and start seizing machines and taking  
20 certain actions.

21 And I thought that entire concept was crazy, forgetting that it was completely,  
22 completely inconsistent with what Rudy was saying. And so I remember getting her to  
23 say that, you know, when I challenged her, Rudy's taking this position, and you're taking  
24 this -- aren't you on the same team.

25 She's like, Rudy doesn't understand this case. He's never understood it until just

1 now. And I use that had comment later on to call Rudy, and get Rudy to come to the  
2 White House that night. But otherwise, I screamed -- Flynn screamed at me that I was a  
3 quitter, and everything. He kept on standing up and turning around and screaming at  
4 me. And at a certain point, I had it with him. So I yelled back, either come over or sit  
5 your F'ing ass back down. And he looked at me and sat down.

6 Q Did he know who you were?

7 A He had no idea who I was. At one point, Burn said something. He was  
8 like -- and I just said to him, do you even know who the F I am? He goes, yeah, you're  
9 Pat Cipollone. I was like, wrong, idiot. Pat wasn't even there yet, right.

10 But I found the entire request and the entire thought process of what they were  
11 asking for to be crazy. So I got Matt Morgan on the phone. And Matt did know what  
12 they're saying actually, factually, didn't happen. You know, the President won the  
13 county that they were claiming was completely fraudulent and flipping the votes.

14 And then there was a national security argument. So I said, get Robert O'Brien  
15 on the phone. I don't think Robert could hear a lot, because there was -- by that time, it  
16 was full blown screaming. And then Pat came in first, and then Derek came in. And  
17 Derek unloaded some, which was kind of out of his temperament, right.

18 Q What was the national security issue for which Robert O'Brien was called?

19 A Well, they were claiming there's a national security issue. And there was  
20 international interference, and Dominion voting machines. And I thought, well, Robert  
21 would be the right person to address whether they had uncovered any evidence of that.

22 Q And what did Mr. O'Brien say?

23 A I don't remember the details, but he did not agree with Sidney.

24 Q It's been reported that Sidney Powell claimed that she only lost her legal  
25 cases because every judge is corrupt. Does that sound familiar to you?

1           A    No.  Well, I challenged her.  I remember Derek and I both challenged what  
2 she was saying.  And she was, like, well, the judges are corrupt.  And I was like, every  
3 one?  Every single case that you've done in the country you guys lost, every one of them  
4 is corrupt, even the ones we appointed?  And that was it.

5           Q    And --

6           A    I was being nice.  I was much more harsh to her.

7           Q    What did she say in response to that?

8           A    Yes.

9           Q    Did the President have a reaction to that?

10          A    He was predominantly watching, you know, and listening to what was going  
11 on.  And she would every so often turned to him, because Patrick Burn at some point  
12 stood up, and he was dressed in a hoodie.  And I don't know what in the world he was  
13 doing there, and leaning in and saying, we're both executives, sir, we've both been CEOs.  
14 We understand this.

15                 And at some point, I made some wise guy comment about, yeah, Patrick and I also  
16 ran a publicly traded company.  And I didn't have the problems that you had, because I  
17 heard the Overstock issues were pretty well known about the problems that he had had  
18 at his role.  But he was leaning in, like entrepreneur to entrepreneur, you know, type of  
19 comments.

20          Q    It's also been reported that Ms. Powell and General Flynn told President  
21 Trump that the Justice Department and the FBI were both corrupt and couldn't be  
22 trusted.  Does that sound familiar?

23          A    It sounds familiar.

24          Q    It was publicly reported that President Trump several times said things to the  
25 effect of, you guys are offering me nothing.  These guys, meaning Sidney Powell and her

1 team, are at least offering me a chance. Does that sound familiar?

2 A I don't remember him saying that. I mean, I remember it more being, you  
3 know, Flynn turning around and screaming, you're quitting, you're quitting, you know,  
4 type of crap. And to me, it was kind of shocking. Some of these people I had never  
5 seen before in my life. And they had no idea what was going on. And here they are  
6 telling the President, you know, that people around here didn't fight, you know, for what  
7 we thought was right.

8 But as I told you, by this stage of the game, I had a pretty good understanding of  
9 which factual allegations I thought were supportable, and which were not. And I  
10 thought this was pie in the sky type of stuff. It's also the explanation for idiotic. I  
11 mean, Derek at one point challenged her that they couldn't spell "district" correctly.  
12 You know, and they had all these iterations. She gave some idiotic explanation. I  
13 remember the President making some comment about that.

14 Q It's been publicly reported that at some point during the meeting, President  
15 Trump orally appointed Sidney Powell to be special counsel. Does that sound familiar?

16 A No, I think it was -- she was saying, you have the authority to do all this.  
17 And he was like, along the lines of, he knew he had the authority.

18 Q Okay. And at some point, did Mr. Giuliani join either in person or by  
19 phone?

20 A We -- the first part of the meeting in the Oval was without Rudy being there.  
21 And I don't think Mark was there, either. It was just myself originally for a while, then  
22 Cipollone, then Derek. Morgan was on the phone for a bit of time, and Robert O'Brien  
23 was on for a bit of time. We broke. I called Meadows. I think he was at home at that  
24 stage, and said, get in here, right.

25 Because I go, Mark, I wouldn't call you this late at night. You know, these people



1 are crazy. And then I called Rudy. And I said to Rudy, Rudy, you know, I didn't know,  
2 but I hear you're a dumb ass. And Sidney says you don't know what the hell you're  
3 doing, and you're just a dumb ass, and you don't know what's going on here. And I  
4 thought I worked up Rudy enough to say, if I were you, I would get in here. I think  
5 there's going to be another meeting. And Rudy came in.

6 Q And was there another meeting?

7 A There was another meeting in the residence.

8 Q And who was there for that meeting?

9 A Meadows came, Patrick -- I'm sorry, the same group from Sidney's team,  
10 now Rudy and Meadows were also there, and Derek, Cipollone, and myself.

11 Q And the President?

12 A And the President.

13 Q So why did the first meeting stop, and then the second meeting start, if it  
14 was largely the same group?

15 A I think that it got to the point where the screaming was  
16 completely -- completely out there. I mean, it was, you know, them telling us, you  
17 know, stuff that we're telling -- or I'm telling them to shut the F up. I mean, it really was  
18 unprecedented. I mean, I don't know how else to describe it.

19 I mean, you've got people walking in, it was late at night, and it had been a long  
20 day. And what they were proposing, I thought was nuts. You know, the theory was  
21 also completely nuts, right? It was a combination of the Italians and Germans. I mean,  
22 it had different things that had been floating around as to who was involved. I  
23 remember Hugo Chavez and Venezuela, and she has an affidavit from somebody that says  
24 they wrote a software in, and something with the Philippines. Just all over the radar.

25 And it was completely inconsistent with what Rudy's overall theory was.

1 Whether Rudy got to proving it didn't matter. There was nothing like this stuff. So at a  
2 certain point, when we had a break, then Mark came in. And then we were over in the  
3 residence.

4 And Rudy came. And it didn't take much, you know, gasoline to get the fires  
5 going again. Because I -- I mean, I took this opportunity, like as soon as I came in, I was  
6 like, Sidney, why don't you tell Rudy what the F you just said, that he's a dumb ass, and he  
7 doesn't know what the hell he's doing. Tell him. And I started screaming at Sidney to  
8 tell Rudy. And Rudy was looking like, what was going on.

9 And the President wasn't happy with the tack I was taking, but Rudy then took on  
10 Sidney. And then at some point, Flynn and Meadows went at it. And Mark really,  
11 really laced into him significantly. And then Sidney wanted clearance. We discussed  
12 SF-86s, and what you would have to do.

13 Eventually, it was late, late, late at night when it ended. And I think by the next  
14 day or whatever, maybe by Monday, it was announced that Sidney was no longer part of  
15 any Rudy team, and she was out. So I had thought, while it was painful to get there, the  
16 result was correct.

17 Q Who made the decision that Sidney Powell would be off the team?

18 A Rudy announced it. I presume he did it in consultation with the President.  
19 But it was -- I mean, I think the article that -- what's his name wrote, Swan wrote, it  
20 doesn't have every detail, but it summarizes enough of what actually transpired.

21 Q So my understanding is that the public announcement to the effect that  
22 Ms. Powell was not affiliated with President Trump's legal team actually came out in late  
23 November, following the November 19th press conference about Dominion voting  
24 machines and things like that. Was there any statement to the effect during that  
25 December 18th meeting that Ms. Powell wasn't on the team or that she --

1           A    I remember there being -- after this meeting, it was clear Rudy put out  
2 something that Sidney is gone.

3           Q    Okay?

4           A    At a certain point, it wasn't clear to me any longer whether Rudy and Sidney  
5 were coordinating with each other at all. I mean, Sidney's theory and coming into the  
6 Oval without Rudy, and unscheduled was pretty unbelievable.

7           Q    During either of those meetings, the one in the Oval Office or the one in the  
8 residence, was there discussion about the joint session of Congress on January 6th?

9           A    No.

10          Q    Was there any discussion about the role of the Vice President?

11          A    No.

12          Q    Was there any discussion about convincing state legislatures to adopt the  
13 Trump electors instead of the Biden electors?

14          A    No.

15          Q    So how did the meeting end?

16          A    I don't remember the exact details. Just a lot of yelling and screaming at  
17 everybody, and really having it out. And then saying, you have our position. And Pat,  
18 Derek, and I were definitely on the same page about it.

