

HEARING ON THE JANUARY 6TH INVESTIGATION

HEARING

BEFORE THE

SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH ATTACK ON THE UNITED STATES CAPITOL

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HEARING ON THE JANUARY 6TH INVESTIGATION

Thursday, June 23, 2022

U.S. HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE THE JANUARY 6TH
ATTACK ON THE UNITED STATES CAPITOL,
Washington, DC.

The Committee met, pursuant to notice, at 3:02 p.m., in room 390, Cannon House Office Building, Hon. Bennie G. Thompson (Chairman of the Committee) presiding.

Present: Representatives Thompson, Cheney, Lofgren, Schiff, Aguilar, Murphy, Raskin, Luria, and Kinzinger.

Chairman THOMPSON. The Select Committee to Investigate the January 6th Attack on the United States Capitol will be in order.

Without objection, the Chair is authorized to declare the Committee in recess at any point.

Pursuant to House Deposition Authority Regulation 10, the Chair announces the Committee's approval to release the deposition material presented during today's hearing.

Good afternoon.

In our previous hearings, the Select Committee showed that then-President Trump applied pressure at every level of government, from local election workers up to his own Vice President, hoping public servants would give in to that pressure and help him steal an election he actually lost.

Today, we will tell the story of how the pressure campaign also targeted the Federal agency charged with enforcement of our laws: The Department of Justice.

We have already covered part of Mr. Trump's effort. We heard Attorney General Bill Barr tell the Committee about the baseless claims Mr. Trump wanted the Justice Department to investigate and that Mr. Barr viewed those claims as nonsense.

Today, we will hear from Jeffrey Rosen, the person Mr. Trump appointed to run the Justice Department after Attorney General Barr resigned. We will hear from other senior Justice Department officials also.

Together, these public servants resisted Mr. Trump's effort to misuse the Justice Department as part of his plan to hold onto power. We will show that Trump's demands that the Department investigate baseless claims of election fraud continued into January 2021.

But Donald Trump didn't just want the Justice Department to investigate; he wanted the Justice Department to help legitimize his lies, to baselessly call the election corrupt, to appoint a special

counsel to investigate alleged election fraud, to send a letter to six State legislatures urging them to consider altering the election results.

When these and other efforts failed, Donald Trump sought to replace Mr. Rosen, the Acting Attorney General, with a lawyer who he believed would inappropriately put the full weight of the Justice Department behind the effort to overturn the election.

Let's think about what that means.

Wherever you live in the United States, there is probably a local government executive—a mayor or a county commissioner. There is also an official responsible for enforcing the laws—a district attorney or a local prosecutor.

Imagine if your mayor lost a reelection bid but, instead of conceding the race, they picked up the phone, called the district attorney and said, "I want you to say this election was stolen. I want you to tell the board of elections not to certify the results."

That is essentially what Donald Trump was trying to do with the election for President of the United States. It was a brazen attempt to use the Justice Department to advance the President's personal political agenda.

Today, my colleague from Illinois, Mr. Kinzinger, and our witnesses will walk through the Select Committee's findings on these matters.

But, first, I will recognize our distinguished Vice Chair, Ms. Cheney of Wyoming, for any opening statement she would care to offer.

Vice Chair CHENEY. Thank you very much, Mr. Chairman.

At this point, our Committee has just begun to show America the evidence that we have gathered. There is much more to come, both in our hearings and in our report. But I would like to take just a moment to put everything we have seen in context.

We have already seen how President Trump falsely declared victory on November 3, 2020; how he and his team launched a fraudulent media campaign that persuaded tens of millions of Americans that the election was stolen from him.

Donald Trump intentionally ran false ads on television and social media featuring allegations that his advisors and his Justice Department repeatedly told him were untrue.

We have also seen how Donald Trump launched a fraudulent fundraising campaign that raised hundreds of millions of dollars—again—based on those same false election fraud allegations.

We have seen how President Trump and his allies corruptly attempted to pressure Vice President Pence to refuse to count lawful electoral votes and obstruct Congress's proceedings on January 6th and how he provoked a violent mob to pursue the Vice President and others in our Capitol.

We have seen how the President oversaw and personally participated in an effort in multiple States to vilify, threaten, and pressure election officials and to use false allegations to pressure State legislators to change the outcome of the election.

We have seen how President Trump worked with and directed the Republican National Committee and others to organize an effort to create fake electoral slates and, later, to transmit those materially false documents to Federal officials—again—as part of his planning for January 6th.

We have seen how President Trump persuaded tens of thousands of his supporters to travel to Washington, DC, for January 6th. We will see in far more detail how the President's rally and march to the Capitol were organized and choreographed.

As you can tell, these efforts were not some minor or ad hoc enterprise concocted overnight. Each required planning and coordination. Some required significant funding. All of them were overseen by President Trump. Much more information will be presented soon regarding the President's statements and actions on January 6th.

Today, as Chairman Thompson indicated, we turn to yet another element of the President's effort to overturn the 2020 election, this one involving the Department of Justice.

A key focus of our hearing today will be a draft letter that our witnesses here today refused to sign. This letter was written by Mr. Jeff Clark with another Department of Justice lawyer, Ken Klukowski, and the letter was to be sent to the leadership of the Georgia State legislature. Other versions of the letter were intended for other States.

Neither Mr. Clark nor Mr. Klukowski had any evidence of widespread election fraud, but they were quite aware of what Mr. Trump wanted the Department to do. Jeff Clark met privately with President Trump and others in the White House and agreed to assist the President, without telling the senior leadership of the Department who oversaw him.

As you will see, this letter claims that the U.S. Department of Justice's investigations have "identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia."

In fact, Donald Trump knew this was a lie. The Department of Justice had already informed the President of the United States repeatedly that its investigations had found no fraud sufficient to overturn the results of the 2020 election.

The letter also said this: "In light of these developments, the Department recommends that the Georgia General Assembly should convene in special session" and consider approving a new slate of electors.

It indicates that a separate, fake "slate of electors supporting Donald Trump" has already been "transmitted to Washington, DC."

For those of you who have been watching these hearings, the language of this draft Justice Department letter will sound very familiar. The text is similar to what we have seen from John Eastman and Rudy Giuliani, both of whom were coordinating with President Trump to overturn the 2020 election.

When one of our witnesses today, Mr. Donoghue, first saw this draft letter, he wrote this: "This would be a grave step for the Department to take, and it could have tremendous constitutional, political, and social ramifications for the country."

This Committee agrees. Had this letter been released on official Department of Justice letterhead, it would have falsely informed all Americans, including those who might be inclined to come to Washington on January 6th, that President Trump's election fraud allegations were likely very real.

Here is another observation about this letter. Look at the signature line. It was written by Jeff Clark and Mr. Klukowski not just

for Clark's signature but also for our witnesses today, Jeff Rosen and Richard Donoghue.

When it became clear that neither Mr. Rosen nor Mr. Donoghue would sign this letter, President Trump's plan necessarily changed. As you will hear today, Donald Trump offered Mr. Clark the job of Acting Attorney General, replacing Mr. Rosen, with the understanding that Clark would send this letter to Georgia and other States and take other actions the President requested.

One other point: Millions of Americans have seen the testimony of Attorney General Barr before this Committee. At one point in his deposition, the former Attorney General was asked why he authorized the Department of Justice to investigate fraud in the 2020 election at all; why not just follow the regular course of action and let the investigations occur much later in time, after January 6th?

Here is what he said.

Attorney General BARR. I felt the responsible thing to do was to be—to be in a position to have a view as to whether or not there was fraud. And, frankly, I think the fact that I put myself in the position that I could say that we had looked at this and didn't think there was fraud was really important to moving things forward. And I—I sort-of shudder to think what the situation would have been if the—if the position of the Department was, "We're not even looking at this until after Biden's in office." I'm not sure we would have had a transition at all.

Vice Chair CHENEY. I want to thank each of our witnesses before us today for your role in addressing and rebutting the false allegations of fraud at the root of January 6th. Thank you for standing up for the Constitution and for the rule of law.

Of course, not all public officials behaved in the honorable way our witnesses did. At the close of today's hearing, we will see video testimony by three members of Donald Trump's White House staff. They will identify certain of the Members of Congress who contacted the White House after January 6th to seek Presidential pardons for their conduct.

Thank you, Mr. Chairman. I yield back.

Chairman THOMPSON. Without objection, the Chair recognizes the gentleman from Illinois, Mr. Kinzinger, for an opening statement.

Mr. KINZINGER. Thank you. Thank you, Mr. Chairman, and thank you to our witnesses for being here.

I would like to start with a personal story.

So, in May 2009, I returned from service in Iraq and I announced my intention to run for Congress. A big reason I decided to run for Congress was my motivation to ensure freedom and democracy were defended overseas.

I remember making a commitment—out loud a few times and in my heart repeatedly, even to today—that if we are going to ask Americans to be willing to die in service to our country, we as leaders must at least be willing to sacrifice our political careers when integrity and our oath requires it. After all, losing a job is nothing compared to losing your life.

Within the halls of power, in the face of a President, that commitment can easily be forgotten. Presidential pressure can be really hard to resist.

Today, we will focus on a few officials who stood firm against President Trump's political pressure campaign. When the President tried to misuse the Department and install a loyalist at its helm,

these brave officials refused and threatened to resign. They were willing to sacrifice their careers for the good of our country.

The Department of Justice is unique in the executive branch. The President oversees the Department of Justice, yet the President's personal or partisan interests must not shape or dictate the Department's actions.

The President cannot and must not use the Department to serve his own personal interest, and he must not use its people to do his political bidding, especially when what he wants them to do is to subvert democracy.

The President cannot pervert justice, nor the law, to maintain his power. Justice must, both in fact and law, be blind. That is critical to our whole system of self-governance.

During this hearing, you will hear time and time again about the President's request to investigate claims of widespread fraud. Our witnesses—Mr. Rosen, Mr. Donoghue, and Mr. Engel—stood firm in the face of overbearing political pressure because they understood that their oath was to the Constitution and not to the personal or political interests of the President.

The President and his allies became keenly aware that, with legal challenges exhausted and electoral votes certified, their only hope would be a last-ditch scheme to prevent Congress from certifying the win, thus throwing the entire system into constitutional chaos.

The President wanted the Department to sow doubt in the legitimacy of the election to empower his followers and Members of Congress to take action. If the Department could just lend its credibility to the conspiracies, people would have the justification they needed to spread the big lie.

So President Trump ultimately wanted the Department of Justice to say the election was "corrupt" and "leave the rest to me and the Republican Congressmen."

As you will hear today, the Department's top leadership refused.

Not surprisingly, President Trump didn't take "no" for an answer. He didn't accept it from Attorney General Barr, and he wouldn't accept it from Mr. Rosen either. So he looked for another Attorney General—his third in 2 weeks. He needed to find someone who was willing to ignore the facts. That is not the norm.

Let's look at what Attorneys General, Democrats and Republicans alike, have said about upholding their oath to the Constitution.

Attorney General SESSIONS. The Attorney General ultimately owes his loyalty to the integrity of the American people and to the fidelity to the Constitution and the legitimate laws of the country. That's what he's ultimately required to do.

Attorney General HOLDER. I will be an independent Attorney General. I will be the people's lawyer. If, however, there were an issue that I thought were that significant that would compromise my ability to serve as Attorney General in the way that I have described it as "the people's lawyer," I would not hesitate to resign.

Attorney General MUKASEY. As you and I discussed, if the President proposed to undertake a course of conduct that was in violation of the Constitution, that would present me with a—a difficult, but not a complex, problem. I would have two choices. I could either try to talk him out of it or leave. Those are the choices.

Attorney General LYNCH. The Attorney General's position as a Cabinet member is perhaps unique from all of the Cabinet members. Yes, a member of the President's Cabinet, but the Attorney General has a unique responsibility to provide independent and objective advice to the President or any agency when it is sought and sometimes, perhaps, even when it is not sought.

Mr. KINZINGER. Everyone in that video, from Eric Holder to Jeff Sessions, spoke as one about the independence of the Department. It is a point of pride at Justice to apply the law without the President's political self-interest tainting its actions or dictating how it uses its authorities.

But President Trump did find one candidate at Justice who seemed willing to do anything to help him stay in power. Let's hear what President Trump's own lawyer, Eric Herschmann, had to say about Jeff Clark's plan to overturn the election.

I would like to advise viewers, this video contains some strong language.

Mr. HERSCHMANN. And when he finished discussing what he planned on doing, I said good, fucking—excuse me, sorry—F'ing A-hole, congratulations. You just admitted your first step or act you take as Attorney General would be committing a felony and violating rule 6(e). You're clearly the right candidate for this job.

Mr. KINZINGER. So who is Jeff Clark? An environmental lawyer, with no experience relevant to leading the entire Department of Justice.

What was his only qualification? That he would do whatever the President wanted him to do, including overthrowing a free and a fair democratic election.

President Trump's campaign to bend the Justice Department to his political will culminated in a showdown on January 3rd. Today, we will take you inside that early evening Oval Office meeting, where top Justice Department officials met with the President. At stake: The leadership and integrity of the Department of Justice.

Mr. DONOGHUE. The meeting took about another 2½ hours from the time I entered. It was entirely focused on whether there should be a DOJ leadership change. I was sitting directly in front of the President. Jeff Rosen was to my right. Jeff Clark was to my left.

Acting Attorney General ROSEN. He looked at me, and I underscored, "Well, the one thing we know is you're not going to do anything. You don't even agree that the concerns that are being presented are—are valid. And here's someone who has—has a different view. So why shouldn't I do that?" You know, that's how the discussion then proceeded.

Mr. HERSCHMANN. Jeff Clark was proposing that—uh—Jeff Rosen be replaced by Jeff Clark, and I thought the proposal was asinine.

Mr. HEAPHY. What were Clark's purported bases for why it was in the President's interest for him to step in? What would he do? What would—how would things change according to Mr. Clark in the meeting?

Mr. DONOGHUE. He repeatedly said to the President that, if he was put in the seat, he would conduct real investigations that would, in his view, uncover widespread fraud. He would send out the letter that he had drafted and that this was a last opportunity to sort-of set things straight with this defective election and that he could do it and he had the intelligence and the will and the desire to pursue these matters in the way that the President thought most appropriate.

Mr. HERSCHMANN. And he was making a pitch, and every time he'd get clobbered over the head. He would, like, say, like, you know, he would call to order, you know, the President—"your decision. You get the chance to make this decision, and, you know, you've heard everybody, and you can make your determination." And then we jump back in, and, you know, they would clobber him.

Mr. DONOGHUE. I made the point that Jeff Clark is not even competent to serve as the Attorney General. He's never been a criminal attorney. He's never conducted a criminal investigation in his life. He's never been in front of a grand jury, much less a trial jury. And he kind of retorted by saying, "Well, I've done a lot of very complicated appeals in civil litigation, environmental litigation, and things like that." And I said, "That's right. You're an environmental lawyer. How about you go back to your office and we'll call you when there's an oil spill." And Pat Cipollone weighed in at one point. I remember saying, "You know, that letter that this guy wants to send, that letter is a murder-suicide pact. It's going to damage everyone

who touches it, and we should have nothing to do with that letter. I don't ever want to see that letter again." And so we went along those lines.

Mr. HERSCHMANN. I thought Jeff's proposal—Clark's proposal was nuts. I mean, this guy—at a certain point, "Listen, the best I can tell is the only thing you know about environmental and elections challenges is they both start with E, and based on your answers tonight, I'm not even certain you know that."

Mr. DONOGHUE. The President said, "Suppose I do this. Suppose I replace him, Jeff Rosen, with him, Jeff Clark. What do you do?"

Mr. KINZINGER. Well, we know these men before us did the right thing.

But think about what happens if these Justice officials make a different decision. What happens if they bow to the pressure? What would that do to us as a democracy? As a Nation?

Imagine a future where the President could screen applicants to the Justice Department with one question: Are you loyal to me or to the Constitution? It wouldn't take long to find people willing to pledge their loyalty to the man.

We know many of President Trump's vocal supporters on January 6th also wanted the Justice Department to do whatever he asked as long as it meant he could stay in power. They made sure Justice Department officials heard his message as they protested loudly in front of the Department on their way to the Capitol on January 6th.

CROWD. Do your job! Do your job! Do your job! Do your job! Do your job!