19          Q    Do you remember roughly what time the meeting ended?

20          A    It was late. I mean, probably after midnight.

21          Q    Let's look at Exhibit 19?

22          ██████████ Before we get there, can I just briefly ask?

23                BY ██████████

24          Q    Other than what we already laid out, was there any discussion about what  
25 the election challenge strategy more generally should look like following that meeting?

1           A    No, it just -- I thought most of the time, Sidney was carrying the Dominion  
2 allegations. It may have been Sidney and Jenna or others that were arguing it, but I  
3 don't believe it was really Rudy's focus at any point.

4           Q    At the end of the meeting, or at least at the time that you left the meeting,  
5 did you have a clear understanding about what things were going to be moving forward,  
6 and what wasn't? For instance, was it your impression that Ms. Powell was going to be  
7 appointed special counsel?

8           A    No, I didn't think there was any chance in the world after that, she was going  
9 to be appointed special counsel. I think between Meadows, myself, Pat Cipollone,  
10 Rudy -- I mean, Rudy was completely on our side at a certain point.

11          Q    Well, maybe let me ask it another way. Did President Trump make clear, at  
12 any point during that meeting, that that wasn't going to happen, or was that something  
13 that had to be ironed out afterwards?

14          A    It was pretty clear to me, it was not going to happen. I mean, it was -- once  
15 I thought I made it -- Rudy and Sidney against each other, I couldn't conceive of him going  
16 with Sidney. I don't think he knew Sidney that well, and obviously he knew Rudy for  
17 years.

18          Q    Was there really any consensus on any approach by the end of the meeting,  
19 as far as you could tell?

20          A    I think it was clear that the Dominion side of it, and what they were  
21 presenting, literally made no sense. I mean, just the coordination that she was talking  
22 about, different jurisdictions across different countries, and tracing it, and doing all this  
23 stuff, and saying, you know, that every judge in the country is corrupt who didn't rule in  
24 her favor, and you know, the voting machines tied -- or they're being internetted, and net  
25 service -- it was ludicrous. Forgetting that how in the world did you gather all this

1 information from all over the world in certain communist countries, and get access to  
2 their servers, and all that.

3 I had done cases like that, and that does not happen, no matter what your access  
4 is for an extended, extended period of time, if you ever get to it. So I thought that her  
5 entire theory was just nuts.

6 Q Did you stay until the end of that meeting?

7 A I think, at some point, Derek, Pat, and I left while there were still people in  
8 the room.

9 Q Were people on Sidney or Rudy's team still in the room when you left?

10 A I think -- well, Mark Meadows was definitely there. And there was no  
11 question in my mind that Mark was 100 percent on our side. And Mark had chewed out  
12 Flynn pretty significantly. I mean, really, really put him in his place. So I had no doubt  
13 that Mark was not going to let Sidney get an appointment into this role when we walked  
14 out. And it was clear that Rudy didn't want her doing it either. So we left, and then it  
15 had been a long night.

16 Q Do you know if Rudy, Sidney, and that crowd left before or after you?

17 A No, they left after us. Derek, Pat, and I were the first ones to leave.

18 Q Okay. But Mark Meadows was still in the room with them when you left?

19 A Yeah.

20 Q Okay?

21 BY [REDACTED]

22 Q Mr. Herschmann, tell us more about President Trump's participation in the  
23 meeting. Was he asking questions, was he making observations, was he the sort of  
24 focus of the conversation? Just give us a little more flavor about how he participated?

25 A Most of it, he was listening. He got upset with me when I was getting Rudy

1 against Sidney.

2 Q What did he say?

3 A Eric, why are you doing it? I mean, I was just screaming back. Why am I  
4 doing what? What am I doing? I said, Sidney, I just want you to tell him what the F  
5 you just said. Tell him, tell Rudy he's a dumb ass, he doesn't understand what he's been  
6 doing until now. And I knew Rudy long enough that that was never going to fly with  
7 Rudy. And the President was upset that I had, you know, played that card at a  
8 time -- and candidly, I was tired and I had it.

9 Q Yeah. Would you characterize him at the beginning of the meeting as  
10 genuinely receptive to the arguments that Ms. Powell and Mr. Flynn were making, and  
11 that over the course changed? Or just give me a sense as what you could tell, if  
12 anything, about his own view of the veracity of these allegations over the course of the  
13 meeting?

14 A I think when they first came in, he had no idea what to expect. I mean,  
15 what they started talking about, I was just sitting in the back. I was like, okay, let me  
16 just see what's going on. Let me see what they're going to say. I don't think he had  
17 any expectation that this was such an enormous demand or request, that initially I think  
18 he was just listening. Like, what are they talking about.

19 And then, you know, they were saying, well, you have the authority, you can do  
20 this, you can waive, you know, a security clearance, you can give us authority to do  
21 whatever, right? And so he was listening. He didn't provide any support. The only  
22 comments I remember him making were, it was embarrassing how their filings had  
23 misspellings. And you know, that Derek really went after them for how embarrassing  
24 their filings were. And he acknowledged that.

25 Q I mean, it sounds like when you heard this, to you, it was patently ridiculous.

1 I'm just wondering if, to the President, it was -- did he seem to think it was similarly  
2 ridiculous, or he was more open to the prospect?

3 A I don't think he conveyed, one way or the other. I think he just listened  
4 predominantly, you know. And I don't think he, at any point, really seriously  
5 entertained, I'm going to put Sidney in charge and let her go do these things as special  
6 counsel, even though he recognized he had the authority to do that, obviously.

7 Q Yeah. Well, is it fair to say that he wasn't convinced, or hadn't conveyed a  
8 position at the end of the Oval meeting, because it continued? I mean, it was obviously  
9 still a live discussion during that interim between the two?

10 A No, I think that Sidney -- they wouldn't leave. I mean, this is -- after that  
11 meeting, I spoke to the head of Secret Service detail. And I said, they cannot be allowed  
12 back in. They can't. You've got to block them from coming back on to campus. And I  
13 said put them on a do not enter list or whatever you have to do.

14 And I thought it was a given that they were never getting back. And then at  
15 some subsequent date, they had figured out a way around getting through. I think it  
16 was someone in Peter Navarro's office had waved them in. And then we found out they  
17 were wandering around, trying to get up to the residence.

18 So I don't think it's that, as much as she really wasn't going to leave. And then  
19 we had the -- subsequently, Mike Lindell, the pillow guy. You know, somebody got him  
20 in. And he was carrying, like, documents that Sidney had given him. And I remember  
21 Pat Cipollone asking me to come and deal with the pillow guy. And I was, like, no, no,  
22 no, you deal with the pillow guy.

23 Q And, Mr. Herschmann, all of that that you're just describing, then, through  
24 Navarro's people coming back, was that between these two meetings on December 18th?

25 A No.

1 Q Or is that a subsequent occasion?

2 A Subsequently. I'm saying that I -- I thought that it would have been over,  
3 and they realized they weren't going to get this, when we were having it out with them.  
4 But they didn't leave, right? They were hanging around, right? I think the President  
5 was getting tired. Okay, they're going to reconvene. And I was like, all right, let me get  
6 Mark to come in, right? And getting Rudy in, which I thought was a way to ensure that  
7 he and Sidney would have it out in front of --

8 Q Yeah, okay. But again, it just seems like the President was at least willing to  
9 continue the conversation. It's his house, right? It's his -- he's the one in the residence  
10 that admits this, and tolerates this ongoing discussion. Is that because he was still  
11 uncertain about the outcome between the Oval meeting and the residence meeting?

12 A No, I think -- I can't explain why he gave as much time as he did. But he  
13 did. I don't think it's that he was thinking, oh, I'm going to do this. I mean, it was -- at  
14 a certain point, it was clear he didn't have -- even the -- obviously, he's the President of  
15 the United States. And their screaming was going on, there wasn't going to be control  
16 done over just how they were behaving, and our reaction to it. I mean, Derek Lyons is  
17 pretty mild mannered, and he unloaded on them. Pat's pretty mild-mannered, and  
18 unloaded. It was significant screaming. And the President kind of watching the  
19 craziness that was going on. And then --

20 Q Go ahead. Sorry?

21 A And then, you know, when Meadows came in, I mean, when he came over  
22 to the residence, he really, really tore into Flynn.

23 Q I understand that. Did he ever, at any point, either the Oval meeting or the  
24 residence, make clear his decision, no, we're not going to do this. No, Sidney, you won't  
25 be special counsel. No, we're not going to seize voting machines. Did he ever say that



1 in a declarative way?

2 A I don't remember whether he said that in a declarative way. It was clear to  
3 me that when this was all done, and this was hours, this was not going to happen. You  
4 know, that much I would tell you. I don't remember a declarative statement, but it was  
5 clear when we were done, this was never going to happen. Sidney Powell was not  
6 becoming some special counsel, no matter what happened.

7 Q So it's your sense, even though there hadn't been a declarative decision  
8 expressed by the President?

9 A Yeah, that was my impression.

10 Q Okay?

11 A He was not going to do this.

12 Q Okay. Thanks?

13

BY [REDACTED]

14 Q Was there ever a discussion, whether that night or at any other time, about  
15 appointing anybody else to be special counsel to look into voter fraud?

16 A No. I mean, to put it in context, we put them on -- like, they can't enter the  
17 White House complex, period. They're not allowed on campus. And some way or  
18 another, the next thing we knew, I get a phone call, hey, Sidney is wandering the halls,  
19 trying to get up to see the President, when the President clearly was not going to see her.

20 And they made it -- and as I recall incredibly -- up to like a valet, who was there.  
21 And at some point, it was, like, get them out of the building. And they wouldn't leave.  
22 And eventually, someone had to come and tell them to get out. But I mean, I don't  
23 know what words to use to describe that behavior, but that's not rational conduct, in my  
24 view.

25 Q Do you know whether there was ever consideration given to the President

1 appointing Ken Cuccinelli to be a special counsel?

2 A I never heard that.

3 Q Do you know whether there was any consideration given to appointing Ken  
4 Starr to be special counsel?

5 A That would surprise me. I knew Ken. It would be really surprising to me.

6 Q Okay. Let's look at Exhibit 19.

7 The early morning of December 19th. The time stamp at the bottom says, 1:42  
8 p.m., but we understand this was actually 1:42 a.m. So presumably not that long after  
9 you finished the meeting in the residence that went over from the 18th, into the early  
10 morning of the 19th. It refers to Peter Navarro's 36 page report. The President wrote,  
11 "statistically impossible to have lost the 2020 election. Big protest in DC on January 6th,  
12 be there, be wild!"

13 Were you involved at all in the preparation of this tweet?

14 A No, I don't remember even seeing it.

15 Q Do you know whether there was anything about the meetings you had just  
16 had that would have prompted the President to tweet about January 6th?

17 A No, I can't imagine there was any connection to it whatsoever.

18 Q At that time, was January 6th a significant date in your mind?

19 A No.

20 Q Do you remember, even leaving aside the meetings we just covered on the  
21 18th, do you recall any discussions about -- at that time, about the joint session of  
22 Congress that was coming up on January 6th?

23 A No.

24 Q Do you remember any discussion about the rally that was being planned or  
25 the protest, to use the President's term, that was being planned for the 6th?

1 A No.

2 [REDACTED] I don't know if we have any Members on, but I'll pause to see if any  
3 Members have questions. Okay.

4 BY [REDACTED]

5 Q At any point after this December 18th meeting, did you ever discuss it, or  
6 have a debriefing on it with Mr. Meadows or anyone else?

7 A No, I'm certain that Pat and myself and Mark, at some point, discussed it.  
8 But it would have been, like, nuts. You know, I'm certain we -- I mean, we laughed. It  
9 was Derek's last night. And here he was hanging out with us.

10 At one point, I remember someone screamed at him, like, do you even still work  
11 here anymore? It was such a shocking comment, because I figured he had until  
12 midnight. But you know, they asked, you know, that type of question, that you're an  
13 outsider, was, say, improper, putting it mildly.

14 Q Did you -- did you learn anything in those conversations or discuss anything  
15 that you haven't already told us?

16 A No, I mean, there were -- there was a lot of cursing going on, and a lot of  
17 screaming, right? I mean, completely to the point that when this article got written, I  
18 thought my children were going to read it, and fall out of their chairs. Not that they  
19 don't hear me curse, but not that they expect me to be going that far in the Oval Office.

20 Q That's all I have?

21 BY [REDACTED]

22 Q Did President Trump ever encourage the Justice Department to be more  
23 aggressive in its investigation of election fraud allegations?

24 A I don't think encourage is the right term. There was Sidney as an example,  
25 Flynn, and others were in -- you know, part of the outside counsel group were pretty

1 routinely derogatory about DOJ. And I knew Bill Barr pretty well. I have the utmost  
2 respect for Bill, really, really the utmost respect. And I thought the allegations against  
3 him and DOJ were completely inappropriate. And I made my position clear on that.

4 Q To the President?

5 A Everybody.

6 Q Including the President?

7 A I would say including the President, yeah. I don't remember the specific  
8 times, but if someone was derogatory about DOJ in any meetings, I defended DOJ. And  
9 as it relates to an election. I'm not talking about, you know, special counsel or Russia or  
10 anything like that. I mean straight up on since Bill was the Attorney General.

11 Q Was President Trump ever critical of the Justice Department for not being  
12 more aggressive in investigating election fraud?

13 A I don't know if he -- that's the right term. I think it was more, at times, he  
14 mentioned Durham and where things stood on that stuff, but not on election fraud, right?  
15 Because I think Pat Cipollone and I made pretty clear that we believed DOJ was  
16 investigating every ballot, you know, claim of election fraud. That obviously DOJ's issue  
17 was, they don't make decisions on elections. You know, they investigate criminal cases.  
18 And there's a process that runs. And they didn't see, as far as I understood, enough  
19 widespread fraud in this election to overturn the election results under any  
20 circumstances.

21 Q Do you have any knowledge of any conversations that the President had  
22 directly with anybody at the Justice Department about allegations of voter fraud?

23 A The Jeff Clark meeting? You know, he's an environmental lawyer, I don't  
24 think I would put him in the election fraud category.

25 Q Other than that?

1 A There was a Bill Barr meeting that I think has been widely reported on.

2 Q Was that December 1st, the day that Attorney General Barr made his public  
3 statement?

4 A If that's the date, I accept that's the date. I obviously don't recall the date.

5 Q Any other conversations that you're aware of?

6 A Not that I'm aware of. I know there were references and documents to  
7 people trying to reach Jeff Rosen at certain points. And at some point, Jeff and I would  
8 have spoken, and told him -- we agreed he wasn't taking those calls.

9 Q So you agreed that Jeff Rosen was not taking the calls?

10 A Yeah.

11 Q From whom?

12 A Whoever was calling him. I don't remember -- somebody claimed to be  
13 trying to reach Jeff. Jeff mentioned it to me. And I told him, I said, don't.

14 Q So as I said earlier, December 1st, 2020 was when Attorney General Bill Barr  
15 did an interview with the Associated Press, where he said something to the effect of there  
16 was not evidence of widespread fraud sufficient to change the result of the 2020  
17 Presidential election. Do you know what the President's reaction was to that  
18 statement?

19 A I don't remember it exactly. I did read Bill's book. And I think Bill  
20 describes accurately my recollection of what happened.

21 Q Which was what?

22 A The President being upset over the fact that he had made the statement  
23 when he did, and being upset with Bill about it.

24 Q Were you with the President when he learned about Attorney General Barr's  
25 statement?

1           A    No, I was with -- I was, I think, standing in the hallway.   And Bill came down.  
2   He saw me.   He says, come on, Eric.   He was walking in to see the President.

3           Q    So you went in to the meeting with the President?

4           A    I went in.   Yeah, Will Levy also came.

5           Q    So who was there, the President, Will Levy, you, Pat Cipollone?

6           A    Yeah, and I think Mark Meadows was there.

7           Q    Anybody else that you can recall?

8           A    Not that I recall.

9           Q    What happened at that meeting?

10          A    I don't remember all the details.   I mean, I really just literally read Bill's  
11   book a few days ago.   Whatever you're going to find in Bill's book about that is  
12   consistent with my recollection.   I mean, not every single word, but it is consistent with  
13   my recollection.

14          Q    And it's your recollection that Attorney General Barr stood behind his  
15   statement?

16          A    Yes.

17          Q    And was the President upset with him?

18          A    I think he was upset with him.

19          Q    And what was your understanding of why the President was upset with the  
20   Attorney General?

21          A    I don't recall the specifics, as much as Bill decided to do a public statement  
22   and an interview that day.   And I didn't know why Bill did it, but he had done it.   And  
23   my initial reaction was that wasn't the best of timing when he did it.   But that was just  
24   my personal view.

25          Q    Why do you think it wasn't the best timing?

1           A    I don't remember what was going on, or what triggered it. All of that  
2 sudden, that day, Bill decided to do an interview. But he had done it. And I didn't  
3 even know the details of what he said, except I knew that he said there wasn't enough  
4 widespread fraud to overturn the election. But I remember the term was widespread  
5 fraud.

6           Q    Do you remember whether Attorney General Barr explained to the President  
7 that there was no evidence of ballots being backdated in Pennsylvania?

8           A    I don't remember that.

9           Q    Do you remember whether Attorney General Barr explained there was no  
10 evidence of suit cases full of ballots in Georgia?

11          A    I think he -- I don't think he said that. I think he said there was -- the  
12 explanation or what he had been told about that wasn't accurate. And they had  
13 investigated it. The Bureau had investigated it in detail, but I don't remember the  
14 details of it.

15          Q    Was the bottom line, though, that the Attorney General said there was no  
16 merit to the allegations that suit cases of ballots were used for fraud?

17          A    I don't remember that.

18          Q    Do you remember what Mark Meadows said during the meeting?

19          A    I don't think Mark said much during that meeting.

20          Q    Do you remember what Pat Cipollone said during the meeting?

21          A    Yeah, I remember, after things got heated, Pat and I defended Bill and DOJ.

22          Q    Do you remember what the two of you said about DOJ?

23          A    That we thought DOJ was investigating all legitimate complaints and  
24 allegations that had been submitted to DOJ.

25          Q    Do you remember anything else that Mr. Cipollone said during the meeting?

1 A No.

2 Q Do you remember anything else you said during the meeting?

3 A I just remember defending Bill and DOJ. I was a strong advocate for Bill and  
4 DOJ.

5 Q Do you remember whether Attorney General Barr referred to the outside  
6 legal team for the campaign as being either a clown car or a clown show?

7 A Something along those lines. You know, that they had not proven it.  
8 And, you know, maybe clown show, or something like that.

9 Q It's been reported that the President in response to that said, you may be  
10 right about that. Do you remember that?