VOICE. Live in DC, we're marching to the Capitol. We are at the Department of Justice right now telling these cowards to do their job!

VOICE. We're going to take the Capitol.

Mr. KINZINGER. I want to take a moment now to speak directly to my fellow Republicans.

Imagine the country's top prosecutor—with the power to open investigations, subpoena, charge crimes, and seek imprisonment—imagine that official pursuing the agenda of the other party instead of that of the American people as a whole.

If you are a Democrat, imagine it the other way around.

Today, President Trump's total disregard for the Constitution and his oath will be fully exposed.

Now let's get this hearing under way so we can do our part to protect the freedoms that we often take for granted, so that we can see how close we came to losing it all.

I now yield back to the Chairman.

Chairman THOMPSON. We are joined today by three distinguished witnesses who each served in the Trump administration in the months preceding January 6th.

Mr. Jeffrey Rosen served at the Department of Justice from May 2019 until January 2021. With President Trump's nomination and the confirmation of the U.S. Senate, he became the United States Deputy Attorney General. In December 2020, he took the mantle of Acting Attorney General.

Mr. Richard Donoghue has served in the Department of Justice for over 14 years. Mr. Donoghue was a United States attorney for the Eastern District of New York; then became Mr. Rosen's Principal Associate Deputy Attorney General; and, finally, Acting Deputy Attorney General. Mr. Donoghue also served more than 20 years in the United States military, including the 82nd Airborne and the Judge Advocate General's Corps.

We are also joined by Mr. Steven Engel, the former Assistant Attorney General for the Office of Legal Counsel. He was nominated by the former President and confirmed by the Senate during the Trump administration. He served from November 2017 to January 2021 and has now returned to private practice.

I will now swear in our witnesses. The witnesses will please stand and raise their right hands.

[Witnesses sworn.]

Chairman THOMPSON. Thank you. You may be seated.

Let the record reflect the witnesses all answered in the affirmative.

I now recognize myself for questions.

First of all, gentlemen, thank you for being here today.

All of you served at former President Trump's pleasure at the Department of Justice in top leadership positions with tremendous responsibilities.

Former Attorney General Bill Barr told the Select Committee that, before he left the Department in December 2020, he told President Trump, on at least three occasions, there was no evidence of widespread election fraud that would have changed the results of the Presidential election and refuted numerous specific claims of election fraud the President was making.

Mr. Rosen, after Mr. Barr announced his resignation, did Donald Trump continue to demand that the Department of Justice investigate his claims of election fraud?

Mr. ROSEN.¹ Yes. He asserted that he thought the Justice Department had not done enough.

Chairman THOMPSON. Thank you.

From the time you took over from Attorney General Barr until January 3rd, how often did President Trump contact you or the Department to push allegations of election fraud?

Mr. ROSEN. So, between December 23rd and January 3rd, the President either called me or met with me virtually every day, with one or two exceptions, like Christmas Day.

Before that—because it had been announced that I would become the Acting Attorney General before the date I actually did—the President had asked that Rich Donoghue and I go over and meet with him, I believe on December 15th, as well.

Chairman THOMPSON. So, after you had some of these meetings and conversations with the President, what things did the President raise with you?

Mr. ROSEN. So the common element of all of this was the President expressing his dissatisfaction that the Justice Department, in his view, had not done enough to investigate election fraud.

But, at different junctures, other topics came up at different intervals. So, at one point, he had raised the question of having a special counsel for election fraud. At a number of points, he raised requests that I meet with his campaign counsel, Mr. Giuliani.

At one point, he raised whether the Justice Department would file a lawsuit in the Supreme Court. At a couple of junctures, there

¹The prepared statement of Mr. Rosen has been included in the Appendix and may be found on page 43.

were questions about making public statements or about holding a press conference.

At one of the later junctures was this issue of sending a letter to State legislatures in Georgia or other States.

So there were different things raised at different parts of—or different intervals, with the common theme being his dissatisfaction about what the Justice Department had done to investigate election fraud.

I will say that the Justice Department declined all of those requests that I was just referencing because we did not think that they were appropriate, based on the facts and the law as we understood them.

Chairman THOMPSON. Thank you.

So, Mr. Donoghue, on December 15th, the day after Attorney General Barr announced his resignation, the President summoned you and Mr. Rosen to the White House.

At this meeting with the President, what did he want to discuss?

Mr. DONOGHUE. There were a number of topics of discussion that day, Mr. Chairman.

Much of the conversation focused on a report that had been recently released relating to Antrim County in Michigan. I believe on December 13th an organization called the Allied Security Group issued a report that alleged that the Dominion voting machines in that county had a 68 percent error rate.

The report was widely covered in the media. We were aware of it. We obtained a copy of it on the 14th of December, the day prior. We circulated it to the U.S. attorneys in Michigan for their awareness. We had a number of discussions internally.

But the conversation with the President on that day, the 15th, was largely focused on that, and he was essentially saying, “Have you seen this report?” He was adamant that the report must be accurate, that it proved that the election was defective, that he, in fact, won the election, and the Department should be using that report to basically tell the American people that the results were not trustworthy.

He went on to other theories as well, but the bulk of that conversation on December 15th focused on Antrim County, Michigan, and the ASOG report.

Chairman THOMPSON. Thank you.

Mr. Engel, we know that Attorney General Barr announced on December 1, 2020, that the Department of Justice had found no evidence of widespread fraud that could have changed the outcome of the election.

So, from December 1, 2020, until today, as you sit here, have you ever doubted that top-line conclusion?

Mr. ENGEL.² No, I have never had any reason to doubt Attorney General Barr’s conclusion.

Chairman THOMPSON. Thank you.

Pursuant to section 5(c)(8) of House Resolution 503, the Chair now recognizes the gentleman from Illinois, Mr. Kinzinger, for questions.

²The prepared statement of Mr. Engel has been included in the Appendix and may be found on page 60.

Mr. KINZINGER. Thank you, Mr. Chairman.

In the weeks leading to January 6th, the Department of Justice was fielding almost daily requests from the President to investigate claims of election fraud. Each claim was refuted time and time again—an effort Attorney General Barr described as “Whack-A-Mole.”

When each of the President’s efforts failed, he resorted to installing a new Attorney General to say the election was illegal and corrupt simply so he could stay in power.

President Trump started leaning on the Justice Department the first chance he got, on November 29th, his first television interview after the election.

Ms. BARTIROMO. Where is the DOJ and the FBI in all of this, Mr. President? You have laid out some serious charges here. Shouldn’t this be something that the FBI is investigating?

President TRUMP. Missing in action.

Ms. BARTIROMO. Are they? Is the DOJ investigating?

President TRUMP. Missing in action. Can’t tell you where they are.

Mr. KINZINGER. Republican Congressmen echoed the President just 2 days later. They wrote a letter to Attorney General Barr, laying into the Justice Department for a “shocking lack of action” in investigating the claims of election fraud.

That same day, Attorney General Barr stated publicly that President Trump’s claims had no merit.

Ignoring the top law enforcement officer in the country, Republican Congressmen amplified the “stolen election” message to the American public. Let’s listen.

Mr. GOHMERT. And so there’s widespread evidence of fraud ’cause people haven’t done their jobs. Durham and Barr will deserve a big notation in history when it’s written of the rise and fall of the United States if they don’t clean up this mess, clean up the fraud, do your jobs, and save this little experiment in self-government.

Mr. BIGGS. Again, I join my colleagues in calling on Attorney General Barr—to immediately let us know what he’s doing.

Mr. GOSAR. We’re already working on challenging the certified electors. And then what about the courts? How pathetic are the courts? [Crowd Boos]

Mr. GAETZ. January 6th, I’m joining with the fighters in the Congress, and we are going to object to electors from States that didn’t run clean elections. [Applause] Democracy is left undefended if we accept the results of a stolen election without fighting with every bit of vigor we can muster.

Mr. JORDAN. The ultimate date of significance is January 6. This is how the process works. The ultimate arbiter here, the ultimate check and balance, is the U.S. Congress. And when something is done in an unconstitutional fashion, which happened in several of these States, we have a duty to step forward and have this debate and have this vote on the 6th of January.

Mr. BROOKS. Today is the day American patriots start taking down names and kicking ass.

Mr. KINZINGER. Mr. Donoghue, on December 27th, you had a 90-minute conversation with the President where he raised false claim after false claim with you and Mr. Rosen.

How did you respond to what you called a “stream of allegations”?

Mr. DONOGHUE. The December 27th conversation was, in my mind, an escalation of the earlier conversations. As the former Acting AG indicated, there were a lot of communications that preceded that. As we got later in the month of December, the President’s entreaties became more urgent; he became more adamant that we weren’t doing our job, we needed to step up and do our job.

He had this arsenal of allegations that he wanted to rely on. So I felt in that conversation that it was incumbent upon me to make it very clear to the President what our investigations had revealed and that we had concluded, based on actual investigations, actual witness interviews, actual reviews of documents, that these allegations simply had no merit.

I wanted to try to cut through the noise, because it was clear to us that there were a lot of people whispering in his ear, feeding him these conspiracy theories and allegations. I felt that being very blunt in that conversation might help make it clear to the President these allegations were simply not true.

So, as he went through them—in what for me was a 90-minute conversation or so and what for the former Acting AG was a 2-hour conversation as the President went through them, I went piece by piece to say, “No, that’s false, that is not true,” and to correct him really in a serial fashion as he moved from one theory to another.

Mr. KINZINGER. Can you give me an example of one or two of those theories?

Mr. DONOGHUE. So one that was very clear at that point was the Antrim County, the ASOG report that I mentioned earlier. Allied Security Operations Group released this report that said 68 percent error rate.

There was, in fact, in Antrim County a hand recount. It had nothing to do with the Department. The Department did not request that. That was pursuant to litigation brought by other parties. But there was a hand recount. So they were able to compare the hand recount to what the machines had reported.

For the ballots that were actually counted by machine, more than 15,000, there was 1 error, 1 ballot. I did a quick calculation and came up with .0063 percent error rate, which is well within tolerance.

So I made it very clear to the President, because he was so fixated on the ASOG report in the December 15th conversation, that, in fact, our investigation revealed that the error rate was .0063 percent. “So that, Mr. President, is an example of what people are telling you that is not true and that you cannot and should not be relying on.”

So that was one very explicit one, and I think you see that reflected in my notes.

We went through a series of others. The truck driver who claimed to have moved an entire tractor trailer of ballots from New York to Pennsylvania, that was also incorrect. We did an investigation with the FBI, interviewed witnesses at the front end and the back end of that trailer’s transit from New York to Pennsylvania. We looked at loading manifests. We interviewed witnesses, including, of course, the driver. We knew it wasn’t true. Whether the driver believed it or not was never clear to me, but it was just not true. So that was another one that I tried to educate the President on.

There were a series of others, mostly in swing States. Of course, he wanted to talk a great deal about Georgia, the State Farm Arena video, which he believed for various reasons was, as he said it, “fraud staring you right in the face.”

Mr. KINZINGER. Were any of the allegations he brought up found credible? Did you find any of them credible?

Mr. DONOGHUE. No.

Mr. KINZINGER. So, during this conversation, did you take handwritten notes directly quoting the President?

Mr. DONOGHUE. I did.

To make it clear, Attorney General Rosen called me on my Government cell phone, said he had been on the phone with the President for some time, the President had a lot of these allegations. I was better versed in what the Department had done, just because I had closer contact with the investigations, and the AG asked me to get on the call. Of course, I agreed.

I begin taking notes only because, at the outset, the President made an allegation I had not heard. I had heard many of these things; I knew many of them were investigated. But when the President, at least when I came to the conversation, when he began speaking, he brought up an allegation I was completely unaware of. Of course, that concerned us. So I simply reached out and grabbed a notepad off my wife's nightstand and a pen, and I started jotting it down.

That had to do with an allegation that more than 200,000 votes were certified in the State of Pennsylvania that were not actually cast. Sometimes the President would say it was 205; sometimes he would say it was 250. But I had not heard this before, and I wanted to get the allegation down clearly so that we could look into it, if appropriate.

That is why I started taking those notes. Then, as the conversation continued, I just continued to take the notes.

Mr. KINZINGER. Let's take a look at the notes, if we could, right now.

As we can see on the screen, you actually quote President Trump asking, "Where's DOJ?", just like we heard him say in his first television interview.

How did you respond to that?

Mr. DONOGHUE. So both the Acting AG and I tried to explain to the President, on this occasion and on several other occasions, that the Justice Department has a very important, very specific, but very limited role in these elections. States run their elections. We are not quality control for the States.

We are obviously interested in and have a mission that relates to criminal conduct in relation to Federal elections. We also have related civil rights responsibilities. So we do have an important role, but the bottom line was, if a State ran their election in such a way that it was defective, that is to the State or Congress to correct. It is not for the Justice Department to step in.

I certainly understood the President, as a layman, not understanding why the Justice Department didn't have at least a civil role to step in and bring suit on behalf of the American people. We tried to explain that to him.

The American people do not constitute the client for the United States Justice Department. The one and only client of the United States Justice Department is the U.S. Government.

The U.S. Government does not have standing, as we were repeatedly told by our internal teams—OLC, led by Steve Engel, as well

as the Office of the Solicitor General researched it and gave us thorough, clear opinions that we simply did not have standing. We tried to explain that to the President on numerous occasions.

Mr. KINZINGER. Let's take a look at another one of your notes. You also noted that Mr. Rosen said to Mr. Trump, "DOJ can't and won't snap its fingers and change the outcome of the election."

How did the President respond to that, sir?

Mr. DONOGHUE. He responded very quickly and said, essentially, "That's not what I'm asking you to do. What I'm just asking you to do is just say it was corrupt, and leave the rest to me and the Republican Congressmen."

Mr. KINZINGER. So let's now put up the notes where you quote the President, as you were speaking to that.

You said the President said, "Just say the election was corrupt, and leave the rest to me and the Republican Congressmen."

So, Mr. Donoghue, that is a direct quote from President Trump, correct?

Mr. DONOGHUE. That is an exact quote from the President, yes.

Mr. KINZINGER. The next note shows that the President kept pressing.

Even though he had been told that there was no evidence of fraud, did the President keep saying that the Department was "obligated to tell people that this was an illegal, corrupt election"?

Mr. DONOGHUE. That is also an exact quote from the President, yes.

Mr. KINZINGER. Let me just be clear. Did the Department find any evidence to conclude that there was anything illegal or corrupt about the 2020 election?

Mr. DONOGHUE. There were isolated instances of fraud. None of them came close to calling into question the outcome of the election in any individual State.

Mr. KINZINGER. How would you describe the President's demeanor during that call?

Mr. DONOGHUE. He was more agitated than he was on December 15th. The President, throughout all of these meetings and telephone conversations, was adamant that he had won and that we were not doing our job. But it did escalate over time until ultimately the meeting on January 3rd, which was sort-of the most extreme of the meetings and conversations.

Mr. KINZINGER. So I want to make sure we don't gloss this over: "Just say it was corrupt, and leave the rest to us."

The President wanted the top Justice Department officials to declare that the election was corrupt, even though, as he knew, there was absolutely no evidence to support that statement.

The President didn't care about actually investigating the facts. He just wanted the Department of Justice to put its stamp of approval on the lies.

Who was going to help him? Well, Jeff Clark.

Mr. Rosen, on Christmas Eve, your first official day as the Acting Attorney General, President Trump called you. What did he want to talk about?

Mr. ROSEN. The same things he was talking about publicly. He wanted to talk about that he thought the election had been stolen

or was corrupt and that there was widespread fraud. I had told him that our reviews had not shown that to be the case.

So we had an extended discussion, probably 15, maybe 20 minutes, something like that, with him urging that the Department of Justice should be doing more with regard to election fraud.

Mr. KINZINGER. Did he mention Jeff Clark's name?

Mr. ROSEN. Yes. It was just in passing. He made what I regarded as a peculiar reference. I don't remember the exact quote, but it was something about, did I know Jeff Clark, or did I know who he was, or something like that. I told him I did, and then the conversation just moved on.

But when I hung up, I was quizzical as to, how does the President even know Mr. Clark? I was not aware that they had ever met or that the President had been involved with any of the issues in the Civil Division.

Mr. KINZINGER. So it was a bit of a surprise when he brought his name up?