11 A No, I don't remember.

12 Q Did Attorney General Barr offer to resign during that meeting?

13 A I believe so.

14 Q Did the President accept his resignation?

15 A I think, initially, the first response was yes, but then subsequently, he did not  
16 want it.

17 Q Meaning subsequently during that meeting, or sometime after the meeting?

18 A I mean almost immediately afterwards.

19 Q How did the meeting end?

20 A Bill and Will walked out. Pat, Mark, and I stayed a little bit, spoke to him.  
21 I called Bill, I think, on his cell, and said, don't leave. I said, Pat let's go. We went  
22 downstairs and Bill was getting into -- no, he was already in his Secret Service car. And  
23 banged on the window. And Bill said, Pat, get in. And we got into Bill's SUV. I don't  
24 remember where Will was sitting. And we spoke to Bill. And Bill ended up agreeing  
25 not to resign.



1 Q So you asked him not to resign?

2 A I think I said the President didn't want him to resign. And I knew Bill pretty  
3 well, and he was okay.

4 Q And how did you know that the President did not want him to resign?

5 A I think he said right after Bill walked out now, that that wasn't what he  
6 wanted.

7 Q Now, Attorney General Barr did eventually resign?

8 A Yes.

9 Q Do you know why Attorney General Barr resigned?

10 A I don't remember exactly why Bill resigned. I mean, I know he was tired.  
11 And I knew Bill pretty well before he came in to take the job, but I don't remember  
12 exactly why.

13 Q Was Attorney General Barr fired?

14 A No, I don't think Bill was fired.

15 Q Do you think Attorney General Barr was frustrated with his relationship with  
16 the President?

17 A I don't know if frustrated is the right word.

18 Q What would the right word be?

19 A I think at times, they had a very, very good things, and relationship.  
20 Sometimes they had disagreements. But Bill made his frustration with the President, I  
21 think, pretty well known directly to the President. So I would leave that between the  
22 two of them. But just my interactions with Bill from the day I met him, I find him to  
23 have an incredible amount of integrity. And he is absolutely brilliant.

24 Q Did Attorney General Barr's relationship with the President deteriorate after  
25 the election?

1           A    I don't know how to answer that. I mean, I really don't. The President  
2 obviously wasn't happy with his statement, but I don't know if I would say it deteriorated  
3 after the election.

4                   BY [REDACTED]

5           Q    On that very last point, Mr. Herschmann, was the President upset during this  
6 conversation that you've just been talking about that Barr had made a statement publicly  
7 without authorization, or was he upset about the underlying conclusion about the fact  
8 that he had not found evidence of systemic fraud sufficient to undermine the outcome of  
9 the election? What were his comments? Were they focused on the fact the statement  
10 was made or the underlying --

11          A    I don't think Bill needed permission from the President to issue a statement  
12 as the Attorney General. I don't even question that. If anything, I thought it was the  
13 timing of what he said. I don't know what triggered that day that Bill came out with that  
14 statement. But I think it was that. And it had been -- I don't think any of us knew it  
15 was coming. At least I didn't know it was coming. The first I heard of it was, you know,  
16 when Bill was in the White House, or maybe even with the President.

17          Q    Yeah, I'm just trying to get a sense as to whether you -- to separate the claim  
18 versus the announcement of the claim. What was the thing that the President was mad  
19 about? Which of those things?

20          A    I don't know. He didn't express it, other than, you know, he was unhappy  
21 with the statement. And I think the time -- to me, it was the timing of the statement,  
22 and it was just out, right? And that was before Bill came in. But I don't know any -- he  
23 didn't express anything, one way or another, that I could tell you the answer to that.

24          Q    Okay. So he didn't say, you're wrong about the fact that there's no  
25 widespread fraud, or challenge the underlying truth of the statement. It was more, how

1 could you make a statement?

2 A No. I don't remember. I mean, he may have challenged it as well. I just  
3 don't remember. I mean, I'm standing in the hallway. And the next thing you know,  
4 I'm sitting there. And I had no idea what was going to happen. And then it was, boom.  
5 And that was it. I don't remember if he challenged Bill on the accuracy of the statement  
6 or the timing -- I know the timing was obviously an issue. But I don't remember if they  
7 had that detailed -- or that argument or not.

8 Q Okay. So you remember the challenge to the -- or the frustration with  
9 the timing, but not necessarily the challenge to the underlying conclusion?

10 A No, there may have been a challenge to the underlying conclusion. I  
11 just -- I don't remember it. I just remember that DOJ hadn't brought any significant  
12 cases, so I was aware of that fact, obviously, right? And if there were significant cases,  
13 and it was going to be outcome determinative, I think I would have known that fact.

14 But I don't remember if it was, he challenged both. I just remember the fact that  
15 the statement came out. I was surprised that Bill would issue that statement. Shortly  
16 before coming over to the White House, you know, right beforehand on an interview with  
17 a reporter. So that was the surprise to me.

18 And my view was, okay, tempers -- you know, tempers are hot now, Bill was, you  
19 know, obviously frustrated. And then it all got dialed back down within -- by the time  
20 we got out of the car, it was clear Bill was not going to resign.

21 Q Do you know if Attorney General Barr made that statement to the  
22 Associated Press because he was concerned about public statements that the President  
23 was making about allegations of election fraud?

24 A I don't know. You'd have to ask Bill.

25 Q You earlier mentioned that, at some point, there was a meeting between the

1 President and Mike Lindell, the My Pillow guy that I think you said you did not attend?

2 A No, I don't think there was a meeting.

3 Q Oh, there was not?

4 A Mike Lindell came to the White House. I was in Pat's office. Lindell was, I  
5 think, rude to an assistant that worked for Pat, a woman. Pat was defensive of her.  
6 And Pat wanted to tell Lindell, he's not seeing the President. The President didn't want  
7 to see him, he had to leave. And Lindell was refusing to leave.

8 And Pat asked me to come down, and talk to Lindell. And I said, I'm not doing it.  
9 You get the pillow guy. And then Lindell was out walking in front, and someone -- some  
10 reporter took pictures of the documents he was holding, which appeared to be, I guess,  
11 Sidney Powell type of documents. And Pat went down, and I remember had some -- a  
12 reporter who came back, and said they had some conversation, where he made it clear to  
13 Lindell, you're not seeing the President. And instead, Lindell lingered for a while. And  
14 then we had somebody come and tell him he had to leave.

15 Q I know we're running out of time before you have to leave for a flight, so I  
16 would like to turn to the Jeffrey Clark story. So rather than me asking you a lot of  
17 detailed questions, why don't you just sort of start with, what's your understanding of  
18 how Jeff Clark came to the President's attention?

19 A I don't know who brought him in. Someone said, at one point, that it was  
20 Representative Perry, but I don't know if that's accurate or not. I got a call. I was  
21 sitting on a plane flying back from Texas to DC. And Jeff Rosen called me, and said,  
22 where are you? I said I'm on a plane, what's up? He said, when are you going to be  
23 back? And I said in four hours. And he like, it's going to be too late. It's, like, what  
24 are you talking about? There's a meeting with Jeff Clark. And I never met Jeff Clark.  
25 And I said, where? He said the Oval. I said, okay, relax. He goes, you've got to get

1 back.

2 So I remember calling Molly. I may have gone even into the bathroom on the  
3 plane because at that point, I don't remember if the doors were closed or not. I think  
4 barring it being Jeff, I'd say, gee, I wouldn't have answered.

5 I said, Molly, there's a meeting? She said, yes. I said, just stall it until I get  
6 there. I'm supposed to land at this time. I landed, called Molly, said, okay, I landed.  
7 And I came -- I flew in to Dulles, and took a car over to the White House.

8 And when I got there, we met -- I went up to Pat Cipollone's office. Jeff was  
9 there, Rich Donahue was there, Steve Angle, Pat Cipollone, and Pat Philbin. And I got a  
10 general discussion as to what Jeff Clark was proposing. And I was like, okay, don't worry  
11 about it. This is never happening.

12 Q What was he proposing?

13 A That he become Acting Attorney General. I lost you guys, by the way.

14 He would become Acting Attorney General. And I think I had known of the  
15 name, that he was some civil person at DOJ, dealing with environmental -- environmental,  
16 something like that.

17 And we then went down to the Oval. I think Philbin was sitting on the  
18 far -- facing the President. Phil was on the far right. I think it was me, and then Rosen  
19 was to my left. And then I remember Steve Angle being all the way on the far end.  
20 And Donahue was initially not in the meeting.

21 And Jeff Clark was making a play that he be put in charge of DOJ, and become  
22 Acting Attorney General. And that he if he got that, he would take certain steps. At  
23 one point, I said to the President, you know, Rich Donahue, he's here, and I don't  
24 remember if I suggested that Rich come in. But he said, get Rich to come in. And  
25 somebody went out and brought Rich into the meeting. And he sat like in between

1 people on the couch, behind.

2 And Jeff Clark was proposing that Jeff Rosen be replaced by Jeff Clark. And I  
3 thought the proposal was asinine. So I got teased a little bit by Jeff or Rich afterwards,  
4 that I know they testified before the Senate Committee and said, Eric was, you know,  
5 extremely aggressive, and he's trying to be polite about it.

6 Yeah, it was -- I did not think Jeff Clark remotely was qualified to become Attorney  
7 General. And I thought this was, like, his lifelong dream to have this opportunity. And  
8 he was making a pitch. And every time he would get clobbered over the head, he  
9 would, like, say, like you know, call to order. You know, you're the President, it's your  
10 decision. You get the chance to make this decision. And you've heard everybody, and  
11 you can make your determination.

12 And then we jump back in. And you know, really clobber him. And at one  
13 point, I remember saying, let me walk through, Jeff, what you want to do. And I  
14 cross-examined him in front of the President as to what his strategy was.

15 And when he finished discussing what he planned on doing, I said, good  
16 fucking -- excuse me, sorry, F'ing A-hole, congratulations, you just admitted your first step  
17 or act you would take as Attorney General would be committing a felony and violating  
18 Rule 68. You're clearly the right candidate for this job.

19 And then -- and he was -- and it was clear, I mean, everybody was on his case.  
20 The guy had never been before a grand jury, let alone having any idea how a criminal case  
21 would be prosecuted.

22 And you know, the people at -- DOJ people had said that they would quit if he got  
23 the role. It went on for a while. And Jeff would keep coming back, and trying to get  
24 the President to consider it. And the President at the end, you know, kept on  
25 saying -- listening to Jeff. And then the second Jeff would call -- I forget what term he

1 was using, like, you know, a call to order or something, and you get, you know, a vote.

2 Q Was it call the question?

3 A Call the question. Sorry, I couldn't remember the term. And it was just  
4 like, what are you talking about? Where are you? And later on, you know, I made fun  
5 of Bill, Cipollone and Steve Angle. I said to them, what's up with Kirkland & Ellis? I get  
6 you three guys, you know, Jeff Rosen and Bill Barr. And then I get, you know, this  
7 lunatic. And you know, others that all had gone through Kirkland & Ellis. I said, you're  
8 either a brilliant lawyer or you're in the nut job category.

9 But I thought Jeff's proposal -- Clark's proposals was nuts. I mean, here's a guy  
10 that, at a certain point, you know, listen, the best I can tell is the only thing you know  
11 about environmental and elections challenges is they both start with E. And based on  
12 your answers tonight, I'm not even certain you know that.

13 But it was -- I mean, he was completely berated at the point that I can't even tell  
14 you where he got it into his head that he should be Acting Attorney General. But I  
15 mean, the President listened. And it was, like, I'm not doing this.

16 Q Did you have an understanding --

17 A And I'm sorry, and I remember Cipollone saying, this is a murder-suicide  
18 pact.

19 Q What do you think he meant by that?

20 A That doing a deal with Jeff Clark, what Jeff was proposing would be like a  
21 mutual destruction. This is crazy.

22 Q Did you have any understanding of whether Jeff Clark had had previous  
23 conversations with the President about possibly being appointed as Acting Attorney  
24 General?

25 A It was clear, I thought, that they had spoken at some point beforehand.

1 But it's clear he didn't know Clark well. But I really looked at this, and thought, this  
2 guy's, like, trying to live out his lifelong dream of becoming Attorney General, to just  
3 come up with this ridiculous idea about how to do it. And his proposal, it was so idiotic  
4 about what he was describing, that if you understood how a criminal division worked, and  
5 grand jury process worked, and search warrants, it was completely ridiculous.

6 Q What was he proposing that he would do if he became Acting Attorney  
7 General?

8 A It was seizing machining, confiscating voting machines. And he didn't  
9 explain how he was going to do that. I said, you're not going to get a search warrant,  
10 right? Why don't you tell me how you get a search warrant, Jeff? It would be a nice  
11 education for me. I said, I've gotten a few in my professional career. Why don't you  
12 walk me through how that process works.

13 And I was like, let me guess, you don't have an F'ing idea, do you? And I said, so  
14 you would obviously go the grand jury route, right? You would obviously have to issue a  
15 grand jury subpoena to get hold of all this equipment, right.

16 And I'd go, yeah, okay, and then you're going to take it, and you're going to hold a  
17 press conference and make it all public, right? Yeah. And then you're going to make  
18 these articulations. Right. I said, well, did anyone ever explain to you Rule 68, right.

19 And then it was -- then it deteriorated down to, you know, literally  
20 congratulations, you would have to be the first AG candidate in history that admits the  
21 first act as AG would be to commit a felony. And then McDonahue laced into him. He  
22 couldn't even find a grand jury. He didn't even know where it was. And Steve  
23 Angle -- it was -- he was on an island trying to pitch this idea.

24 Q Do you know whether in advance of that meeting, the President had offered  
25 Jeff Clark the position of Acting Attorney General?



1           A    I don't. I could tell you that it was clear to me, Jeff Clark was making a run  
2   at the President to get a job, by pitching something that under scrutiny would never have  
3   withstood anything, forgetting that people were saying they would quit. That was kind  
4   of almost neither here nor there, since his theory to me never had a chance of going  
5   anywhere.

6           Q    Do you recall whether there was any discussion of the Justice Department  
7   sending a letter to state officials, asking -- telling them that there was voter fraud in their  
8   states, and asking the state legislatures to convene to consider whether sending an  
9   alternate slate of electors?

10          A    I don't remember the exact language. I know that he had prepared a letter  
11   that he was proposing to send. He wanted to discuss sharing with the President, and it  
12   was not shared with the President. But I know that he had a letter that Rosen  
13   or -- either before or after, I don't remember, others described as being nuts.

14          Q    Do you remember whether you ever saw the letter?

15          A    I probably saw it afterwards. I didn't see it before that meeting.

16          Q    You made reference to possible resignations. Can you tell us about that?

17          A    Jeff and Rich had said that large groups of DOJ -- senior people at DOJ would  
18   resign if Jeff Clark got appointed Acting Attorney General.

19          Q    Do you know who?

20          A    I mean, Rich and Jeff, obviously, but I don't remember who else.

21          Q    And Steve Angle as well?

22          A    I think Steve may have said it in the meeting. I mean, it was clear to me in  
23   that meeting that President Trump was not going to appoint Jeff Clark as Acting Attorney  
24   General. He had been, in my view, completely and absolutely humiliated by -- I mean,  
25   Rich was aggressive, and the trial lawyer, as I say, mentality. But

1 everybody -- everybody was really blasting him.

2 Q Do you recall whether the President ever said anything to Jeff Rosen to the  
3 effect of, well, you're not going to do anything for me, but this guy, meaning Jeff Clark,  
4 would?

5 A No, I don't recall that. I've been in a lot of meetings, and obviously  
6 contentious stuff. I don't know if I ever saw any lawyer get more lambasted and get  
7 smashed over the head than Jeff Clark did. And he's so out of touch with reality that I  
8 remember, he was walking out and turns to Pat Cipollone, and said, no hard feelings.  
9 And I don't remember what Pat said to him. I know we discussed afterwards. If I were  
10 them, I would have assigned him to somewhere -- you know, the farthest reaches  
11 humanly possible, where cell service came every three years. You know, I was, like, this  
12 guy's nuts.

13 Q Did you say whether you would resign if Jeff Clark were appointed Acting  
14 Attorney General?

15 A I don't remember. I may have, but I just -- I mean, my view was by the time  
16 we were done with Jeff Clark, there was no way in the world he was going to get  
17 appointed Attorney General.

18 Q Do you remember -- go ahead?

19 A This guy, he got clobbered. I mean, you're sitting there with OLC, White  
20 House counsel, the Acting Attorney General, the Deputy Attorney General, and myself,  
21 and deputy White House counsel. And I mean, and Jeff Clark was not even in my view  
22 remotely qualified for the position he was seeking, especially for the region he was  
23 seeking it. He just had no chance in the world.

24 Q Do you recall whether Pat Cipollone said whether he would resign if Jeff  
25 Clark were appointed Acting Attorney General?

1           A    I don't remember. He may have said that. I just don't remember.

2           Q    Do you remember whether Pat Philbin said whether he would resign?

3           A    He may have also said it. It may have been possible that at some point,  
4 everyone just said it to make the point. I'm just telling you, I really took this as this nut  
5 job as trying to live out his lifelong dream of making himself Attorney General. And he  
6 figured this is the pathway in. I mean, he was not expecting what happened in that  
7 meeting. He was ill equipped for, I mean, the beatdown that he took.

8           Q    Okay. What about after the meeting? What was discussed after the  
9 meeting?

10          A    I stayed back for a little bit with the President. He asked me to stay back.  
11 We went upstairs to Pat's office, kind of laughed over what happened. He said to me, I  
12 think we all need a drink. We had a drink, thinking like, okay, that's the craziest thing in  
13 the world. But and kind of said, you know, Clark's -- the comment that he made to  
14 Cipollone about no hard feelings, like, you know, everything is okay, even though I just  
15 tried that stunt. It was, like, okay, this guy needs to be put in -- assign him somewhere  
16 else on Earth, if he's staying. And that was it.

17          Q    Why did the President asked you to stay behind?

18          A    I don't know. I mean, I had been around him a lot. And just, I think, knew  
19 100 percent with confirmation that that guy's not qualified. And his pitch to you was  
20 ridiculous.

21          Q    Tell us more, Mr. Herschmann, about his conduct, the President's, during his  
22 discussion. I understand that Clark was clobbered. Was the President asking him  
23 questions? Was he chiming in? I'm curious if you could tell us more about how he  
24 participated in the meeting?

25          A    I don't remember him participating much. He may have said a throw away

1 line, like people say he's smart or something like that. I mean, I don't remember that.  
2 I just remember, you know, him getting -- it was -- I don't know how else to describe it.  
3 Jeff Clark got his head handed to him, but I don't remember the President reacting except  
4 that, you know, at the very end saying, okay, I appreciate your making this pitch to me  
5 and everything else. I'm not going to do it. That was the -- I don't remember what he  
6 said in between that, if anything.