Mr. ROSEN. Yes.

Mr. KINZINGER. So Mr. Clark was the acting head of the Civil Division and head of Environmental and Natural Resources Division at the Department of Justice.

Do either of those divisions have any role whatsoever in investigating election fraud, sir?

Mr. ROSEN. No. And, to my awareness, Jeff Clark had had no prior involvement of any kind with regard to the work that the Department was doing that Attorney General Barr has talked about to this Committee.

Mr. KINZINGER. So let's take a minute and explain why the President mentioned Jeff Clark's name to Mr. Rosen here on Christmas Eve.

On December 21st, some Republican Members of Congress met with President Trump in the White House to talk about overturning the 2020 election.

Let's hear Representative Marjorie Taylor Greene talk about how this meeting got set up.

Mrs. GREENE of Georgia. I was the only new Member at the meeting. I called President Trump on Saturday and—and said, "We've got to have a meeting. There's many of us that feel like this election has been stolen."

Mr. KINZINGER. So, on the screen, you will see that President Trump's chief of staff, Mark Meadows, tweeted about that meeting right after it happened.

He said, "Several Members of Congress just finished a meeting in the Oval Office with President Donald Trump, preparing to fight back against mounting evidence of voter fraud. Stay tuned."

On the same day he met with these Republican Members of Congress, President Trump called into a conservative political convention, and he used the opportunity to pressure the Department of Justice to investigate his bogus claims.

President TRUMP. The problem is we need a party that's going to fight, and we have some great Congressmen and—women that are doing it. And we have others, some great fighters. But we won this in a landslide. They know it, and we need backing from, like, the Justice Department. And other people have to finally step up.

Mr. KINZINGER. The Select Committee obtained records from the National Archives that show that Scott Perry was one of the Congressmen who joined that meeting.

We learned from White House records—that you will now see on the screen—that, the very next day, Representative Perry returned to the White House. This time, he brought a Justice Department official named Jeffrey Clark.

Representative Perry provided the following statement to his local TV affiliate. He said, “Throughout the past 4 years, I’ve worked with Assistant Attorney General Clark on various legislative matters. When President Trump asked if I would make an introduction, I obliged.”

But why Jeff Clark? Let’s hear Mr. Giuliani explain the kind of person that he and the President wanted at the top of Justice.

Mr. GEORGE. Do you remember ever recommending to anybody that Mr. Clark, meaning Jeffrey Clark, at DOJ be given election-related responsibilities?

Mr. GIULIANI. You mean beyond the President?

Mr. GEORGE. Correct.

Mr. GIULIANI. Well, beyond the President, I do recall saying to people that somebody should be put in charge of the Justice Department who isn’t frightened of what’s going to be done to their reputation because the Justice Department was filled with people like that.

Mr. KINZINGER. Should put somebody that is not frightened of what is going to be done to their reputation.

Mr. Donoghue, when you told the President that you wouldn’t pursue baseless claims of fraud, was it because you were worried about your reputation?

Mr. DONOGHUE. No. Not at all.

Mr. KINZINGER. Mr. Clark’s name was also mentioned in White House in late December and early January, as described by a top aide to Mark Meadows, Cassidy Hutchinson.

Mr. GEORGE. Was it your understanding that Representative Perry was pushing for a specific person to take over the Department?

Ms. HUTCHINSON. He wanted Mr. Clark—Mr. Jeff Clark to take over the Department of Justice.

Mr. KINZINGER. Mr. Rosen, after your call with President Trump on December 24th, you spoke with Mr. Clark on December 26th about his contact with the President.

Can you tell us about that conversation?

Mr. ROSEN. Yes.

Because I had been quizzical about why his name had come up, I called him, and I tried to explore if he would share if there was something I ought to know. After some back-and-forth, he acknowledged that shortly before Christmas he had gone to a meeting in the Oval Office with the President.

That, of course, surprised me. I asked him, how did that happen? He was defensive. He said it had been unplanned, that he had been talking to someone he referred to as “General Perry” but I believe is Congressman Perry, and that, unbeknownst to him, he was asked to go to a meeting, and he didn’t know it but it turned out it was at the Oval—he found himself at the Oval Office. He was apologetic for that.

I said, well, you didn’t tell me about it, it wasn’t authorized, and you didn’t even tell me after the fact. You know, this is not appropriate.

But he was contrite and said it had been inadvertent and it would not happen again and that if anyone asked him to go to such a meeting he would notify Rich Donoghue and me.

Mr. KINZINGER. Is there a policy that governs who can have contact directly with the White House?

Mr. ROSEN. Yes. So, across many administrations, for a long period of time, there is a policy that, particularly with regard to criminal investigations, restricts at both the White House end and the Justice Department end those more sensitive issues to the highest ranks.

So, for criminal matters, the policy for a long time has been that only the Attorney General and the Deputy Attorney General, from the DOJ side, can have conversations about criminal matters with the White House, or the Attorney General and the Deputy Attorney General can authorize someone for a specific item with their permission.

But the idea is to make sure that the top rung of the Justice Department knows about it and is in the thing to control it and make sure only appropriate things are done.

Mr. KINZINGER. Mr. Engel, from your perspective, why is it important to have a policy like Mr. Rosen just discussed?

Mr. ENGEL. Well, it is critical that the Department of Justice conducts its criminal investigations free from either the reality or any appearance of political interference.

So people can get in trouble if people at the White House are speaking with people at the Department. That is why—the purpose of these policies is to keep these communications as infrequent and at the highest levels as possible, just to make sure that people who are less careful about it, who don't really understand these implications, such as Mr. Clark, don't run afoul of those contact policies.

Mr. KINZINGER. Thank you.

So the Select Committee conducted an informal interview with the White House Counsel, Pat Cipollone, and his deputy, Pat Philbin, about their contact with Mr. Clark, though neither has yet agreed to sit for transcribed and videotaped interviews.

But Pat Cipollone told the Select Committee that he intervened when he heard Mr. Clark was meeting with the President about legal matters without his knowledge, which was strictly against White House policy.

Mr. Cipollone and Mr. Philbin, like Mr. Rosen, told Mr. Clark to stand down, and he didn't.

On the same day Acting Attorney General Rosen told Mr. Clark to stop talking to the White House, Representative Perry was urging Chief of Staff Mark Meadows to elevate Clark within the Department of Justice.

You can now see on the screen behind me a series of texts between Representative Perry and Mr. Meadows. They show that Representative Perry requested that Mr. Clark be elevated within the Department.

Representative Perry tells Mr. Meadows on December 26th that, "Mark, just checking in as time continues to count down. Eleven days to January 6th and 25 days to inauguration. We've got to get going."

Representative Perry followed up and says, “Mark, you should call Jeff. I just got off the phone with him, and he explained to me why the principal deputy won’t work, especially with the FBI. They will view it as not having the authority to enforce what needs to be done.”

Mr. Meadows responds with, “I got it. I think I understand. Let me work on the deputy position.”

Representative Perry then texts, “Roger. Just sent you something on Signal. Just sent you an updated file. Did you call Jeff Clark?”

Mr. Donoghue, Representative Perry called you the next day, on December 27th. Who told him to call you?

Mr. DONOGHUE. My understanding is the President did. At the outset of the call, Congressman Perry told me that he was calling at the behest of the President.

Mr. KINZINGER. What did he want to talk about?

Mr. DONOGHUE. He wanted to talk about Pennsylvania in particular. He gave me some background about, you know, why he in particular doesn’t trust the FBI and why the American people don’t necessarily trust the FBI.

Then he went into some allegations specific to Pennsylvania, which included, amongst others, this allegation that the secretary of state had certified more votes than were actually cast.

Mr. KINZINGER. Did you direct the local U.S. attorney’s office to investigate that claim?

Mr. DONOGHUE. So Mr. Perry said that he had a great deal of information, that investigations had been done, that there was some sort of forensic-type report that would be helpful to me.

I didn’t know Congressman Perry. I had never heard of him before this conversation. But I said, “Sir, if you’ve got something that you think is relevant to what the Justice Department’s mission is, you should feel free to send it to me.” He did.

I was en route from New York to Washington. I got it. I looked at it on my iPhone. Obviously, I couldn’t read the whole thing in transit like that, but I looked at it to get a feel for what it was. Then I forwarded it to the United States attorney for the Western District of Pennsylvania.

Mr. KINZINGER. Did they get back to you? What did they conclude?

Mr. DONOGHUE. Scott Brady looked at it. He was the Western District of Pennsylvania U.S. attorney. Took him a couple days, but he got back in relatively short order with a pretty clear explanation for why there was no foundation for concern.

The secretary of state had not certified more votes than were actually cast. The difference between the 5.25 that was actually certified by the secretary of state and the 5 million that was on a public-facing website was that the information on the website was incomplete because 4 counties had not uploaded their data.

Mr. KINZINGER. So no credibility to that claim?

Mr. DONOGHUE. There was zero to that, right.

Mr. KINZINGER. During that call, did Scott Perry mention Mr. Clark? What did he say about him, if so?

Mr. DONOGHUE. He did; he mentioned Mr. Clark. He said something to the effect of, “I think Jeff Clark is great, and I think he

is the kind of guy who could get in there and do something about this stuff.”

This was coming on the heels of the President having mentioned Mr. Clark in the afternoon call earlier that day.

Mr. KINZINGER. I would like to yield to the gentlewoman from Wyoming, Vice Chair Cheney.

Vice Chair CHENEY. Thank you very much, Mr. Kinzinger. I thank the gentleman for yielding.

As we discussed earlier, at the center of Mr. Clark’s plan to undo President Trump’s election loss was a letter.

Mr. Donoghue, on December 28th, Mr. Clark emailed you and Mr. Rosen a draft letter that he wanted you to sign and send to Georgia State officials. You testified that this could have “grave constitutional consequences.”

Mr. Donoghue, can you tell us what you meant by that?

Mr. DONOGHUE. Well, I had to read both the email and the attached letter twice to make sure I really understood what he was proposing because it was so extreme to me I had a hard time getting my head around it initially.

But I read it, and I did understand it for what he intended, and I had to sit down and sort-of compose what I thought was an appropriate response.

I actually initially went next door to the Acting AG’s office, but he was not there. We were both on that email. I knew we would both have probably a very similar reaction to it.

He was not in his office, so I returned to my office, and I sat down to draft a response because I thought it was very important to give a prompt response rejecting this out of hand.

In my response I explained a number of reasons this is not the Department’s role to suggest or dictate to State legislatures how they should select their electors. But more importantly, this was not based on fact. This was actually contrary to the facts as developed by Department investigations over the last several weeks and months.

So I responded to that. For the Department to insert itself into the political process this way I think would have had grave consequences for the country. It may very well have spiraled us into a constitutional crisis. I wanted to make sure that he understood the gravity of the situation because he didn’t seem to really appreciate it.

Vice Chair CHENEY. What was Mr. Clark’s reaction when you sent this email to him?

Mr. DONOGHUE. He didn’t respond directly to the email, but we met shortly after that. After I sent the email, the Acting AG returned. I went to his office. He had just read it. He had a very similar reaction to me. He was exasperated. He told me that he had told one of his administrative assistants to get Jeff Clark up here, we want to him talk face to face about this.

So the three of us then had a meeting probably around 1800 that night in the Deputy Attorney General’s conference room.

Vice Chair CHENEY. One of the things that you said to Mr. Clark is, “What you are doing is nothing less than the United States Justice Department meddling in the outcome of a Presidential election.”

I assume you conveyed that to him as well in your meeting that evening?

Mr. DONOGHUE. Yes, in those very words. It was a very contentious meeting. But, yes, that was said, amongst other things.

Vice Chair CHENEY. Despite this contentious meeting and your strong reaction to the letter, did Mr. Clark continue to push his concept in the coming days?

Mr. DONOGHUE. He did, yes. We had subsequent meetings and conversations. The Acting AG probably had more contact with him than I did.

But between the 28th and the 2nd, when we had another in-person meeting, he clearly continued to move down this path. He began calling witnesses and apparently conducting investigations of his own.

He got a briefing from DNI about purported foreign intelligence interference. We thought perhaps once it was explained to him that there was no basis for that part of his concern, that he would retreat.

But instead, he doubled down and said, "Well, okay, so there is no foreign interference. I still think there are enough allegations out there that we should go ahead and send this letter," which shocked me even more than the initial one because you would think after a couple days of looking at this, he, like we, would have come to the same conclusion that it was completely unfounded.

Vice Chair CHENEY. When you learned that he had been calling witnesses and conducting investigations on his own, did you confront him?

Mr. DONOGHUE. Yes.

Vice Chair CHENEY. What was his reaction?

Mr. DONOGHUE. He got very defensive. You know, as I said, there were a series of conversations through that week. I certainly remember very specifically the conversation and the meeting on January 2nd. That got even more confrontational.

But he was defensive. You know, similar to his earlier reaction when I said this is nothing less than Justice Department meddling in an election, his reaction was, "I think a lot of people have meddled in this election."

So he kind-of clung to that, and then spewed out some of these theories, some of which we had heard from the President, but others which were floating around the internet and media, and just kept insisting that the Department needed to act and needed to send those letters.

Vice Chair CHENEY. The Committee has also learned that Mr. Clark was working with another attorney at the Department named Ken Klukowski, who drafted this letter to Georgia with Mr. Clark.

Mr. Klukowski had arrived at the Department on December 15th with just 36 days left until the inauguration. He was specifically assigned to work under Jeff Clark.

Mr. Klukowski also worked with John Eastman, who we showed you at our hearing last week was one of the primary architects of President Trump's scheme to overturn the election.

The Georgia letter that we have been discussing specifically talks about some of Dr. Eastman's theories, including, "The purpose of

the special session the Department recommends would be for the General Assembly to determine whether the election failed to make a proper and valid choice between the candidates, such that a General Assembly could take whatever action is necessary to ensure that one of the slates of electors cast on December 14th will be accepted by Congress on January 6th.”

The Committee has also learned that the relationship between Dr. Eastman and Mr. Klukowski persisted after Mr. Klukowski joined the Justice Department.

Let’s take a look at an email recommending that Mr. Klukowski and Dr. Eastman brief Vice President Pence and his staff. Other recipients of this email included the chief of staff to Congressman Louie Gohmert.

The email says, “As stated last week, I believe the Vice President and his staff would benefit greatly from a briefing by John and Ken. As I also mentioned, we want to make sure we don’t over-expose Ken given his new position.”

This email suggests that Mr. Klukowski was simultaneously working with Jeffrey Clark to draft the proposed letter to Georgia officials to overturn their certified election and working with Dr. Eastman to help pressure the Vice President to overturn the election.

I want to thank all of our witnesses for being here today and for answering our questions about this letter and other issues.

We asked Mr. Clark some of the same questions that we have asked you, and here is how he answered.

Mr. WOOD. Did you discuss this draft letter to Georgia officials with the President of the United States?

Mr. CLARK. Fifth and executive privilege. Again, just restated for the abundance of caution.

Mr. WOOD. Okay. If you look again at the draft letter, in the first paragraph, second sentence says, “The Department will update you as we are able on investigatory progress, but at this time, we have identified significant concerns that may have impacted the outcome of the election in multiple States, including the State of Georgia.” Isn’t that, in fact, contrary to what Attorney General Barr had said on December 1, 2020?

Mr. CLARK. Fifth.

Vice Chair CHENEY. Mr. Chairman, I yield back.

Mr. KINZINGER. Mr. Chairman, I reserve.

Chairman THOMPSON. Pursuant to the order of the Committee of today, the Chair declares the Committee in recess for a period of approximately 10 minutes.

[Accordingly, at 4:08 p.m., the Committee recessed until 4:20 p.m., when it was called to order by the Chairman.]

Chairman THOMPSON. The Chair recognizes the gentleman from Illinois.

Mr. KINZINGER. Thank you, Mr. Chairman.

Mr. Chairman, around the time Mr. Clark was pushing for the Department to send the Georgia letter, the President and his supporters were pressuring the Justice Department to take other actions to change the outcome of the 2020 election.

Mr. Engel, you were the head of the Office of Legal Counsel. Can you first off explain your role? What is that?

Mr. ENGEL. Sure. One of the Attorney General's most important responsibilities is to provide legal advice to the President and to the executive branch.

As a practical matter, given the responsibilities of the Attorney General, the Assistant Attorney General for the Office of Legal Counsel exercises that job on a day-to-day basis.