7 Q The reason I ask is that both Donahue and Rosen have told us that Clark  
8 indicated that the President had decided to appoint him as Acting Attorney General.  
9 That they had to essentially ask for and get this meeting to try to undo that. And I'm  
10 wondering if you sensed any evolution in the President's perspective about that prospect  
11 over the course of the discussion?

12 A No, I don't know that Jeff Clark was a source for that, or where they got it  
13 from. I know that when Jeff Rosen called me, he was nervous. He asked me where I  
14 was, and four hours will be too late. I was like, relax. Okay, and then I was -- when we  
15 got there, we had a meeting in Pat's office beforehand, I was a thousand percent  
16 convinced that there was no way in the world Jeff Clark was going to walk out of that  
17 meeting as Acting Attorney General.

18 And it was clear that the President -- if the President had offered him the job and  
19 said, okay, I'm appointing him, the conversation would have been completely different.  
20 He kept on lobbying for the President to consider him.

21 Q Before this meeting, Mr. Donahue and Mr. Rosen had participated in several  
22 discussions with the President, in which he complained about the Department not  
23 sufficiently aggressively pursuing voter fraud investigations. Did that come up during  
24 the discussion, hey, you guys aren't doing enough on these issues, at least I have a chance  
25 with him, pointing to Clark?

1           A    I don't remember that. You know, I just don't remember him saying that.  
2    You know, just say -- you know, is it possible he said it? If Jeff and Rich said that's what  
3    happened, I'm not going to question them on what they said. But I mean, just so -- I had  
4    never heard of that, that Jeff Clark was going to be up for Attorney General, or  
5    anything -- that that was even a consideration until I got there.

6           Q    Before that, had you heard the President on other occasions complain about  
7    what he perceived as insufficient zeal by the Department on issues relating to the  
8    election or voter fraud?

9           A    No, I had heard a lot of people telling him and raising that, right? You  
10   know, that came out of the woodwork, you know, whether it be Sidney, Kurt Olson, Bill  
11   Olson, others raising the fact that DOJ wasn't doing enough. That I had had heard. But  
12   I had not heard the President say that.

13          Q    I see. So you heard other people say that to the President, but you hadn't  
14   heard him, himself, express those concerns or speculate that the Department wasn't  
15   being aggressive enough?

16          A    I had heard other people, and I don't remember if it was directly to the  
17   President or not. But there were outside people that I felt were routinely trying to get  
18   in by saying DOJ wasn't doing enough. And the campaign lawyer didn't know what the  
19   hell they were doing. And we do know this, and we have this. And I personally thought  
20   that the President, forgetting any client, but the President of the United States, sitting  
21   there and having this complete bombardment of telephone calls, documents being sent  
22   to him, claims of affidavits, claims of finding things, it was unfair. And I think that was a  
23   tack that people were taking to try to get into and get access to the President, which was  
24   why I put in the cutoff the document flow.

25          Q    It sounds like you weren't personally involved in any prior discussions about

1 DOJ efforts with respect to voting fraud with Donahue, Rosen, and the President, like  
2 altogether with them?

3 A I don't believe so. I mean, I would speak to Bill about what was going on,  
4 but I had a high level of confidence in Bill.

5 Q Post -- I'm talking now about post Bill's resignation, when Rosen took over as  
6 Acting AG. There were multiple meetings with the President and conversations with  
7 him. Were you a party to any of those?

8 A I was not. I told you that I remember Jeff would occasionally tell me,  
9 somebody was trying to reach him. It was an outside person purportedly, and the  
10 direction or advice of the President or whatever else. And I would say, Jeff, okay, don't  
11 answer. We agree, don't answer. Ignore them. I'll deal with it if it happens.

12 Q Okay?

13

BY [REDACTED]

14 Q Are you familiar with a December 21, 2020 meeting in which President  
15 Trump and Vice President Pence met with Members of the House Freedom Caucus to  
16 discuss raising objections at the joint session of Congress on January 6th?

17 A No.

18 Q I would like to show you Exhibit 23.

19 This is -- the first one, chronologically, is from Maria Ryan at Giuliani Partners to  
20 Molly Michael, January 4th, 2021. "Hi Molly, for POTUS to review, and then send to  
21 Senators. Please let me know if you received the three draft documents. These are  
22 intended to share with Senators." And the subject suggests the attachment is the  
23 immaculate deception, which we understood to be part of the so-called Navarro report.  
24 And then it looks like Ms. Michael forwarded it to you and Mark Meadows. Do you  
25 know whether at the White House shared the Navarro report with Senators?

1 A I don't.

2 Q Do you have an understanding of why Giuliani Partners wanted it to be  
3 shared with Senators?

4 A I don't. I just know that if this is -- if it went from Molly to me, then it's  
5 pretty safe to say that it was my intent that it's not going to the President.

6 Q Okay.

7 Then look at Exhibit 24. This is January 5th. The attachment, The Art of the  
8 Steal, which I think is part of the Navarro report. This is, understand, from Molly  
9 Michael again to you and Mark Meadows. The text says, "I was asked to send this to  
10 Congress, initiated by Peter Navarro." So do you know why Peter Navarro wanted that  
11 sent to Congress?

12 A I don't know. I can't answer about what Peter Navarro did or was thinking.

13 Q Do you recall whether you did anything with this document?

14 A I would have told Molly not to send it.

15 Q All right. And what was Peter Navarro's role in dealing with Members of  
16 Congress related to the joint session of Congress on January 6th?

17 A I have no idea.

18 Q Okay. Do you have any knowledge of whether he was trying to encourage  
19 Members of the Senate to object?

20 A I don't know what Peter was doing at all.

21 BY [REDACTED]

22 Q So I suppose there are two readings of this email. One is Molly Michael is  
23 asked by Peter Navarro to send The Art of the Steal to Congress. The other reading is  
24 that President Trump asked her to send it to Congress, but that the report or the request  
25 originally was initiated by Peter Navarro. Do you have any sense as to whether one of

1 the things is more likely than the other?

2 A I think it's probably Peter Navarro's request. Because if the President  
3 asked, she would normally say POTUS asked. She would say POTUS asked to send this  
4 to Congress, right? So the way it's written, my guess it would be that Peter had asked.

5 Q Do you know why Peter Navarro would be asking the President's assistant to  
6 circulate any information to Members of Congress or really using her in any capacity?

7 A No idea.

8 Q Do you recall meeting in mid-December between the President and the Vice  
9 President regarding the Vice President's role in the electoral certification?

10 A I don't recall.

11 Q Let's look at Exhibit 9.

12 Handwritten notes on chief of staff stationery, underlined at the top, it says, brief  
13 POTUS. Do you recognize this document?

14 A No.

15 Q Do you know whose handwriting it is?

16 A I don't.

17 Q Okay. When it says at the beginning, "Marc Short on VP role for January 6,  
18 2021." Do you know what that refers to?

19 A I don't. Obviously, other than reading the words, but I don't.

20 Q Right. Okay. Do you know whether Marc Short briefed the President on  
21 the Vice President's role, or whether somebody else briefed the President on Marc  
22 Short's view of the Vice President's role?

23 A I don't. I mean, there were times when I would be walking out of the Oval,  
24 and the VP would walk in, or say come back in. But I don't recall this stuff.

25 Q Okay. Sorry, there were times when you would be asked to come back in,



1 did you say?

2 A The VP would ask me to come in. I didn't have a scheduled meeting. And  
3 he would see me, and say, Eric, come with me.

4 Q Was any of that for matters related to January 6th joint session of Congress?

5 A I don't remember. I mean, it dealt, at some point, with legal matters, but I  
6 don't remember.

7 Q And then it says, "Ted Cruz-audit commission on." Do you know what that  
8 refers to?

9 A No idea. I've never seen this.

10 Q Okay. And then it says, "Brad Raffensperger call with." Do you know  
11 what that refers to?

12 A No.

13 Q Okay. Let's get Exhibit 10.

14 Again, on chief of staff stationery. It looks like similar handwriting, although I  
15 can't be certain. Clela Mitchell's name, and then phone number, Michele Roosevelt  
16 Edwards' name and phone number. And then command sergeant major. Do you know  
17 what this document is?

18 A No.

19 Q Do you know who Michele Roosevelt Edwards is?

20 A No, never heard of the name.

21 Q Are you familiar with allegations that are sometimes referred to as Italy  
22 Gate?

23 A Give me a greater description.

24 Q I believe the theory is that the Italian government used satellites to change  
25 the outcome of the 2020 Presidential election?

1           A    Yeah, I heard something about this.

2           Q    What did you hear?

3           A    Just what you said.   At some point, someone else argued Germany, I  
4   remember.

5           Q    Okay.   Well, the Germany issue may be an allegation that Dominion -- or  
6   votes cast using Dominion machines were counted in Germany.   Does that sound  
7   familiar to you?

8           A    I just -- I don't remember it.   I just remember it being what I thought was a  
9   far-fetched, you know, ridiculous, you know, position that they were taking.   Just, you  
10   know, Venezuela, Hugo Chavez, the Italians, the Germans.   Various other countries that  
11   would have taken an historical cooperation, you know, amongst countries to do this,  
12   supposedly with the Democrats.   I didn't think that was practical.

13          Q    And do you remember who was advocating these theories?

14          A    I don't.   I don't think it was Rudy, actually, but it may have been someone  
15   else on these other things.