So, in addition, the head of OLC often functions as a general counsel essentially to the Attorney General, and so is often the chief legal adviser to the AG as well as the White House and the executive branch more broadly.

Mr. KINZINGER. So given that role, can you kind-of describe your relationship with the President?

Mr. ENGEL. Well, in connection with my role at OLC, over the course of my tenure there there were a number of instances in which folks at the White House would seek to bring me in to provide legal advice to the President, sometimes discussing the legal options that could be pursued among various policy—to reach various policy objectives, sometimes to advise the President that a course of action that they had been discussing was not legally available.

Mr. KINZINGER. So I want to ask you about two things the President asked you and the Department to do. The first is reflected in this email that we are going to put on the screen.

The President sent a draft lawsuit to be filed by the Department and the Supreme Court. He wanted you, Mr. Rosen, and Mr. Cipollone specifically to review it. You and the Department opposed filing it.

We see on the screen here the talking points that you actually drafted on that. So you stated that, "There is no legal basis to bring this lawsuit. Anyone who thinks otherwise simply doesn't know the law, much less the Supreme Court."

Why was this the Department's position?

Mr. ENGEL. Well, I mean, I think the memo sort-of speaks to this.

But essentially this was a draft lawsuit that apparently was prepared by people outside the Department. It would be styled as brought by the United States and by the Acting Solicitor General as an original jurisdiction matter in the Supreme Court.

It was a meritless lawsuit that was not something that the Department could or would bring. You know, somebody obviously prepared it, handed it to the President, and he forwarded it on for our review.

But that memo explains why the Department of Justice, as Mr. Donoghue said earlier, doesn't have any standing to bring such a lawsuit. The lawsuit would have been untimely. The States had chosen their electors. The electors had been certified. They had cast their votes. They had been sent to Washington, DC.

Neither Georgia nor any of the other States on December 28th, or whenever this was, was in a position to change those votes. Essentially, the election had happened. The only thing that hadn't happened was the formal counting of the votes.

So, obviously, the person who drafted this lawsuit didn't really understand, in my view, you know, the law and/or how the Supreme Court works or the Department of Justice.

So it was just not something we were going to do. The Acting Attorney General asked me to prepare a memo with talking points so that he could explain our reasons when he spoke with the President about this.

Mr. KINZINGER. So would you say it was an unusual request?

Mr. ENGEL. Certainly. The request that the Department file a lawsuit from—drafted by outside lawyers—was certainly an unusual request.

Mr. KINZINGER. There was another issue you were asked to look into. In mid-December, did the White House ask Attorney General Barr to consider whether a special counsel could be appointed to look into election fraud issues?

Mr. ENGEL. Yes. I mean, I think the President was probably vocal at the time that he believed that a special counsel was something that should be considered to look into election fraud. There is a specific, you know, request where the Attorney General sought my legal advice in the middle of December.

Mr. KINZINGER. What was your conclusion? What conclusion did you reach?

Mr. ENGEL. So this request was whether the Attorney General could appoint as a special counsel a State attorney general to conduct an investigation.

I mean, as a legal matter, under Federal law the Attorney General actually has fairly wide discretion to delegate prosecutorial authority, including to State prosecutors, which happens to assist the Department, you know, and not uncommonly. Obviously, a State attorney general exercising prosecutorial authority on behalf of the Department of Justice would be fairly uncommon.

When we looked at the issue, what we saw is actually that the State law—the State was Louisiana—that the State law precluded the Louisiana attorney general from accepting any position, any official position on behalf of the U.S. Government. So that answered the question, that it was not legally available.

Mr. KINZINGER. So during your time at the Department, was there ever any basis to appoint a special counsel to investigate President Trump's election fraud claims?

Mr. ENGEL. Well, neither Attorney General Barr nor Acting Attorney General Rosen did appoint a special counsel. You would appoint a special counsel when the Department—when there is a basis for the investigation and the Department essentially has a conflict of interest.

It is important to get someone who is independent outside of the Department to handle such an investigation. Neither Attorney General Barr nor Acting Attorney General Rosen ever believed that that was appropriate or necessary in this case.

Mr. KINZINGER. In fact, Attorney General Barr had already told the President that there was no need for the special counsel. He actually stated that publicly, and we will see that here in a video from December 21st.

Attorney General BARR. To the extent that there's an investigation, I think that it's being handled responsibly and professionally currently within the—the Department, and to this point, I have not seen a reason to appoint a Special Counsel, and I have no plan to do so before I leave.

Mr. KINZINGER. So remember that December 21st was the same day President Trump met with Republican Members at the White House to strategize about how to overturn the election while his Attorney General is out telling the public, again, that there was no widespread evidence of election fraud. Yet, 2 days later, we have President Trump tweeting, again publicly pressuring the Department to appoint a special counsel.

He said, "After seeing the massive voter fraud in the 2020 Presidential election, I disagree with anyone that thinks a strong, fast, and fair special counsel is not needed immediately. This was the most corrupt election in the history of our country, and it must be closely examined."

The Select Committee's investigation revealed that President Trump went as far as to promise the job of special counsel to now discredited former Trump campaign lawyer Sidney Powell at a late-night meeting December 18th.

Ms. POWELL. I know on—on Friday he had asked me to be Special Counsel to address the election issues and to collect evidence, and he was extremely frustrated with the lack of, I would call it, law enforcement by any of the government agencies that are supposed to act to protect the rule of law in our republic.

Mr. KINZINGER. So let's think here. What would a special counsel do? With only days to go until election certification, it wasn't to investigate anything. An investigation led by a special counsel would just create an illusion of legitimacy and provide fake cover for those who would want to object, including those who stormed the Capitol on January 6th. All of President Trump's plans for the Justice Department were being rebuffed by Mr. Rosen, Mr. Donoghue, Mr. Engel, and others.

The President became desperate entering into the New Year with January 6th fast approaching. President Trump rushed back early from Mar-a-Lago on December 31st and called an emergency meeting with the Department's leadership.

Here is Mr. Donoghue describing the last-minute meeting held at the White House on New Year's Eve.

Mr. DONOGHUE. The President was a little more agitated than he had been on the meeting—in the meeting on the 15th. He discussed a variety of election matters. He did say, "This sounds like the kind of thing that would warrant appointment of a Special Counsel." There was a point at which the President said something about, "Why don't you guys seize machines?"

Mr. KINZINGER. Mr. Rosen, the President asked you to seize voting machines from State governments. What was your response to that request?

Mr. ROSEN. That we had seen nothing improper with regard to the voting machines. I told him that the real experts at that had been at DHS, and they had briefed us that they had looked at it and that there was nothing wrong with the voting machines. So that was not something that was appropriate to do.

Mr. KINZINGER. There would be no factual basis to seize machines?

Mr. ROSEN. I don't think there was legal authority either.

Mr. KINZINGER. Mr. Donoghue, can you explain what the President did after he was told that the Justice Department would not seize voting machines?

Mr. DONOGHUE. The President was very agitated by the Acting Attorney General's response. To the extent that machines and the technology was being discussed, the Acting Attorney General said that the DHS, Department of Homeland Security, has expertise in machines and certifying them and making sure that the States were operating them properly.

Since DHS had been mentioned, the President yelled out to his secretary, "Get Ken Cuccinelli on the phone." She did in very short order.

Mr. Cuccinelli was on the phone. He was No. 2 at DHS at the time. I was on the speaker phone. The President essentially said, "Ken, I am sitting here with the Acting Attorney General. He just told me it is your job to seize machines, and you are not doing your job." Mr. Cuccinelli responded.

Mr. KINZINGER. Mr. Rosen, did you ever tell the President that the Department of Homeland Security could seize voting machines?

Mr. ROSEN. No, certainly not.

Mr. KINZINGER. Mr. Donoghue, during this meeting, did the President tell you that he would remove you and Mr. Rosen because you weren't declaring there was election fraud?

Mr. DONOGHUE. Toward the end of the meeting the President, again, was getting very agitated, and he said, "People tell me I should just get rid of both of you, I should just remove you and make a change in the leadership, put Jeff Clark in, maybe something will finally get done."

I responded as I think I had earlier in the December 27th call: "Mr. President, you should have the leadership that you want. But understand the United States Justice Department functions on facts, evidence, and law, and those are not going to change. So you can have whatever leadership you want, but the Department's position is not going to change."

Mr. KINZINGER. The President's White House Counsel, Pat Cipollone, was also present. Do you remember what his position was?

Mr. DONOGHUE. Pat was very supportive. Pat Cipollone throughout these conversations was extremely supportive of the Justice Department. He was consistent. I think he had an impossible job at that point, but he did it well. He always sided with the Justice Department in these discussions.

Mr. KINZINGER. So let's pause for a second. It is New Year's Eve. President Trump is talking about seizing voting machines and making the same demands that had already been shot down by former Attorney General Barr on at least three occasions and by Mr. Rosen and Mr. Donoghue on multiple other occasions. Claim after claim knocked down, but the President didn't care.

The next day, Chief of Staff Mark Meadows sent a flurry of emails to you, Mr. Rosen, asking that the Department look into a new set of allegations. We are going to put those emails here on the screen.

Here we see three requests made on January 1st. One email is a request from Mr. Meadows to you, Mr. Rosen, to send Jeff Clark to Fulton County.

What did you do with this request?

Mr. ROSEN. Well, really nothing. Certainly didn't send Mr. Clark to Fulton County. But that email was the first corroboration I had seen of—Mr. Clark had told me at that point that the President was considering making the change by Monday, January 4th.

So Mr. Meadows' email was something of a corroboration that there were discussions going on that I had been—not been informed about by Mr. Clark or anybody else.

Mr. KINZINGER. Interesting.

The second request that you have is to have the Department of Justice lawyers investigate allegations of fraud related to New Mexico.

Mr. Rosen, did you have concern about these emails?

Mr. ROSEN. Yes. Really two concerns about that one. One was that it was coming from a campaign or political party, and it was really not our role to function as, you know, an arm of any campaign for any party or any campaign. That wasn't our role. That is part of why I had been unwilling to meet with Mr. Giuliani or any of the campaign people before.

The other part was it was another one of these ones where lots of work had already been done and I thought it was a rehash of things that had been debunked previously.

Mr. KINZINGER. So the final email here included a completely baseless conspiracy theory that an Italian defense contractor uploaded software to a satellite that switched votes from Trump to Biden.

The Select Committee investigation found that this wild, baseless conspiracy theory made it from the recesses of the internet to the highest echelons of our Government. On December 31st, Mr. Meadows received this internet conspiracy theory from Representative Perry.

On the screen now is the text that Representative Perry sent to Mr. Meadows, copying a YouTube link with the message, "Why can't we just work with the Italian government?"

The next day, the President's chief of staff sent the YouTube link to Mr. Rosen, who forwarded it to Mr. Donoghue.

Mr. Donoghue, did you watch this video?

Mr. DONOGHUE. I did, Congressman.

Mr. KINZINGER. How long was the video?

Mr. DONOGHUE. Approximately 20 minutes.

Mr. KINZINGER. Let's just take a look at an excerpt of that video, if we may.

Mr. JOHNSON. What's being said out of Rome, out of Italy is that this was done in the U.S. Embassy, that there was a certain State Department guy whose name I don't know yet. I guess this is probably going to come out in Italy at some point. And he was the mastermind—not the mastermind, but the—but anyway, the guy running the operation of changing the votes. And that he was doing this in conjunction with some support from MI6, the CIA, and this Leonardo group.

Mr. KINZINGER. Mr. Donoghue, what was your reaction when you watched that entire 20-minute video?

Mr. DONOGHUE. I emailed the Acting Attorney General and I said, "pure insanity," which was my impression of the video, which was patently absurd.

Mr. KINZINGER. Mr. Rosen, you were asked by Mr. Meadows to meet with Mr. Johnson, who is the person in that video. What was your reaction to that request?

Mr. ROSEN. So, ordinarily, I would get an email like this and there was no phone call. It would just come over the transom.

But this one, he called me, Mr. Meadows, and asked me to meet with Mr. Johnson. I told him this whole thing about Italy had been debunked and that should be the end of that, and I certainly wasn't going to meet with this person.

He initially seemed to accept that. He said, "You know, well, why won't you meet with him?"

I said, "Because if he has real evidence, which this video doesn't show, he can walk into an FBI field office anywhere in the United States. There are 55 of them."

He said, "Okay."

But then he called me back a few minutes later and complained and said, "I didn't tell you, but this fellow, Johnson, is working with Rudy Giuliani, and Mr. Giuliani is really offended that you think they have to go to an FBI field office. That is insulting. So couldn't you just have the FBI or you meet with these guys?"

By then, I was somewhat agitated, and told him that there was no way on Earth that I was going to do that. I wasn't going to meet with Mr. Johnson. I certainly wasn't going to meet with Mr. Giuliani. I had made that clear repeatedly. So that is the end of that, you know, don't raise this with me again.

So because Mr. Donoghue and I had been exchanging our views about this—I think it was, yes, 7:13 on a Friday night of New Year's Day—had run out of patience. I sent the email that you are talking about where I made pretty clear that I had no interest in doing anything further with this.

Mr. KINZINGER. Just to button this up, Mr. Donoghue. Did you receive a follow-up call from a Department of Defense official about this conspiracy?

Mr. DONOGHUE. I did. I believe it was that same day.

Mr. KINZINGER. Can you give details on that at all?

Mr. DONOGHUE. I received a telephone call from Kash Patel, who I know was a DOD official at that time, worked for, I believe, Acting Secretary of Defense Miller, and he didn't know much about it. He basically said, "Do you know anything about this Italy thing and what this is all about?"

I informed him that the chief of staff had raised the issue with us in his office on December 29th, that we had looked into it a little bit. We had run the name that was provided to us by the chief of staff.

I learned that that individual was in custody in Italy. He had been arrested for a cyber offense of some sort in Italy. The allegation was that he had been exfiltrating data from his company. He was either an employee or a contractor of that company, and he was in custody. That the whole thing was very, very murky at best, and the video was absurd. But that we, the Department, were not going to have anything do with it and DOD should make up its own mind as to what they are going to do. But I made it clear to him that I didn't think it was anything worth pursuing.

Mr. KINZINGER. So you called the video absurd, and despite the absurdity of that conspiracy theory we learned that Mr. Meadows discussed it frequently in the White House.

Mr. Meadows didn't let the matter go. The request went from the Department of Justice to the Secretary of Defense, Christopher Miller. As you will hear, Secretary Miller actually reached out to a high-ranking official based in Italy to follow up on this claim.

Acting Secretary of Defense MILLER. The ask for him was, "Can you call out the Defense Attaché Rome and find out what the heck's going on because I'm getting all these weird, crazy reports and probably the guy on the ground knows more than anything?"

Mr. KINZINGER. The Select Committee confirmed that a call was actually placed by Secretary Miller to the attaché in Italy to investigate the claim that Italian satellites were switching votes from Trump to Biden.

This is one of the best examples of the lengths to which President Trump would go to stay in power—scouring the internet to support his conspiracy theories shown here, as he told Mr. Donoghue in that December 27th call, "You guys may not be following the internet the way I do."

President Trump's efforts to this point had failed. Stonewalled by Mr. Rosen and Mr. Donoghue, President Trump had only one option: He needed to make Clark Acting Attorney General.

Mr. Rosen, during a January 2nd meeting with Mr. Clark, did you confront him again about his contact with the President? If so, can you describe that?

Mr. ROSEN. So at this point Mr. Clark had told us that the President had asked him to consider whether he would be willing to replace me, supposedly on a time table by Monday the 4th.

So I had told Mr. Clark I thought he was making a colossal error in judgment, but I also hoped to persuade him to be more rational and to understand what we had understood, that there is not a factual basis for the fraud assertions that are being made.

So at this meeting, Mr. Donoghue and I met with Mr. Clark, and I guess my hopes were disappointed in that Mr. Clark continued to express a view that he thought there was fraud, even though he had not been a participant in the Department's review of that, and that he was dissatisfied that we knew what we were doing.

But he had acknowledged that he had had further—I don't know if it was a meeting or phone calls or what—but further discussion with the President despite having a week earlier said that he, (A), wouldn't do that, and if did, if he got an invitation to do that, he would let Rich Donoghue or me know.

So we had—it was a contentious meeting where we were chastising him that he was insubordinate, he was out of line, he had not honored his own representations of what he would do. He raised, again, that he thought that letter should go out and we were not receptive to that.

Mr. KINZINGER. Did he tell you in that that the President had offered him the job of Acting Attorney General?

Mr. ROSEN. That was a day later. On the 2nd, he said that the President had asked him to let him know if he would be willing to take it.

Subsequently, he told me that—on Sunday, the 3rd—he told me that the time line had moved up and that the President had offered him the job and that he was accepting it.

Mr. KINZINGER. Let me ask you about that.

What was your reaction to that?

Mr. ROSEN. Well, on the one hand, I wasn't going to accept being fired by my subordinate, so I wanted to talk to the President directly.

With regard to—the reason for that is I wanted to try to convince the President not to go down the wrong path that Mr. Clark seemed to be advocating.

It wasn't about me. There are only 17 days left in the administration at that point. I would have been perfectly content to have either of the gentleman on my left or right replace me if anybody wanted to do that.

But I did not want for Department of Justice to be put in a posture where it would be doing things that were not consistent with the truth, were not consistent with its own appropriate role, or were not consistent with the Constitution.

So I did four things as soon as Mr. Clark left my office on that Sunday, the 3rd.

No. 1, I called Mark Meadows and said I need to see the President right away. He was agreeable and set up a meeting for 6:15 that Sunday, so about 2 hours away.

No. 2, I called Pat Cipollone, the White House Counsel, told him what was going on, and he said he would go into the White House to make sure he was at the meeting, and he would be supporting the Justice Department's position as he had been doing consistently.

No. 3, I called Steve Engel, who was—I was at the Department. It was a Sunday, but there had been some reasons I needed to be there. Mr. Engel I called at home and asked him if he would come in and go to the meeting, which he did and proved to be quite helpful.

Then, No. 4, I asked Rich Donoghue and Pat Hovakimian, who had previously been my chief of staff, to get the Department's senior leadership on a call and let them know what was going on, which they did.

Then Eric Herschmann called me to tell me that he was going to go to the meeting and that he would be supporting the Department of Justice position as well.

So I knew that the meeting was on course and that I would have a number of people supportive of the Department of Justice's approach and not supportive of Mr. Clark's approach.

Mr. KINZINGER. Did Mr. Clark ask you to continue to stay at the Department?

Mr. ROSEN. At that Sunday meeting when he told me that he would be replacing me, he said he had asked to see me alone, because usually he had met with me and Mr. Donoghue, because he thought it would be appropriate in light of what was happening to at least offer me that I could stay on as his deputy.

I thought that was preposterous, told him that was nonsensical, and that there is no universe where I was going to do that, to stay

on and support someone else doing things that were not consistent with what I thought should be done.

So I didn't accept that offer, if I can put it that way.

Mr. KINZINGER. During that meeting, did Mr. Clark ask you to sign the Georgia letter?

Mr. ROSEN. That was on the Saturday meeting, January 2nd, that Mr. Donoghue and I had with him. He again raised with both of us that he wanted us both to sign that letter actually.

Mr. KINZINGER. So in that meeting, did Mr. Clark say he would turn down the President's offer if you reversed your position and signed the letter?

Mr. ROSEN. Yes.

Mr. KINZINGER. Did Mr. Clark—so you still refused to sign and send that letter, I take it?

Mr. ROSEN. That is right. I think Mr. Donoghue and I were both very consistent that there was no way we were going to sign that letter. It didn't matter what Mr. Clark's proposition was in terms of his own activities, we were not going to sign that letter as long as we were in charge of the Justice Department.

Mr. KINZINGER. Thank you for that, by the way.

Mr. Donoghue, were you expecting to have to attend a meeting at the White House on Sunday, January 3rd?

Mr. DONOGHUE. No. As the Acting AG indicated, we had a meeting that afternoon that related to preparations for January 6th.

So I was at the Department, but I had no expectation of leaving the Department. It was a Sunday afternoon, and I was there in civilian clothes, as we both were, and expected to have that meeting, do some other work.

But I had no expectation of going to the White House that day.

Mr. KINZINGER. So let's ask, so prior to that Oval Office meeting, did you set up a conference call with senior leadership at the Department? If so, tell us about that call.

Mr. DONOGHUE. Yes. So, obviously, it was a bit of a scramble that afternoon to prepare for the Oval Office meeting. We had discussed on several occasions, the Acting Attorney General and I, whether we should expand the circle of people who knew what was going on.

It was very important that Steve Engel know, and that is why I reached out to Steve on December 28th, because if Mr. Rosen were removed from the seat and the President did not immediately appoint someone else to serve as Attorney General, just by function of the Department's change of succession Mr. Engel would be in the seat. We wanted to make sure he knew what was going on should that occur.

So the three of us knew. We also brought Pat Hovakimian in. So the four of us knew. But no one else, aside from Jeff Clark, of course, knew what was going on until late that Sunday afternoon. We chose to keep a close hold because we didn't want to create concern or panic in the Justice Department leadership.

But at this point, I asked the Acting AG, "What else can I do to help prepare for this meeting at the Oval Office?"

He said, "You and Pat should get the AAGs on the phone and it is time to let them know what is going on. Let's find out what

they may do if there is a change in leadership, because that will help inform the conversation at the Oval Office.”

Pat Hovakimian subsequently set up that meeting. We got most, not all, but most of the AAGs on the phone. We very quickly explained to them what the situation was.

I told them, “I don’t need an answer from you right now. I don’t need an answer on this phone call. But if you have an answer, I need it in the next few minutes. So call me, email, text me, whatever it is, if you know what you would do if Jeff Clark is put in charge of the Department.”

Immediately Eric Dreiband, who was the AAG of the Civil Rights Division, said, “I don’t need to think about it. There is no way I am staying.”

Then the other AAGs began to chime in in turn and all essentially said they would leave. They would resign en masse if the President made that change in the Department leadership.

Mr. KINZINGER. Incredible.

I would like to look at the Assistant Attorney Generals on the screen, if we can pull that up, have their pictures.

Did every Assistant Attorney General that you spoke to, as you said, agree to resign?

Mr. DONOGHUE. Makan Delrahim was not on the call only because we had some difficulty reaching him.

But, yes, the other people on the screen were on the call and all without hesitation said that they would resign.

Mr. KINZINGER. So as part of the Select Committee’s investigation we found that while Mr. Rosen, Mr. Donoghue, and Mr. Engel were preparing for their meeting at the White House, Jeff Clark and the President were in constant communication, beginning at 7 a.m.

White House call logs obtained by the Committee show that by 4:19 p.m. on January 3rd, the White House had already begun referring to Mr. Clark as the Acting Attorney General. As far as the White House was concerned, Mr. Clark was already at the top of the Justice Department.

Two hours later, DOJ leadership arrived at the White House. The Select Committee interviewed every person who was inside the room during this Sunday evening Oval Office meeting.

Mr. Cipollone told the Committee that he was “unmistakably angry” during the meeting and that he, along with Eric Herschmann and Mr. Donoghue “forcefully challenged” Mr. Clark to produce evidence of his election fraud theories.

Mr. Rosen, can you describe how that meeting started?

Mr. ROSEN. Yes.

So after some preliminaries—so we—Mr. Meadows had ushered us all in, and then he left. So Mr. Cipollone did some introductions.

So after some preliminaries, the President turned to me, and he said, “Well, one thing we know is you, Rosen, you aren’t going to do anything. You don’t even agree with the claims of election fraud. This other guy at least might do something.”

Then I said, “Well, Mr. President, you are right that I am not going to allow the Justice Department to do anything to try to overturn the election. That is true. But the reason for that is because that is what is consistent with the facts and the law and that

is what is required under the Constitution. So that is the right answer and a good thing for the country. Therefore, I submit it is the right thing for you, Mr. President.”

That kicked off another 2 hours of discussion in which everyone in the room was in one way or another making different points, but supportive of my approach for the Justice Department and critical of Mr. Clark.

Mr. KINZINGER. So at some point, Mr. Donoghue comes in the room. Can you explain what led to him coming in the room?

Mr. ROSEN. Oh, I forgot about that.

So initially, in part I think because he was underdressed, and we had not arranged—we had not yet told the President that he was going to come in—the White House had a list of who would be there that did include Mr. Engel, and the White House Counsel, and the Deputy White House Counsel, Mr. Herschmann.

We went in, and then we told the President, maybe 10 minutes into the meeting or something, I forget how far in, Mr. Donoghue was outside. He said, “Well, bring him in.” Then Mr. Donoghue came in and joined the meeting.

Mr. KINZINGER. So, Mr. Donoghue, you enter that room. Can you set the scene for us and describe the tone you walked into?

Mr. DONOGHUE. Yes. But if I could just back up one moment, Congressman, because you put the pictures up on the screen of the AAGs.

I just want to make clear, one of the AAGs who was not on the screen was John Demers. John was the National Security Division AAG.

John was on the call. But I prefaced the call by saying, “John, we need you to stay in place. National security is too important. We need to minimize the disruption. Whether you resign is entirely up to you. Obviously, we will respect your decision either way. But I am asking you, please stay in place.”

He did. So I don’t want to leave the impression that he was not willing to resign, because I think he was.

Mr. KINZINGER. Great. Thank you for that.

Mr. DONOGHUE. So with regard to entering the Oval Office, I was sitting in the hallway. An administrative assistant passed by.

She asked me, “Are you supposed to be in this meeting with the President?”

I said, “No. I am simply here in case questions come up that other people don’t have the answer to.”

She walked away and then came back probably 30 seconds later and said, “The President wants you in the meeting.”

I proceeded into the Oval Office. I took probably two or three steps in and I stopped, because I was, as the AG said, not exactly properly attired. I was wearing jeans and muddy boots and an Army T-shirt, and I never would arrive in the Oval Office this way.

I said, “Mr. President, I apologize. I am sorry. I didn’t know I was going to be here.”

He said, “No, no, no. Just come in, come in, come in.”

So I went in. I attempted to take a seat on one of the couches that are behind the chairs arrayed in front of the President’s desk. He said, “Oh, no, no, no. You are going to be up here.”

Everyone kind-of laughed. They moved the chairs a little bit. Someone from the White House Counsel's Office picked up a spare chair and put it directly in front of the President and I took that seat.

Mr. KINZINGER. Was there discussion about Mr. Clark? Can you kind-of enlighten some of what that discussion was?

Mr. DONOGHUE. Yes. So the conversation at this point had moved beyond the specific allegations, whether it was State Farm Arena or Antrim County or Pennsylvania or whatever. We had discussed those repeatedly, and that was backdrop to the conversation.

But the conversation at this point was really about whether the President should remove Jeff Rosen and replace him with Jeff Clark. Everyone in the room, I think, understood that that meant that letter would go out.

So that was the focus. It was about a 2½-hour meeting after I entered. So there were discussions about the pros and cons of doing that.

Early on, the President said, "What do I have to lose?"

It was actually a good opening, because I said, "Mr. President, you have a great deal to lose."

I began to explain to him what he had to lose and what the country had to lose and what the Department had to lose, and this was not in anyone's best interest.

That conversation went on for some time. Everyone essentially chimed in with their own thoughts, all of which were consistent about how damaging this would be to the country, to the Department, to the administration, to him personally.

At some point the conversation turned to whether Jeff Clark was even qualified, competent to run the Justice Department, which in my mind he clearly was not.

It was a heated conversation. I thought it was useful to point out to the President that Jeff Clark simply didn't have the skills, the ability, and the experience to run the Department.

So I said, "Mr. President, you are talking about putting a man in that seat who has never tried a criminal case, who has never conducted a criminal investigation. He is telling you that he is going to take charge of the Department, 115,000 employees, including the entire FBI, and turn the place on a dime and conduct nationwide criminal investigations that will produce results in a matter of days. It is impossible. It is absurd. It is not going to happen. It is going to fail."

"He has never been in front of a trial jury, a grand jury. He has never even been to Chris Wray's office."

I said at one point, "If you walk into Chris Wray's office, No. 1, would you know how to get there? No. 2, if you got there, would he even know who you are? Do you really think that the FBI is going to suddenly start following your orders?"

"It is not going to happen. He is not competent."

That is the point at which Mr. Clark tried to defend himself by saying, "Well, I have been involved in very significant civil and environmental litigation. I have argued many appeals in appellate courts and things of that nature."

Then I pointed out that, yes, he was an environmental lawyer, and I didn't think that was appropriate background to be running the United States Justice Department.

Mr. KINZINGER. Did anybody in there support Mr. Clark?

Mr. DONOGHUE. No one.

Mr. KINZINGER. Mr. Rosen, it was you he was going to replace. So what was your view about the President's plan to appoint Mr. Clark?

Mr. ROSEN. Well, as I alluded to earlier, the issue really wasn't about me. It was—it would have been fine, as I said, to have had Rich Donoghue replace me. I would have said, "Great, I get 17 days vacation," or something.

But the issue was the use of the Justice Department. It is just so important that the Justice Department adhere to the facts and the law.

That is what it is there to do, and that is what our constitutional role was. So if the Justice Department gets out of the role that it is supposed to play, that is really bad for our country, and I don't know of a simpler way to say that. When you damage our fundamental institutions, it is not easy to repair them.

So I thought this was a really important issue—to try to make sure that the Justice Department was able to stay on the right course.

Mr. KINZINGER. Mr. Donoghue, did you eventually tell the President that mass resignations would occur if he installed Mr. Clark and what the consequences would be?

Mr. DONOGHUE. Yes. So this was in line with the President saying, "What do I have to lose?" Along those lines, he said, "So suppose I do this, suppose I replace him, Jeff Rosen, with him, Jeff Clark. What would you do?"

I said, "Mr. President, I would resign immediately. I am not working 1 minute for this guy," who I had just declared was completely incompetent.

So the President immediately turned to Mr. Engel, and he said, "Steve you wouldn't resign, would you?"

He said, "Absolutely I would, Mr. President. You leave me no choice."

Then I said, "And we are not the only ones. No one cares if we resign. If Steve and I go, that is fine. It doesn't matter. But I am telling you what is going to happen. You are going to lose your entire Department leadership. Every single AAG will walk out on you. Your entire Department leadership will walk out within hours. I don't know what happens after that. I don't know what the United States attorneys are going to do."

We have U.S. attorneys in districts across the country, and my guess would be that many of them would have resigned, and that would then have led to resignations across the Department in Washington.

I said, "Mr. President, within 24, 48, 72 hours, you could have hundreds and hundreds of resignations of the leadership of your entire Justice Department because of your actions. What is that going to say about you?"

Mr. KINZINGER. Wow.

Mr. Engel, what was—can you describe what your reaction was to that?

Mr. ENGEL. Yes. No, I think when the President—my recollection is that when the President turned to me and said, “Steve, you wouldn’t leave, would you?” I said, “Mr. President, I have been with you through four Attorneys General, including two Acting Attorneys General, but I couldn’t be part of this.”

Then the other thing that I said was that, you know, “Look, all anyone is going to sort-of think about when they see this—no one is going to read this letter. All anyone is going to think is that you went through two Attorneys General in 2 weeks until you found the environmental guy to sign this thing.”

“So the story is not going to be that the Department of Justice has found massive corruption that would have changed the results of the election. It is going to be the disaster of Jeff Clark.”

I think at that point Pat Cipollone said, “Yes, this is a murder-suicide pact, this letter.”

Mr. DONOGHUE. I would note too, Congressman, that it was in this part of the conversation where Steve pointed out that Jeff Clark would be left leading a graveyard. That comment clearly had an impact on the President. The leadership will be gone. Jeff Clark will be left leading a graveyard.

Mr. ENGEL. Again, the premise that—which Mr. Donoghue had said—but that Mr. Clark could come in and take over the Department of Justice and do something different was just an absurd premise. All he was doing, Mr. Clark, by putting himself forward, was blowing himself up. If the President were to have gone that course, you know, it would have been a grievous error for the President as well.

Mr. KINZINGER. Mr. Cipollone, the White House Counsel, told the Committee that Mr. Engel’s response had a noticeable impact on the President, that this was a turning point in the conversation.

Mr. Donoghue, toward the end of this meeting, did the President ask you what was going to happen to Mr. Clark?