16          Q    Okay.   Let's look at Exhibit 25.   And we've talked at length about John  
17   Eastman, so I'll try not to ask too much, but I have a couple documents I wanted you to  
18   look at.   This is December 20th, 2020, from John Eastman to you at a Gmail account.  
19   Subject, "are you back in the States?   If so, give me a call.   John."   And then his phone  
20   number.

21                Do you recall whether you talked to John Eastman in response to that?   And if so,  
22   what it was about?

23          A    I don't.   By the way, I would love if you guys would redact that email  
24   address.

25          Q    Okay.   Yes, we can do that.

1           A    Thank you.

2           Q    Let's go to Exhibit 29.

3                    There's an email from Ivan Raiklin to several people at the White House, and  
4   you're copied on it.   Subject, time sensitive, hours urgent, a lot of exclamation points in  
5   there.   "Title III USC Section 12, maneuver Pence card by midnight! If you want to be  
6   reelected, you better get VP Pence to do this in the next few hours.   This will almost  
7   guarantee victory and avoid January 6 showdown."

8                    And then there's in the document a memo.   It does not make clear who wrote  
9   the memo, but as I said, Ivan Raiklin is the one who sent it to you and others.   The  
10   subject is "operation Pence card."   Do you know what this memo is?

11           A    I have no idea.   It's funny because until you read the beginning of the email,  
12   there were a lot of emails coming in.   And this one was, if we want to get reelected.  
13   And I thought, well, good, I'm not an elected official, so that's great.   It doesn't apply to  
14   me.   But at some point, I went to Tony Ornato and said, can we please figure out how to  
15   cut off emails that come pouring in from the outside.   And he -- I don't remember what  
16   they did, but I thought they figured out a way of doing it.

17           Q    Do you know who Ivan Raiklin is?

18           A    Never heard of him.

19           Q    So let's look at Exhibit 30.

20                    This is a memo dated December 31, 2020, prepared by Jenna Ellis to President  
21   Donald J.   Trump.   "Memorandum, RE constitutional analysis of Vice President  
22   authority for January 6, 2021 Electoral College vote count."   Do you recall ever seeing  
23   this memo before?

24           A    I had heard about a memo that Jenna had done.   But I would be surprised if  
25   Jenna -- if Jenna actually did this research and provided it.   My guess it was -- she was

1 trying to get herself more in the mix. I think this is the one that she tried to ask Jay -- or  
2 someone to deliver to the President. And it wasn't making its way there, but I don't  
3 remember this.

4 Q Do you know whether it ultimately made its way to the President?

5 A I don't think it did.

6 Q Okay. Let's go to Exhibit 33.

7 This is another memo prepared by Jenna Ellis. This is dated January 5th, 2020.  
8 And it's addressed to Jay Sekulow, "RE Vice President authority in counting electors  
9 pursuant to U.S. Constitution and 3 USC Sections 5 and 15." Have you seen this  
10 document before?

11 A I don't remember it. I remember at some point, Jay and I having a  
12 conversation about Jenna.

13 Q And what do you recall from that conversation?

14 A That we didn't think she had the qualifications or the experience to be giving  
15 advice on this. Or litigating the challenges.

16 Q Did Mr. Sekulow express a view regarding what the Vice President's  
17 authority was at the joint session of Congress?

18 A No, I don't think Jay was supportive of -- if he was aware of it, I don't think  
19 he was supportive of it. But I don't remember Jay participating in these things. I don't  
20 see Jay sharing this with the President. I can't conceive of a situation of when it would  
21 happen.

22 Q Okay. Let's go to Exhibit 31.

23 This is an one-page set of bullet points. "Jefferson used his position as Vice  
24 President to win." Our understanding is that Johnny McEntee wrote that. Is that  
25 consistent with your understanding?

1           A    I don't know. I can't imagine Johnny McEntee knowing the legal history of  
2 Jefferson on this stuff, but I don't remember even seeing it.

3           Q    Okay. As you sit here today, does it cause you any concern if Johnny  
4 McEntee was writing a memo like that to the President, rather than having it go through  
5 either you or White House counsel?

6           A    I don't know. I can't imagine the President would pay attention to Johnny's  
7 view on the legal challenges.

8           Q    Okay. Exhibit 32.

9           There's a handwritten note. This says, "this is probably our only realistic option  
10 because it would give Pence an out." Signed, Johnny. And I can represent to you that  
11 that's Johnny McEntee. And then the next page, there's one page set of bullets, similar  
12 format to the one about Jefferson. This one, though, says, "Pence can let the states  
13 decide." Have you seen this before?

14          A    I haven't.

15          Q    This one says, "there's a middle path. On January 6th, the VP could only  
16 accept half the electoral votes from the disputed states instead of all." Have you ever  
17 heard that theory or proposal, that the Vice President could accept only half of the  
18 electoral votes from the disputed states?

19          A    No.

20          ██████████ Does anybody else have questions before I move on?

21          BY ██████████

22          Q    Do you have any knowledge of any interactions between the Vice President  
23 and state officials regarding the 2020 election?

24          A    No, not that I recall.

25          Q    Do you have any knowledge about the government versus Pence lawsuit?

1 A I'm sorry, I didn't hear what you said.

2 Q Do you have any knowledge of the Gohmert versus Pence lawsuit, filed by  
3 Congressman Louie Gohmert regarding the Vice President's authority on January 6th?

4 A Generally, I remember hearing about it, but I don't remember any details  
5 about it.

6 Q Do you know whether the President or anybody at the White House had any  
7 role in encouraging Congressman Gohmert to file that lawsuit?

8 A Not that I know of.

9 Q If you look at Exhibit 34, which we'll put on the screen.  
10 It's an email, December 28, 2020, from Sidney Powell to Molly Michael, subject,  
11 "latest filing." The text says, "it would be very helpful to have some Senators sign onto  
12 this suit. State AGs to file amicus or join. We're hoping Pence will agree with the relief  
13 requested. No one should be certifying a fraudulent election." And then it is  
14 forwarded from Molly Michael to you and Mark Meadows. And the attachment is  
15 Gohmert versus Pence 2020EDTX.PDF?

16 A Was the lawsuit filed? I don't remember anymore.

17 Q Yes.

18 A Okay.

19 Q Yeah, Louie Gohmert's lawsuit was filed. Do you know anything about an  
20 effort to get Senators to join onto that suit?

21 A No.

22 Q Any knowledge of any effort to get state attorneys general to file an amicus  
23 brief?

24 A No, if Molly sent this to me, then this did not go any further.

25 Q Okay. Let's look at Exhibit 35.

1           You've already talked about your in-person interaction with John Eastman on  
2           January 5th, I think it was in Greg Jacob's office, where Marc Short had you come along.  
3           But this is -- it looks like a missed call notification, a call from you to John Eastman, 7:50  
4           a.m. It looks like that's probably Colorado time, because I think John Eastman was a  
5           visiting professor at Colorado at the time. Do you recall why you were calling John  
6           Eastman that morning?

7           A     Is this the day that we met with Greg Jacobs?

8           Q     Yes. So this is the day after the President and the Vice President met with  
9           John Eastman. And it's the morning of the day that you met with Greg Jacobs in Greg  
10          Jacobs' office?

11          A     I don't remember it, but my only guess would be someone told Eastman was  
12          looking for me, and he was there. That's the only reason I could think of.

13          Q     So we talked earlier about the January 7th videotaped statement that the  
14          President did, that I think is referred to as the Remarks on National Healing. I want to  
15          show you Exhibit 7.

16          A     I don't know if it was called that at the end, but my recollection that was the  
17          Philbin title that he had given for what he had written up.

18          Q     Well, yeah, that was the title he used for this draft, so this draft was called  
19          Remarks on National Healing, Exhibit 7. So a typed up draft of the remarks with  
20          handwritten edits. Do you know whose handwritten edits those are?

21          A     I don't. If you go down a little bit maybe, but I don't -- further down, sorry.  
22          I don't.

23          Q     Did you have any conversations with anybody about the draft of those  
24          remarks?

25          A     I'm sure I did.

1 Q Do you recall whether you made any edits to it?

2 A I don't remember if I made edits, but I'm certain I spoke with Jared, Ivanka,  
3 probably Pat Cipollone, Pat Philbin, maybe Steven Miller, someone else in the speech  
4 writing, about what was going to be said on the 7th.

5 Q Okay. What do you recall from those conversations?

6 A Just everyone working collectively as to what would be said, on the 7th.

7 Q Was there anything that the President was reluctant to say that he was  
8 asked to say?

9 A Not that I recall. I thought that this was the normal regular process,  
10 that -- it would have been done in speech writing.

11 Q So I know you told us earlier about a conversation that you had with Vice  
12 President Pence following the events of January 6th. After January 6th, did you have  
13 any conversations with his chief of staff, Marc Short, about what happened on January  
14 6th?

15 A I don't think so.

16 Q Did you have any conversations with Marc Short on January 6th?

17 A No.

18 Q Were you involved in any conversations about the possible invocation of  
19 martial law or the Insurrection Act with regard to the 2020 Presidential election?

20 A No. I know that there was -- somebody wrote about it dealing with General  
21 Flynn. That's not -- martial law, those words, or Insurrection Act, were not, to my  
22 recollection, used.

23 Q Did General Flynn or anybody else ever propose that there could be  
24 essentially a redo of the election?

25 A I don't know if redo is the right word, but they were proposing -- I don't



1 remember the details, but seizing of machines. And, you know, that type of, you know,  
2 conduct. But I don't remember if redo is the right term.