Mr. DONOGHUE. He did. When we finally got to, I would say, the last 15 minutes of the meeting, the President’s decision was apparent. He announced it. Jeff Clark tried to scrape his way back and asked the President to reconsider. The President doubled down and said, “No, I have made my decision. That is it. We are not going to do it.”

Then he turned to me and said, “So what happens to him now?” meaning Mr. Clark, and he understood that Mr. Clark reported to me.

I didn’t initially understand the question. I said, “Mr. President?”

He said, “Are you going to fire him?”

I said, “I don’t have the authority to fire him. He is a Senate-confirmed Assistant Attorney General.”

He said, “Well who has the authority to fire him?”

I said, “Only you do, sir.”

He said, “Well, I am not going to fire him.”

I said, “All right. Well, then, we should all go back to work.”

Mr. KINZINGER. Did you get a call from the President later that night?

Mr. DONOGHUE. I did, I don't know, probably 90 minutes later or something like that.

Mr. KINZINGER. What was that about?

Mr. DONOGHUE. The President at this point—we left the White House, reconvened at the Department. I left the Department. I was back in my apartment. My cell phone rang, it was the President, and he had information about a truck supposedly full of shredded ballots in Georgia that was in the custody of an ICE agent whose name he had.

I told him that ICE was part of Department of Homeland Security. I hadn't heard about this. If Department of Homeland Security needed our assistance, we, of course, would provide it. But it was really up to DHS to make a call if their agent was involved.

He said, "Fine, I understand. Can you just make sure that Ken," meaning Ken Cuccinelli, "knows about this?"

I said fine, I would pass that along to him. I eventually contacted Ken Cuccinelli later that evening, and I said, "This is what the President told me. If you guys have anything you think should be brought to our attention, let me know."

He said, "Thank you." That was it.

Mr. KINZINGER. Mr. Cipollone left the meeting convinced the President would not appoint Mr. Clark, but he didn't think the President had actually accepted the truth about the election. Sure enough, all the same debunked theories appeared in his speech at the Ellipse 3 days later.

President TRUMP. In the State of Arizona, over 36,000 ballots were illegally cast by non-citizens, 11,600 more ballots than votes were counted, more than there were actual voters. You see that? In Wisconsin, corrupt Democrat-run cities deployed more than 500 illegal, unmanned, unsecured drop boxes, which collected a minimum of 91,000 unlawful votes.

Mr. KINZINGER. Mr. Donoghue, Mr. Rosen, Mr. Engel, and others stopped President Trump's efforts at least temporarily. Yet the message President Trump and his Republican allies pushed throughout December made its way to his supporters anyway. They kept up the pressure campaign on the way to storming the Capitol on January 6th.

Mr. Rosen, were you at the Department of Justice on January 6th?

Mr. ROSEN. Yes, I was there all day.

Mr. KINZINGER. Once the Capitol was under attack, I understand that you communicated with fellow Cabinet members and Capitol Hill leadership. Can you tell us who you spoke to?

Mr. ROSEN. Yes. I was basically on the phone virtually nonstop all day, some calls with our own DOJ folks, some with Cabinet counterparts at DHS and Defense and Interior, some with senior White House officials and with a number of congressional leaders.

I received calls from Speaker Pelosi, from Leader McCarthy, from Leader Schumer. I believe Leader McConnell's chief of staff called; a number of other Members of Congress as well.

You know, the basic thrust of the calls with the Members of Congress was, "There is a dire situation here, and can you help?" I reported to them that we were on a very urgent basis sending help from the Department.

We wound up sending over 500 agents and officers from FBI, ATF, and the U.S. Marshals to assist with restoring order at the Capitol.

So had a number of calls. As I say, it was more or less nonstop all afternoon.

Mr. KINZINGER. Did you speak to the Vice President that day?

Mr. ROSEN. Yes. Twice. The——

Mr. KINZINGER. No. Please, go ahead.

Mr. ROSEN. Well, I was going to say the first call was a one-on-one discussion, somewhat akin to the congressional leadership calls, updating him on what we were doing to assist.

The second call was a conference call around 7 o'clock with the Vice President, congressional leaders, senior White House staff, some other Cabinet officials, to address that order appeared to be close to being restored or restored, but security is still being determined, and the question being what time could the Congress reassemble. The answer was 8 o'clock. Thankfully Congress did reassemble and complete its constitutional duty.

There was one highlight of that second call with the Vice President, which is Mr. Donoghue had gone to the Rotunda of the Capitol to be able to give a first-hand account and was able to tell the folks on the call, including the Vice President, that we thought 8 o'clock would work.

Mr. KINZINGER. Did you speak to the President on January 6th?

Mr. ROSEN. No. I spoke to a number of senior White House officials, but not the President.

Mr. KINZINGER. Mr. Donoghue, on January 6th, we know from Mr. Rosen that you helped in the effort to reconvene the joint session. Is that correct?

Mr. DONOGHUE. Yes, sir.

Mr. KINZINGER. We see here in a video that we are going to play now you arriving with your security detail to help secure the Capitol.

Mr. Donoghue, 30 minutes after you arrived to the Capitol, did you lead a briefing for the Vice President?

Mr. DONOGHUE. I am not sure exactly what the time frame was, but I did participate in the call and participate in briefing the Vice President as well as the congressional leadership that night, yes.

Mr. KINZINGER. Where did you conduct that call at?

Mr. DONOGHUE. I was in an office. I am not entirely sure where it was. My detail found it, because the acoustics in the rotunda were such that it wasn't really conducive to having a call. So they found an office. We went to that office. I believe I participated in two phone calls, one at 1800 and one at 1900, that night from that office.

Mr. KINZINGER. What time did you actually end up leaving the Capitol?

Mr. DONOGHUE. I waited until the Senate was back in session, which I believe they were gaveled in a few minutes after 8 p.m. Once they were back in session and we were confident that the entire facility was secured and cleared, that there were no individuals hiding in closets or under desks, that there were no IEDs or other suspicious devices left behind, I left minutes later. I was probably gone by 8:30.

Mr. KINZINGER. Mr. Donoghue, did you ever hear from President Trump that day?

Mr. DONOGHUE. No. Like the AAG, the Acting AG, I spoke to Pat Cipollone and Mark Meadows and the Vice President and the congressional leadership, but I never spoke to the President that day.

Mr. KINZINGER. So today's hearing showcased the efforts of the Americans before us to stand up for democracy. Mr. Rosen and Mr. Donoghue stayed steadfastly committed to the oath they take as officials in the Department of Justice. On January 6th itself, they assisted during the attack while our Commander-in-Chief stayed silent. Their bravery is a high moment in the sordid story of what led to January 6th.

My colleagues and I up here also take an oath. Some of them failed to uphold theirs and, instead, chose to spread the big lie.

Days after the tragic events of January 6th, some of these same Republican Members requested pardons in the waning days of the Trump administration.

Five days after the attack on the Capitol, Representative Mo Brooks sent the email on the screen now. As you see, he emailed the White House, "pursuant to a request from Matt Gaetz," requesting a pardon for Representative Gaetz, himself, and unnamed others.

Witnesses told the Select Committee that the President considered offering pardons to a wide range of individuals connected to the President. Let's listen to some of that testimony.

Mr. WOOD. And was Representative Gaetz requesting a pardon?

Mr. HERSCHMANN. I believe so. The—the general tone was we may get prosecuted because we were defensive of, you know, the President's positions on these things. The pardon that he was discussing—requesting was as broad as you can describe, from beginning—I remember he's—from the beginning of time up until today for any and all things. Then he mentioned Nixon, and I said, "Nixon's pardon was never nearly that broad."

Vice Chair CHENEY. And are you aware of any Members of Congress seeking pardons?

Ms. HUTCHINSON. I guess Mr. Gaetz and Mr. Brooks, I know, have both advocated for there'd be a blanket pardon for Members involved in that meeting and a— a handful of other Members that weren't at the December 21st meeting as the preemptive pardons. Mr. Gaetz was personally pushing for a pardon, and he was doing so since early December. I'm not sure why Mr. Gaetz reached out to me to ask if he could have a meeting with Mr. Meadows about receiving a Presidential pardon.

Vice Chair CHENEY. Did they all contact you?

Ms. HUTCHINSON. Not all of them, but several of them did.

Vice Chair CHENEY. So you mentioned Mr. Gaetz, Mr. Brooks.

Ms. HUTCHINSON. Mr. Biggs did. Mr. Jordan talked about congressional pardons, but he never asked me for one. It was more for an update on whether the White House was going to pardon Members of Congress. Mr. Gohmert asked for one as well. Mr. Perry asked for a pardon, too, I'm sorry.

Vice Chair CHENEY. Mr. Perry? Did he talk to you directly?

Ms. HUTCHINSON. Yes, he did.

Vice Chair CHENEY. Did Marjorie Taylor Greene contact you?

Ms. HUTCHINSON. No, she didn't contact me about it. I heard that she had asked White House Counsel's Office for a pardon from Mr. Philbin, but I didn't frequently communicate with Ms. Greene.

Mr. WOOD. Are you aware of any conversations or communications regarding the possibility of giving Congressman Matt Gaetz a pardon?

Mr. MCENTEE. I know he had asked for it, but I don't know if he ever received one or what happened with it.

Mr. WOOD. How do you know that Congressman Gaetz asked for a pardon?

Mr. MCENTEE. He told me.

Mr. WOOD. Tell us about that.

Mr. MCENTEE. He told me he'd asked Meadows for a pardon.

Mr. WOOD. Were you involved in or did you witness any conversations about the possibility of a blanket pardon for everyone involved in January 6th?

Mr. MCENTEE. I had heard that mentioned, yeah.

Mr. WOOD. Do you know whether the President had any conversations about potentially pardoning any family members?

Mr. MCENTEE. I know he had hinted at a blanket pardon for the January 6th thing for anybody, but I think he had for all the staff and everyone involved, not with January 6th, but just before he left office, I know he had talked about that.

Mr. KINZINGER. The only reason I know to ask for a pardon is because you think you have committed a crime.

Thank you, Mr. Chairman. I yield back.

Chairman THOMPSON. I want to thank our witnesses for joining us today.

The Members of the Select Committee may have additional questions for today's witnesses, and we ask that you respond expeditiously in writing to these questions.

Without objection, Members will be permitted 10 business days to submit statements for the record, including opening remarks and additional questions for the witnesses.

Without objection, the Chair recognizes the gentleman from Illinois for a closing statement.

Mr. KINZINGER. Thank you, Mr. Chairman.

The Justice Department lawyers are not the President's personal lawyers. We count on them to be on the side of the law and to defend the best interests of the United States, not the best interests of any political campaign. That is how it has been since the Department was founded soon after the Civil War. Justice Department lawyers are supposed to play it 100 percent straight.

President Trump tried to erase his loss at the ballot box by parachuting an unqualified man into the top job at Justice. It was a power play to win at all costs, with no regard for the will of the American people. It was about ignoring millions of votes. Ignore them, throw them out, label them fraudulent, corrupt, illegal, whatever. Facts were clearly just an inconvenience.

From the Oval Office, President Trump urged others to bring his big lie to life. He begged, "Just say the election was corrupt, and leave the rest to me and the Republican Congressmen." He didn't care what the Department's investigations proved. What good were facts when they would only confirm his loss?

It is no surprise that all the far-out, fully fabricated, whack-job conspiracy theories collapsed under even the slightest scrutiny. That insanity went from the internet to the highest levels of Government in no time.

The bottom line? The most senior leadership of the Justice Department, from Attorney General Bill Barr to Jeff Rosen, his successor, and his deputy, Rich Donoghue—everyone except Jeff Clark—was telling President Trump the very same thing: The conspiracy theories were false. The allegation of a stolen election was a lie. The data left no room for doubt, nothing to question. The Constitution left no room for President Trump to change the outcome of the election.

But we are here today because the facts were irrelevant to President Trump. It was about protecting his very real power and very fragile ego, even if it required recklessly undermining our entire electoral system by wildly casting baseless doubt upon it.

In short, he was willing to sacrifice our Republic to prolong his Presidency. I can imagine no more dishonorable act by a President.

We owe a great debt of gratitude to these men you have heard from here today. Real leaders who stood for Justice when it was in grave peril, who put their country first when the leader of the free world demanded otherwise. They threatened to resign rather than corrupt our democracy. Thanks largely to each of them, President Trump's coup failed.

Contrast that to Jeff Clark, who would do exactly what the President wanted: Say there was massive fraud, forget the facts, and leave the rest to President Trump's congressional friends.

Mr. Clark refused to cooperate with this Committee. He pled the Fifth over 125 times. Why risk self-incrimination?

President Trump's congressional friends—some of them are angling for pardons? They knew that every bit of what they did was a lie and it was wrong.

That is all the more reason to respect those who came here to testify today. We thank them for their unflinching service in the face of incredible pressure.

As it is said, "The only thing necessary for evil to succeed is good men to do nothing." Thankfully, there were good people in the Department of Justice.

You heard from other good people, too, on Tuesday. They, too, defended us.

But I am still worried that not enough has changed to prevent this from happening again.

The oath that we take has to mean something. It has to cut to the core of who we are and be the driving force of our service to this Nation.

We on this Committee, we may be able to shine light on the darkness, but that is not enough. It is now up to every American, now and in the future, to stand for truth, to reject the lies, wherever we confront them—in our towns, in our capitals, in our friendships, in our families, and at the ballot box, and within our own minds and hearts.

Thank you, Mr. Chairman. I yield back.

Chairman THOMPSON. Without objection, the Chair recognizes the gentlewoman from Wyoming, Ms. Cheney, for a closing statement.

Vice Chair CHENEY. Thank you very much, Mr. Chairman.

I again want to thank the witnesses for being here today.

After today, I suspect that there will be some who label you agents of the deep state or something else conspiratorial or nonsensical meant to justify ignoring what you have said today, ignoring the facts.

That may be the short-term cost of acting honorably and telling the truth, but your actions should have an important long-term impact. They will help keep us on the course set by the Framers of our Constitution.

Let me paraphrase the words of John Adams and others: Whether ours shall continue to be a Government of laws and not of men is ultimately for the American people to decide.

Let me also today make a broader statement to millions of Americans who put their trust in Donald Trump.

In these hearings so far, you have heard from more than a dozen Republicans who have told you what actually happened in the weeks before January 6th. You will hear from more in the hearings to come. Several of them served Donald Trump in his administration; others, in his campaign. Others have been conservative Republicans for their entire careers.

It can be difficult to accept that President Trump abused your trust, that he deceived you. Many will invent excuses to ignore that fact. But that is a fact. I wish it weren't true, but it is.

Thank you, Mr. Chairman. I yield back.

Chairman THOMPSON. Again, I thank our witnesses and thank my colleagues for this hearing.

As we conclude our fifth hearing in this series, I want to remind the American people of a few things the Committee has shown.

Donald Trump lost the 2020 election. Top Republican officials who supported Trump knew that he lost and told him he lost. Trump knew he lost.

Those who say the election was affected by widespread voter fraud are lying. They were lying in 2020, they were lying in 2021, and, indeed, they are lying today.

Donald Trump went to court. That is the right of any candidate seeking to challenge the outcome of an election. Donald Trump lost in court dozens and dozens of times.

He lost in part because there was no evidence that voter fraud had any impact on the results of the election. To borrow a phrase from our witness earlier this week, Mr. Bowers, all he had was theories and no evidence.

As I have said, if you are running for office in the United States, that is the end of the line. You accept the court's judgment. You concede the race. You respect the rule of law and the will of the voters.

But for Donald Trump, that wasn't the end of the line. Not even close.

The voters refused to keep him in office. The courts refused to keep him in office. But he continued to lie. He went in search of anyone who would go along with his scheme.

As we have shown today, he pressured the Justice Department to act as an arm of his reelection campaign. He hoped law enforcement officials would give the appearance of legitimacy to his lies so he and his allies had some veneer of credibility when they told the country that the election was stolen.

Earlier this week, we showed how Donald Trump brought the weight of the Presidency down on local and State officials who were trying to do their jobs—and ultimately did. They investigated his claims and found them to be false. Then they endured Trump's pressure campaign, at great risk to themselves and their loved ones.

Of course, there was the scheme to get the former Vice President, Mike Pence, to violate the law and the Constitution by rejecting the electoral college votes on January 6th and blocking the peaceful transfer of power.