3 Q But in addition to seizing machines, was there any suggestion that there  
4 could be a new election?

5 A I don't recall that. I just remember it being -- we're getting yelled at that  
6 we're quitters, that we're not going ahead and fighting this the way they had proposed it.

7 Q Are you aware of any discussion of possible invocation of the 25th  
8 Amendment after January 6th?

9 A No.

10 [REDACTED] I have a few things.

11 BY [REDACTED]

12 Q First, earlier you mentioned something that I had found to be interesting.  
13 You mentioned that Jenna Ellis had written a memo about the VP's role, because she was  
14 trying to get in the mix. Was it your perception, generally, that there were people who  
15 felt like they could get in the mix or curry favor with President Trump, that they provided  
16 him with legal options that he could pursue after the election?

17 A No, I think Jenna just wanted to communicate with the President. And a  
18 way of trying to communicate with the President was to get -- a more firm if I had memo,  
19 a John Eastman memo, simplified down by sending it in. And I just knew it wasn't being  
20 delivered to him.

21 And I just knew it wasn't being delivered to him. So she was trying to do it via  
22 Jay or Mark Meadows. But that's why I thought she just wanted to be in the mix. I  
23 mean, some of the stuff by background is, Jenna would talk to the President sometimes.  
24 And I understood her to come back to the campaign, and say, I spoke to the President, X.  
25 And the people there didn't know.

1           And at some point, I got wind of that, and they asked me to join a call with them,  
2           and kind of laced into Jenna some in front of everybody.   And then she kind of stopped  
3           doing it.   But I think it was very much her just wanting to be part and say I'm talking to  
4           the President.

5           Q    So it was the proximity to the President that appealed to her, in your  
6           understanding?

7           A    Yes, she wanted to be, like a lot of people wanted to be, coming in close to  
8           the President.   Close to the Oval.

9           Q    Were there other people who exhibited that kind of behavior?

10          A    I think a lot of the people that sent in things.   I remember that Bill situation  
11          and others.   And colonels that -- also that wanted to be in contact with the President.  
12          And some of these people, the President had never met before, as far as I knew.   And  
13          they were calling because somebody recommended them.   And then they come in and  
14          propose something that I found impossible to believe that they had come up with  
15          evidence while they're sitting in their own private practice sufficient to present to the  
16          President.

17          Q    Right.   And so the way they could get in the door, so to speak, was to have  
18          some sort of proposal or idea about the election?

19          A    Yeah.   I think -- well, listen, I mean, I did make the joke about Kirkland &  
20          Ellis, but I'm serious.   It was literally a joke.   These people would come up, and you'd  
21          look up who they were, and a bunch of them had gone through Kirkland & Ellis.

22          I used to tease Cipollone.   I said, I don't get this place.   And Pat's response was,  
23          they were never equity partners.   I said, Pat, I don't get -- how did all these people come  
24          through this place?   I got you guys, who I really thought were great brilliant lawyers.  
25          And these guys have great resumes that I thought were nut jobs.

1           So they would figure out some means of getting in contact, and then sending  
2 something in, or lobbying a phone call. And they were -- because they got a  
3 recommendation from someone or their background, they were able to reach him or  
4 send an email in.

5           Q    Okay. One other thing. We have heard that, at some point after the  
6 election, you and Jared Kushner had a conversation where he told you something to the  
7 effect of, you know, reach out to me if things get bad, or if I can make a difference in any  
8 way. Do you recall any conversation like that?

9           A    Yeah, I don't know if it's exactly like that. It was after the election. And I  
10 think after the President decided to put Rudy in charge, I had a conversation with Jared,  
11 where I said, listen, go try to solve like Mission Impossible, like Middle East peace, and  
12 deal with COVID, and get us vaccines and get all that stuff done.

13           You know, I'll deal with the lawyers and litigation. And I didn't think Jared  
14 was -- if he could add value, maybe. I didn't think he was going to be as confrontational  
15 as I would be with the group. So that's when we sat and decided, candidly, went off and  
16 pulled off the impossible. A once in a lifetime opportunity, and he delivered it, so -- but  
17 that was the general gist of, go do things that you can get done and forget this.

18           Q    Was it your sense that you needed someone around who could be  
19 confrontation in dealing with Rudy's team after he took over?

20           A    I don't know if it's that, per se. I think my personality is what it is. I won't  
21 say I'm older than Pat Cipollone, but not particularly older than him. But I had known  
22 Rudy from New York days. And I just felt that I had the ability to fight with this group if  
23 need be.

24           And I had spent 35 years of my professional career, I don't think I ever raised my  
25 voice, ever. And I was general counsel of a publicly traded company, I was vice

1 chairman, President, and CEO. I never raised my voice, been a partner in a law firm.  
2 Been a prosecutor, and never did it.

3 And there was more screaming that went on in my time in the White House than  
4 every single year combined. It was at a certain point, people thought that they were  
5 going to like bully us down. And I was just going to have none of it. So I don't think  
6 Jared was there for any -- I think Jared would have fallen out of his chair if he heard what  
7 had been going on, with the amount of screaming. It was definitely not his personality.

8 Q Was there ever a point where you felt you needed to call Jared or someone  
9 from the family in? Obviously, we already talked about Ivanka Trump on the day of the  
10 6th?

11 A I don't think so. I don't think that there would have been a time when -- I  
12 won't say value add, but they're weren't going to win a legal battle. They weren't going  
13 to be able to articulate how a courtroom process works, or using DOJ, or how we would  
14 actually present a case, even if you uncovered fraud in the time period. They just didn't  
15 have that experience.

16 Q Right. I suppose that's true, but what about those -- the larger  
17 conversation about whether to keep fighting or whether to -- you know, commit to a  
18 transfer of power? Is that something you felt like the family could have added value in?

19 A So we're clear, I don't think there was any question in my mind that there  
20 would be a peaceful transfer of power. You know, January 6th aside over what  
21 happened, even then, there was no question in my mind that there was going to be a  
22 transfer of power.

23 I mean, Ivanka was working on transition, like for an extended period of time. I  
24 mean, completely, you know, getting memos ready, boxing up documents and organizing  
25 them. And I saw that. So I think it's a given that that's what was happening. White

1 House counsel was boxing things up, where everyone was getting ready to move.

2 So I don't question that people were thinking, no, we're staying in our offices and  
3 no one's leaving. I don't believe that. But the President decided to express his views  
4 and raise the election challenges the way he deemed fit. And he was the President.

5 Q Did you ever hear him, Mr. Herschmann, acknowledge that he had lost or  
6 commit himself to the inevitability of a transition at any time before January 6th?

7 A I think he was committed to a transition. I mean, there were discussions  
8 about who is going to work where, and where the office was going to be, long before  
9 January 6th. There's no question about that.

10 Q Okay?

11 A There's no question in my view that I knew he was going to go down to  
12 Florida. And people that worked in the White House were offered positions to go.  
13 And that was before January 6th.

14 Q Did you ever hear him acknowledge that he had lost or talk about why he  
15 had lost? Did he use those words?

16 A I don't -- I didn't have discussions like that with him.

17 Q And it sounds like when he was talking about his future plans in Florida, did  
18 you ever raise with him his public rhetoric, which were kind of the opposite, continuing to  
19 say that the election was stolen, and that he was going to fight until the very end to  
20 maintain -- to overturn the result and maintain his authority?

21 A I don't recall discussions like that. I mean, there was no question in my  
22 mind, January 20th, everybody was out, including the President. And he understood  
23 that. Challenges or no challenges, that's what was happening.

24 Q Besides talking about moving to Florida, what else did he say or do that  
25 suggested to you his awareness of that?

1 A He offered people jobs.

2 Q Okay?

3 A So -- and they accepted, and were moving to Florida.

4 Q Right?

5 A Pretty clear to me that he was moving to Florida, and so were other people  
6 that were going to go continue to work for him.

7 Q How early do you recall that discussion -- those discussions taking place, him  
8 offering people jobs?

9 A I don't remember. It was before January 6th and obviously post November  
10 3rd.

11 Q Okay. But in terms of whether it was going -- go ahead?

12 A I mean, whatever the election date got called, whenever the election got  
13 called before January 6th, that had been in discussions.

14 Q I understand. Anything else that he said or did that gave you a sense that  
15 he was aware of the fact that the administration was ending?

16 A I don't know how to answer. Just practically speaking, it was ending. I  
17 don't remember exactly, you know, discussions about it. But it was ending, and he was  
18 going to be moving to Florida when it was over.

19 BY [REDACTED]

20 Q Did you have any conversations with Jeff Clark, other than the December 3rd  
21 meeting at the White House?

22 A No. That was really my first and only interaction with him.

23 Q Okay. Are there any things that you can think of that we should know  
24 about, that we have not asked about yet?

25 A No.

1           Q    Do you have any thoughts on how to prevent a tragedy like what happened  
2 on January 6th from happening again?

3           A    I don't know how to answer that.    I mean, I'm sorry, you know, listen, there  
4 are a lot of things that would have been done differently, right?    It was definitely lessons  
5 learned, whether it be security at the Capitol, and a million other different things that  
6 happened, right?    But other than that, I don't really know the answer.

7           Q    Okay.    That's all we have.    So I would just check one last time to make  
8 sure there are no Members on that have questions.    There are no Members on.    Okay.  
9 That's all we have.    Unless you have anything else, we'll go off the record now.    Off the  
10 record, 6:21.

11           [Whereupon, at 6:21 p.m., the interview was concluded.]

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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