I mention the former Vice President last because, as we showed, when he refused to bow to the pressure in those critical moments

on January 6th, there was a back-up plan for stopping the transfer of power: The mob and their vile threats.

Up to this point, we have shown the inner workings of what was essentially a political coup—an attempt to use the powers of the Government, from the local level all the way up, to overturn the results of the election.

Find me the votes. Send fake electors. Just say the election was corrupt.

Along the way, we saw threats of violence; we saw what some people were willing to do. In service of the Nation? Of the Constitution? No. In service of Donald Trump.

When the Select Committee continues this series of hearings, we are going to show how Donald Trump tapped into the threat of violence; how he summoned the mob to Washington; and how, after corruption and political pressure failed to keep Donald Trump in office, violence became the last option.

Our investigation is ongoing. Those hearings have spurred an influx of new information that the Committee and our investigators are working to assess. We are committed to presenting the American people with the most complete information possible. That will be our aim when we reconvene in the coming weeks.

The Chair requests those in the hearing room remain seated until the Capitol Police have escorted Members from the room.

Without objection, the Committee stands adjourned.

[Whereupon, at 5:28 p.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF JEFFREY A. ROSEN, FORMER ACTING ATTORNEY GENERAL

JUNE 15, 2022

Chairman Thompson and Vice Chair Cheney, thank you for inviting me to appear here today with my former colleagues Richard Donoghue and Steven Engel. Serving alongside them and the many other dedicated employees of the Justice Department was an extraordinary honor. They were and are an exceptional team of public servants who always put the best interests of our Country first. In the interest of time, I have submitted a copy of my prior opening statements to the House Oversight Committee and Senate Judiciary Committee, and would ask that both be entered into the public record.

With respect to my tenure at the Department of Justice, my priority was to ensure the Department would always proceed on the basis of the facts and the legal merits, to enforce the Constitution and preserve the rule of law. We did that with unfailing fidelity under sometimes very challenging circumstances.

During my tenure as Acting Attorney General, the Justice Department maintained the position that the Department had been presented with no evidence of widespread voter fraud at a scale sufficient to change the outcome of the 2020 election. We thus held firm to the position that the Department would not participate in any campaign's or political party's legal challenges to the certification of the Electoral College votes. We also insisted that there must be an orderly and peaceful transfer of power under the Constitution. In particular, during my tenure, we appointed no special prosecutors; sent no letters to States or State legislators disputing the election outcome; and made no public statements saying the election was corrupt and should be overturned. We initiated no Supreme Court actions, nor filed or joined any other lawsuits, calling into question the legitimacy of our election and institutions. To the contrary, the only time the Department filed a brief in court, it was to say that a Congress Member's lawsuit to overturn the election should be dismissed, as it was.

Some argued to the former President and public that the election was corrupt and stolen. That view was wrong then and it is wrong today, and I hope our presence here today helps reaffirm that fact.

Thank you and I am happy to answer your questions.

HEARING BEFORE THE U.S. HOUSE OF REPRESENTATIVES COMMITTEE ON OVERSIGHT
AND REFORM

MAY 12, 2021

TESTIMONY OF JEFFREY A. ROSEN, FORMER ACTING UNITED STATES ATTORNEY
GENERAL AND DEPUTY ATTORNEY GENERAL

Chairwoman Maloney, Ranking Member Comer, and Members of the Committee, good morning and thank you for the opportunity to join this hearing today. Because this is my first appearance before this Committee since June 2005, please allow me to introduce myself again. I am Jeff Rosen, and from December 24, 2020 to January 20, 2021, I had the honor and privilege of serving as the Acting Attorney General of the United States. Since graduating from law school in 1982, I have lived and worked in our nation's capital region, including more than 9 years of public service at three different Federal agencies. My first position was as General Counsel of the Department of Transportation under Secretary Norman Mineta, followed by service as General Counsel and Senior Advisor at the Office of Management & Budget under then-Director, now-Senator Rob Portman. After several years back in private

practice, I was Deputy Secretary of Transportation under Secretary Elaine Chao, and after that I became Deputy Attorney General at the Department of Justice (“DOJ”) under William Barr. After Attorney General Barr’s departure in December 2020, I became the Acting Attorney General, leading the Department until the end of the Trump Administration. My testimony today relates to my time as Acting Attorney General, and I appreciate this opportunity to discuss the actions taken by DOJ on January 6, 2021, to help restore order at the Capitol and enable the completion of Congress’ certification of the 2020 Electoral College vote.

INTRODUCTION

The events of January 6 were a national travesty and an intolerable attack on our representative democracy. To those who risked their safety to protect everyone at the Capitol: I honor your bravery. To the families of the Capitol Police officers who were injured that day or died in the wake of the attack: I extend my deepest sympathy. And to all of you and your staff who lived through that day: I share the justified anger at what the violent mob of attackers put you through.

Although the storming of the Capitol was a tragic episode in our nation’s history, I take some comfort in the resilience of our institutions in the face of such an attack, as demonstrated by Congress’s ability to reconvene and fulfill its constitutional duties just hours after the breach. I am also proud of the efforts of DOJ, which urgently deployed more than 500 agents and officers from the Federal Bureau of Investigation (“FBI”); the Bureau of Alcohol, Tobacco, and Firearms (“ATF”); and the US Marshals Service (“USMS”) to assist in restoring order at the Capitol. These outstanding men and women moved with urgency to assist the Capitol Police and others in the midst of an unprecedented security breach, and helped to clear and secure the hallowed epicenter of representative government.

I am also proud of the swift action taken thereafter by DOJ personnel in the FBI and the DC US Attorney’s Office to investigate and work to hold accountable those responsible for the disgraceful attack on the Capitol. As I said publicly on January 7, 2021: “Yesterday, our Nation watched in disbelief as a mob breached the Capitol Building and required Federal and local law enforcement to help restore order. The Department of Justice is committed to ensuring that those responsible for this attack on our Government and the rule of law face the full consequences of their actions under the law. Our criminal prosecutors have been working throughout the night with special agents and investigators from the U.S. Capitol Police, FBI, ATF, Metropolitan Police Department and the public to gather the evidence, identify perpetrators, and charge Federal crimes where warranted. Some participants in yesterday’s violence will be charged today, and we will continue to methodically assess evidence, charge crimes and make arrests in the coming days and weeks to ensure that those responsible are held accountable under the law.” (attached as Ex. A).

I appreciate the importance of today’s oversight hearing, and I welcome the opportunity to share with you what I know about the January 6 events in light of my prior roles at the DOJ. The Justice Department plays a special role in our government, and must be guided by our Constitution and the rule of law. I can tell you that is what guided me. My focus was consistently on following the rule of law and enabling the orderly transition of power in the manner contemplated in our Constitution and laws. Upon learning of the events at the Capitol on January 6, my priorities were threefold: securing the Capitol following the breach, supporting the Congress as it sought to fulfill its duty to certify the Electoral College vote, and beginning the critical work of holding accountable those who committed wrongful acts at the Capitol.

I want to note as a threshold matter that there are some unavoidable limitations on the testimony I can provide today. For one, my access to information is limited because I am no longer with DOJ. Further, while the events of that day will be with me forever, my memory is unlikely to be perfect, as some aspects are seared in memory and others have become a blur. Moreover, I have only been authorized by DOJ to testify on certain topics, as I am bound to maintain certain information in confidence and must avoid making any statements that could interfere with the numerous ongoing investigations and prosecutions of individuals involved in the events of January 6. I appreciate your patience and understanding as to those, as I do my best to answer your questions.

I. DOJ ACTIONS PRIOR TO JANUARY 6

On December 24, 2020, with the departure of William Barr, I became Acting Attorney General. During my tenure, DOJ maintained the position publicly announced previously that the Department had been presented with no evidence of widespread voter fraud at a scale sufficient to change the outcome of the 2020 election, that it

would not participate in any campaign's or political party's legal challenges to the certification of the Electoral College votes, and that there would be an orderly and peaceful transfer of power under the Constitution. During my tenure, no special prosecutors were appointed, whether for election fraud or otherwise; no public statements were made questioning the election; no letters were sent to State officials seeking to overturn the election results; no DOJ court actions or filings were submitted seeking to overturn election results, and the only time DOJ did file a brief it was to seek a dismissal of Representative Gohmert's lawsuit aiming to decertify the electoral count—and that lawsuit was dismissed, as DOJ had urged.

In the days and weeks leading up to Congress's January 6 vote to certify the results of the Electoral College, DOJ, FBI, and other law enforcement agencies learned that there would likely be rallies and protests in Washington D.C. on that day, including near the Ellipse and the US Capitol, among other possible locations. By itself, that was not unusual: the National Capital Region periodically and with some regularity hosts protests, rallies, and other demonstrations that can pose safety or security threats. The District of Columbia Metropolitan Police Department ("MPD"), Park Police, and Capitol Police are all experienced at dealing with such events. For example, they had dealt with protest disturbances related to the election results as recently as November and December 2020, and the Capitol Police (which are a part of the legislative branch) handled days of protests pledging to "flood the Capitol" during the nomination hearing of now-Justice Kavanaugh in October 2018.

As you know, the police departments are not a part of DOJ, and DOJ does not have authority to control their activities. But as an investigative and prosecutorial agency, DOJ—primarily through the FBI—would normally focus on gathering intelligence about potential threats of violence and sharing information with police and Federal partner agencies about those threats, while the Department of Homeland Security ("DHS") Office of Intelligence and Analysis and the police were likewise gathering available intelligence as well.

From a leadership standpoint, my role was to ensure that the DOJ organization was appropriately fulfilling its functions. I fulfilled that obligation. Formal information coordination activities among DOJ, various police departments—including the Capitol Police and MPD—and various Federal agencies accelerated during the week of December 28. MPD initiated a Joint Operations Command Center. The FBI's Washington Field Office ("WFO") set up a regular command post to share information among the FBI, ATF, DHS, and each of the various police organizations in the District (including the Capitol Police who are part of the legislative branch and report to Congress). And the District of Columbia US Attorney's Office arranged a number of conference calls to coordinate among local and Federal law enforcement. On January 5, the FBI took the added step of setting up a national coordination center at its Strategic Information and Operations Center ("SIOC"). Located at FBI headquarters, the SIOC was geared toward facilitating better coordination and sharing of information, among the Federal agencies, including DHS, the Department of the Interior ("DOI"), and the Department of Defense ("DOD"). Each of these Federal agencies supplied personnel to staff the SIOC 24/7 beginning on January 5 and 6, and continuing for a period thereafter. It was my understanding that the SIOC also coordinated closely with the WFO post, and thus the partners located there as well.

I am aware that FBI Director Wray and Assistant Director Sanborn have testified publicly about the FBI's work regarding the events of January 6, and the work the FBI did, along with others, to gather intelligence about the planned events and the risk of violence. Based on the updates I received, I was confident that very substantial efforts were undertaken by DOJ personnel in advance of January 6 to understand and prepare for the potential threats, and share that information with law enforcement partners. During the week of December 28, I received reports that MPD and others estimated that between 10,000 and 30,000 people would be coming for the rallies or protests on January 6—a sizable, but not unprecedented number. Crowd size remained a continuing topic of conversation during the ensuing week, but, based on what was reported to me, projections did not materially change.

As is generally the case with large protests or demonstrations in the National Capital Region, it was expected that experienced police departments like the Capitol Police, the Park Police, and MPD would bear responsibility for crowd control and security in their respective jurisdictions.¹ The Department of Defense, which includes the Army National Guard, provided 340 personnel to assist MPD and placed others on standby. On January 4, MPD arrested the leader of the Proud Boys militia group for prior violent acts, and prosecutors obtained a judicial order barring him from the city on January 6. District of Columbia Mayor Muriel Bowser wrote

¹In these types of situations, DOJ performs intelligence-gathering, information-sharing, and after-the-fact investigation and prosecution where warranted.

to Acting Defense Secretary Miller and me that MPD “is prepared for this week’s First Amendment Activities,” and that other than the logistical support of unarmed members of the DC National Guard, DC “has not requested personnel from any other Federal law enforcement agencies.” (attached as Ex. B.)

Nonetheless, although not specifically requested by MPD, Capitol Police, or any other agencies, my office directed various DOJ entities to take cautionary steps to alert or pre-position tactical teams if needed for support on January 6. For example, the FBI’s Hostage Rescue team and Render Safe teams were activated; an additional FBI SWAT team from Baltimore was repositioned to Washington, DC.; ATF Special Response Teams were pre-positioned in Virginia for activation if needed; and USMS Special Operations Group personnel were also pre-positioned in Virginia for deployment if needed.²

I believe that DOJ reasonably prepared for contingencies ahead of January 6, understanding that there was considerable uncertainty as to how many people would arrive, who those people would be, and precisely what purposes they would pursue. Unlike the police, DOJ had no frontline role with respect to crowd control. The FBI, ATF, DEA, and U.S. Attorneys’ offices, as investigative and prosecuting agencies, are generally not equipped for crowd control. But DOJ took appropriate precautions to have tactical support available if contingencies led to them being called upon.

II. DOJ’S ACTIONS ON JANUARY 6

The demonstrations and protests expected for January 6 had been a significant focus of attention for DOJ and FBI leadership in the week prior, and they continued to be so on the day of the events. On the morning of January 6, Principal Associate Deputy Attorney General Richard Donoghue³ and I met with FBI leadership for the latest updates and preparation. I continued to talk to Principal Associate Deputy Attorney General Donoghue and FBI Deputy Director David Bowdich throughout the day and their proactive engagement and decisionmaking were simply invaluable.

In the early afternoon, as President Trump was speaking to an audience at the Ellipse, I contacted the Acting US Attorney for the District of Columbia, Michael Sherwin, in part to inquire if the crowd size there was consistent with or larger than the forecasts. He was personally in the vicinity of the event and reported that the size of the crowd was on the lower side of the forecast and conceivably might have been below the lower end of the range. He also indicated that the crowd at the Ellipse did not appear to be violent or unruly.

Reports after that conversation were more negative. ATF was notified of potential explosive devices having been placed at the Republican and Democratic National Committee offices. ATF promptly sent a team of experts to deal with the explosive devices, in coordination with the Capitol Police and MPD. Subsequently, I observed on television the events as the crowd moved from the Ellipse, up Constitution Avenue, and then to the US Capitol. During that time, I recall receiving updates from Acting US Attorney Sherwin and others.

Sometime around 2 o’clock p.m., I was horrified and dismayed as I saw on television the crowd breaching the Capitol. I soon learned that ATF and FBI, among others, had just received requests for assistance from the Capitol Police and were beginning to respond. My office asked ATF, FBI, and the USMS to provide as much help as possible as quickly as possible, including deploying the pre-positioned resources. I also recall receiving phone calls from White House staff requesting that DOJ provide as much help as we could; I reported to them that we were doing so. I also received calls from multiple Members of Congress and staff, including members of leadership in both the House and Senate. I informed them that DOJ was sending help as quickly as possible. As I monitored the continuing events, I spoke multiple times with DOJ personnel who were onsite and coordinated with my counterparts across the Federal government.

My understanding is that ATF had some personnel arrive to the Capitol very quickly, with sizable numbers following by 2:40 p.m. FBI personnel, including from the Hostage Rescue and SWAT teams, and personnel from the USMS Special Operations Group also deployed urgently to the Capitol. In total, more than 500 DOJ personnel surged to the Capitol to help clear the building and secure it so that the Congress could resume its business. It is my understanding that DHS likewise sent

²Additionally, as it was conceivable that some protesters might be unhappy with DOJ’s not having filed court actions regarding the election outcome, DOJ arranged for tactical support from Bureau of Prisons personnel to supplement existing security at its own RFK Building.

³During this time, Principal Associate Deputy Attorney General Donoghue was performing the functions of the Deputy Attorney General, due to my taking the position of Acting Attorney General.

personnel from the Federal Protective Service and from Immigration and Customs Enforcement and that MPD and other local police departments also sent officers to assist the Capitol Police that afternoon.

My original plan had been to go to the FBI SIOC for the afternoon, which was at the FBI headquarters just across the street from my office, but the urgency of the phone discussions and the need to coordinate with my DOJ staff in responding to the attack on the Capitol complex prevented my doing so. Instead, Principal Associate Deputy Attorney General Donoghue went to the SIOC and provided me with ongoing updates. As the attack continued, he and FBI Deputy Director Bowdich personally went to the Capitol building, to the Rotunda, and continued to provide me with situation reports from inside the building as efforts to restore order remained underway. I shared information with others and sometimes facilitated others talking directly with Principal Associate Deputy Attorney General Donoghue and Deputy Director Bowdich. I also took steps to let the public know where DOJ stood with respect to the attacks: I directed my staff to begin drafting a statement condemning the attacks. After internal review at DOJ, this statement was released later that same afternoon (attached as Ex. B).

It is my understanding that by approximately 5 o'clock to 5:30 p.m., the efforts at the Capitol to clear out the attackers had largely succeeded in doing so with the help of the more than 500 DOJ agents and officers who had deployed, but work remained, as those DOJ personnel were then working with the Capitol Police and others to check for explosives and to otherwise secure the offices and chambers in the Capitol building, so that Congress could return that same day and complete the electoral count.

At 7 o'clock p.m., I, Principal Associate Deputy Attorney General Donoghue, and others from DOJ participated in a conference call that included congressional leaders and representatives from DHS and DOD, as well as others. Principal Associate Deputy Attorney General Donoghue provided a situation report, and congressional leaders wanted to know if it would be feasible for the Congress to return and complete its business that evening. Principal Associate Deputy Attorney General Donoghue told them he expected Congress could return by 8 o'clock p.m., which is what happened, with Vice President Pence reconvening the Senate at 8:06 p.m.

Accordingly, Congress returned and completed its constitutional role in certifying the votes of the Electoral College that evening. With the achievement of the twin objectives of restoring order at the Capitol and enabling Congress to fulfill its electoral count obligation under the Constitution, I was and remain extremely appreciative for the work done that afternoon and into the night by the women and men of the FBI, ATF, and USMS, as well as others at the DC US Attorney's Office and elsewhere in DOJ. They, and all the others from DHS, DOD, DOI, and the various police departments who went to that Capitol that afternoon to help restore order, accomplished a vital feat for our country, and we owe them our deepest gratitude.

III. DOJ'S ACTIONS AFTER JANUARY 6

DOJ also immediately began work to ensure that those responsible for the attack on the Capitol would face the full consequences of their actions under the law. Acting US Attorney Sherwin and his team, along with the FBI and police counterparts, began charging participants in the violence as early as January 7. Within the first week after the attack, more than 70 individuals had been criminally charged, and DOJ had opened more than 170 investigations and gathered over 100,000 digital tips.

DOJ also sent the clear message that further violence would not be tolerated in the lead up to President-Elect Biden's inauguration. In a January 13 video message, I expressed DOJ's support for the exercise of constitutional rights but also strongly warned that "I want to send a clear message to anyone contemplating violence, threats of violence, or other criminal conduct: We will have no tolerance whatsoever for any attempts to disrupt the peaceful transfer of power on January 20th that our Constitution calls for . . . [t]he Department of Justice will seek to hold any violators accountable to the fullest extent of the law."

The work of investigating and prosecuting those who attacked the Capitol on January 6 continues to this day and is now in the capable hands of my former DOJ colleagues and the new DOJ leadership team. To avoid interfering in these ongoing matters, I must leave it to others to answer any questions regarding them as they deem appropriate.

IV. CONCLUSION

January 6 was a dark and harrowing day for America. And though I remain saddened by the events of that day, I am nonetheless grateful that physical harm to

Members of Congress was avoided and that, because of the prompt work that was done to clear and secure the Capitol, Congress was able to complete its work that same evening. I am also proud of the role DOJ played in helping to restore order and all we were able to accomplish alongside our partners from various police forces, Federal departments and law enforcement agencies, and the National Guard.

What the attackers did that day was terrible in its violence, the loss of life, and injuries suffered. But it was also terrible because it constituted an assault on a building that is a fundamental symbol of our democracy, on the institution of Congress itself, and on an electoral process required by our Constitution. As a society, we need to restore greater respect and appreciation for our Constitution, our representative democracy, and the rule of law. As I have said before, violence and senseless criminal conduct are not the right way to resolve differences or promote change in our country. And they will not carry the day.


In closing, I would like to publicly thank my former DOJ colleagues and everyone who played a role in bringing order to chaos on January 6. I will leave it to others to assess why the security at the Capitol was not sufficient to protect the building that afternoon in the first instance, but the assistance that was provided after the breach occurred is something that deserves appreciation. I will also leave it to appropriate authorities to assess responsibility for what happened and determine any precipitating causes.

Finally, if any valuable lesson could come out of the disturbing events from the Capitol riots, perhaps it might be that Americans of all backgrounds and political affiliations could agree that we cannot have anything like that happen again. Our Constitution, our traditions, and our ideals as a nation must be respected and revered. I know that all of you share that wish as well.

EXHIBIT A

5/10/2021

Statement of Acting Attorney General Jeffrey A. Rosen | OPA | Department of Justice

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Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, January 7, 2021

Statement of Acting Attorney General Jeffrey A. Rosen

"Yesterday, our Nation watched in disbelief as a mob breached the Capitol Building and required federal and local law enforcement to help restore order. The Department of Justice is committed to ensuring that those responsible for this attack on our Government and the rule of law face the full consequences of their actions under the law. Our criminal prosecutors have been working throughout the night with special agents and investigators from the U.S. Capitol Police, FBI, ATF, Metropolitan Police Department and the public to gather the evidence, identify perpetrators, and charge federal crimes where warranted. Some participants in yesterday's violence will be charged today, and we will continue to methodically assess evidence, charge crimes and make arrests in the coming days and weeks to ensure that those responsible are held accountable under the law."

Component(s):

Office of the Attorney General

Press Release Number:

21-13

Updated January 7, 2021

EXHIBIT B



MURIEL BOWSER
MAYOR

January 5, 2021

The Honorable Jeffery Rosen
Acting United States Attorney General
950 Pennsylvania Ave, NW
Washington, DC 20530

The Honorable Ryan D. McCarthy
Secretary of the Army
101 Army Pentagon
Washington, DC 20310

The Honorable Chris Miller
Acting Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

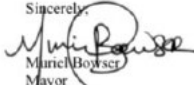
Dear Acting Attorney General Rosen, Secretary McCarthy, and Acting Secretary Miller:

As the law enforcement agency charged with protecting residents and visitors throughout the District of Columbia, the Metropolitan Police Department (MPD) is prepared for this week's First Amendment activities. MPD has coordinated with its federal partners, namely the US Park Police, US Capitol Police and the US Secret Service—all of whom regularly have uniformed personnel protecting federal assets in the District of Columbia. This week, MPD has additional logistical support of unarmed members of the DC National Guard, who will work under the direction of, and in coordination with, MPD.

The District of Columbia Government has not requested personnel from any other federal law enforcement agencies. To avoid confusion, we ask that any request for additional assistance be coordinated using the same process and procedures.


We are mindful that in 2020, MPD was expected to perform the demanding tasks of policing large crowds while working around unidentifiable personnel deployed in the District of Columbia without proper coordination. Unidentifiable personnel—in many cases, armed—caused confusion among residents and visitors and could become a national security threat with no way for MPD and federal law enforcement to decipher armed groups.

To be clear, the District of Columbia is not requesting other federal law enforcement personnel and discourages any additional deployment without immediate notification to, and consultation with, MPD if such plans are underway. The protection of persons and property is our utmost concern and responsibility. MPD is well trained and prepared to lead the law enforcement, coordination and response to allow for the peaceful demonstration of First Amendment rights in the District of Columbia.

Sincerely,

Muriel Bowser
Mayor

Cc: Congresswoman Eleanor Holmes Norton

EXHIBIT C

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Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, January 6, 2021

Acting Attorney General Jeffrey A. Rosen Regarding the Overrunning of the U.S. Capitol Building

Acting Attorney General Jeffrey A. Rosen issued the following statement:

"The violence at our Nation's Capitol Building is an intolerable attack on a fundamental institution of our democracy. From the outset, the Department of Justice has been working in close coordination with the Capitol Police and federal partners from the Interior Department, the Department of Homeland Security, and the National Guard, as well as the Metropolitan Police and other local authorities. Earlier this afternoon, the Department of Justice sent hundreds of federal law enforcement officers and agents from the FBI, ATF, and the U.S. Marshals Service to assist the Capitol Police in addressing this unacceptable situation, and we intend to enforce the laws of our land."

Component(s):
[Office of the Attorney General](#)

Press Release Number:
21-12

Updated January 6, 2021

1 UNITED STATES SENATE
2 COMMITTEE ON THE JUDICIARY
3 WASHINGTON, D.C.
4
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6
7

8 INTERVIEW OF JEFFREY ROSEN
9
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11

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13 SATURDAY, AUGUST 7, 2021
14
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16

17 The interview was convened, pursuant to notice, at 10:00
18 a.m., and was conducted at the Dirksen
19 Senate Office Building, Washington, D.C.
20
21
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1 record.

2 The letter of authorization from the Department of
3 Justice dated July 26, 2021; the prior authorization, which
4 remains in effect, which was May 9, 2021; and the letter of
5 nonobjection from Doug Collins on behalf of former President
6 Trump dated August 2, 2021. These authorize testimony that
7 Mr. Rosen will give today.

8 Ms. Zdeb. Thank you. And those will be
9 entered into the record.

10 Mr. Rosen. Okay. Well, thank you. I thought I'd
11 offer some preliminary observations to help frame the
12 discussion and facilitate some conversation. So thank you for
13 the opportunity to make some preliminary observations as we
14 begin the voluntarily transcribed interview. With both the
15 current President and the former President having confirmed
16 that they do not object to my responding to these questions,
17 I'm here today to share with you, and the American public,
18 information about events during the period that I served as
19 the Acting Attorney General.

20 So I want to affirm at the outset that during
21 my tenure at the Department of Justice, my priority was to
22 ensure that the Department would always proceed on the basis
23 of the facts and the legal merits to enforce the Constitution
24 and preserve the rule of law. We did that. And I was honored
25 to have led and have served alongside the extraordinary team

1 of public servants who always put the best interests of our
2 country first.

3 During my tenure as the Acting Attorney
4 General, which began on December 24 of last year, the
5 Department of Justice maintained the position, publicly
6 announced by former Attorney General William Barr, that the
7 Department had been presented with no evidence of widespread
8 voter fraud in a scale sufficient to change the outcome of the
9 2020 election. We thus held firm to the position that the
10 Department would not participate in any campaign's or
11 political parties' legal challenges to the certification of
12 the Electoral College votes, and that there must be an orderly
13 and peaceful transfer under the Constitution.

14 In particular, then, during my tenure, we
15 appointed no special prosecutors. We sent no letters to
16 states or state legislators disputing the election outcome.
17 We made no public comments saying the election was corrupt and
18 should be overturned. We initiated no Supreme Court actions,
19 nor filed or joined any other lawsuits, calling into question
20 the legitimacy of the election and our institutions.

21 To the contrary, the only time the Department
22 of Justice filed a brief in court regarding the election, it
23 was to say that a Congressional member's lawsuit to overturn
24 the election should be dismissed. And it was.

25 Back in April of 2019, when I appeared before

1 the Senate Judiciary Committee at my nomination hearing, I
2 testified, "If the appropriate answer is to say no to
3 somebody, then I will say no." That's exactly what I did.

4 At the outset, I want to comment on the
5 actions of two people you will likely be interested in;
6 President Trump, and former Acting Assistant Attorney General
7 for the Civil Division, Jeffrey Clark.

8 President Trump's unwillingness to accept the
9 results of the election is public and well known. I thought
10 that was misguided, and I disagreed with things that President
11 Trump suggested the Justice Department do with regard to the
12 election, so we did not do them.

13 But when I and others told the President he was misinformed or
14 wrong or that we would not take various actions to discredit
15 the election's validity, he acquiesced to the Department's
16 position.

17 The President was persistent with his inquiries.
18 And I would have strongly preferred if he had chosen a
19 different focus in the last month of his presidency. But as to
20 the actual issues put to the Justice Department, DOJ
21 consistently acted with integrity, and the rule of law held
22 fast.

23 It was unfortunate that I ultimately had to
24 seek a meeting with the President on the evening of January
25 3rd, 2021, to persuade the President not to pursue a different

1 path endorsed by Jeffrey Clark, which would have ended my
2 tenure. But with the support of the entire DOJ's senior
3 leadership team, and the White House counsel as well, the
4 President himself decided not to do that, not to pursue that
5 alternative path.

6 To this day, I find Mr. Clark's actions
7 inexplicable. I'll do my best to answer your questions today,
8 recognizing my memory is unlikely to be perfect, as the events
9 occurred many months ago during an extraordinary time for our
10 country, and additional access to documents or other things to
11 jog my memory could be useful.

12 But the key thing that I clearly remember,
13 and will underscore today, is that during my time as Acting
14 Attorney General, the Department of Justice maintained its
15 integrity and maintained the rule of law with regard to last
16 year's elections.

17 Having seen no widespread fraud sufficient to
18 change the election result, we resisted entreaties from any
19 source to take public actions or make public statements that
20 would negate the results of the election.

21 So if there any further questions, I'll be
22 happy to address them.

23 Ms. Zdeb. Thank you, Mr. Rosen, for that
24 opening statement. We're glad to have the opportunity to
25 speak with you. And as you can imagine, we do have some

PREPARED STATEMENT OF STEVEN A. ENGEL, FORMER ASSISTANT ATTORNEY
GENERAL, OFFICE OF LEGAL COUNSEL, U.S. DEPARTMENT OF JUSTICE

JUNE 15, 2022

Good morning, Chairman Thompson, Vice Chairwoman Cheney, and Members of the committee. I appear this morning at the Committee's request, and I thank you for the opportunity to make an opening statement.

Although the topics to be discussed involve Presidential communications and the deliberative processes within the executive branch, the U.S. Department of Justice has authorized me to provide testimony on the particular subjects identified by the Committee, and former President Trump previously authorized Department officials to discuss these matters with the committees of Congress. I will therefore seek to answer the Committee's questions to the best of my ability.

I was privileged to serve as the Assistant Attorney General of the Office of Legal Counsel from November 2017 through January 2021. In that role, I served as the chief counsel to the Attorney General and the principal legal adviser to the executive branch. During that period, we sought to ensure that our legal advice would assist the President and his cabinet secretaries in discharging their responsibilities within the boundaries of the Constitution and laws of the United States, and in the interest of the people of the United States. Our commitment to that work remained the same both before and after the election of November 2020.

Following the November 2020 election, in an effort to promote confidence in the election results, Attorney General Barr authorized the Department to review and, where appropriate, to investigate reports of fraud and irregularities as they came in. The Department's senior officials ultimately concluded that there was no evidence of widespread voter fraud on a scale sufficient to change the outcome of the election, and Attorney General Barr reported that publicly in early December.

Although I was not personally responsible for these investigations, I did not doubt the judgment of the Attorney General and the Department's senior leadership. As a Presidential candidate, President Trump and his campaign had every right to pursue litigation in contesting the election results in the various Federal and State courts. But absent credible evidence of a violation of Federal law, the Department did not have any role to play in these election contests.

This view was widely shared among the Department's senior leadership, including by Acting Attorney General Rosen. Yet we discovered in late December that one of the Assistant Attorneys General, Jeff Clark, took a different view. Mr. Clark believed that the Department should publicly assert that the election results had been marred by fraud and should urge several of the States to replace their previously certified electors. Mr. Clark's views came to the attention of President Trump, who considered whether Mr. Clark should replace the Acting Attorney General at the helm of the Department of Justice.

The Department's senior leadership, as well as the White House Counsel, believed that Mr. Clark's plan lacked any factual or legal basis. On January 3, we met with the President and with Mr. Clark to explain why the Clark plan should not be pursued. We also made clear that the Department's leadership could not remain if the President chose to pursue that course. Following that discussion, President Trump agreed with us, and he retained Acting Attorney General Rosen through the end of his Administration.

It was a great honor to serve at the Department of Justice, and I was privileged during my time to work with many lawyers of integrity and honor, including those sitting beside me today. The Department's leadership clearly understood our responsibility to ensure the neutral enforcement of the law, to protect our Constitution, and to assist in the peaceful transfer of power.

Thank you for the opportunity to make this statement, and I will seek to answer the Committee's questions today to the best of my ability.

○