

OVERSIGHT OF THE OFFICE OF SPECIAL COUNSEL
JACK SMITH

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED NINETEENTH CONGRESS

SECOND SESSION

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C O N T E N T S

THURSDAY, JANUARY 22, 2026

OPENING STATEMENTS

	Page
The Honorable Jim Jordan, Chair of the Committee on the Judiciary from the State of Ohio	1
The Honorable Jamie Raskin, Ranking Member of the Committee on the Judiciary from the State of Maryland	4

WITNESS

Jack Smith, Former Special Counsel, U.S. Department of Justice	
Oral Testimony	7
Prepared Testimony	10

LETTERS, STATEMENTS, ETC. SUBMITTED FOR THE HEARING

All materials submitted by the Committee on the Judiciary, for the record	87
An article entitled, “Opinion Jack Smith wrongly tried to silence Trump. He makes no apologies,” Jan. 9, 2026, <i>The Washington Post</i> , submitted by the Honorable Jim Jordan, Chair of the Committee on the Judiciary from the State of Ohio, for the record	
Materials submitted by the Honorable Jamie Raskin, Ranking Member of the Committee on the Judiciary from the State of Maryland, for the record	
An article entitled, “Trump Acknowledges He Wanted to Go to the Capitol On January 6,” May 1, 2024, <i>The New York Times</i>	
An article entitled, “Washington Post’s Carol Leonnig Outlines Trump Deputy Tony Ornato’s Troubling History With the Truth: ‘Not So Great,’” Jun. 30, 2022, <i>Mediaite</i>	
An article entitled, “The Men Disputing Hutchinson’s Testimony Are Two of Trump’s Biggest Acolytes,” Jul. 1, 2022, <i>TruthOut</i>	
An article entitled, “Cassidy Hutchinson stands by her testimony amid push back,” Jun. 29, 2022, <i>CNN</i>	
A criminal complaint entitled, “Criminal Complaint by Telephone or Other Reliable Electronic Means,” United States District Court, Central District of California, Dec. 12, 2025	
An article entitled, “Peter Thiel was reportedly an FBI informant,” Oct. 19, 2023, <i>The Verge</i>	
An article entitled, “Hunting Leaks, Trump Officials Focused on Democrats in Congress,” Jun. 14, 2021, <i>The New York Times</i>	
An article entitled, “Trump’s DOJ secretly obtained phone and text message logs of 43 congressional staffers and 2 members of Congress,” Dec. 10, 2024, <i>NBC News</i>	
A press release entitled, “Congressman Jeff Van Drew Statement on Storming of the Capitol Building,” Jan. 6, 2021, <i>Office of Congressman Jeff Van Drew</i>	
An article entitled, “Meme Rehashed Old, False Claim That J6 Committee Destroyed Evidence,” Oct. 15, 2024, <i>factscheck.org</i>	
An article entitled, “Kenneth Chesebro, an architect of Trump’s fake elector scheme, pleads guilty in Georgia,” Oct. 20, 2023, <i>Politico</i>	

Materials submitted by the Honorable Henry C. “Hank” Johnson, Jr., a Member of the Committee on the Judiciary from the State of Georgia, for the record

A press release entitled, “Joint Statement from Elections Infrastructure Government Coordinating Council & the Election Infrastructure Sector Coordinating Executive Committees,” Nov. 12, 2020, *America’s Cyber Defense Agency*

The testimony from the former FBI Director Chris Wray, Sept. 24, 2020
Not provided at the time of publication

An article entitled, “Disputing Trump, Barr says no widespread election fraud,” Jun. 28, 2022, *AP News*

An article entitled, “Rudy Giuliani Voicemail Transcript,” Nov. 19, 2025, *Rev*, submitted by the Honorable Jerrold Nadler, a Member of the Committee on the Judiciary from the State of New York, for the record

Materials submitted by the Honorable Andy Biggs, a Member of the Committee on the Judiciary from the State of Arizona, for the record

An article entitled, “Biden’s FBI Paid Anti-Trump Sedition Hundreds as Informants in J6 Arctic Frost Probes,” Jan. 20, 2026, *MSN*

Not provided at the time of publication

An article entitled, “Jack Smith Team Approved \$20,000.00 Payment to Informant to Snitch on Trump During Arctic Frost Probe,” *MSN*

Not provided at the time of publication

An article entitled, “AT&T Turned Kevin McCarthy’s Cell Phone Records over to Jack Smith.”

Not provided at the time of publication

An article entitled, “Biden’s Legal Team Met with Jack Smith Aide Before Trump Indictment.”

Not provided at the time of publication

An article entitled, “Jack Smith Deposition Gives Insight into Failed Effort to Hold Trump Accountable.”

Not provided at the time of publication

An article entitled, “Trump special counsel Jack Smith was involved in Lois Lerner IRS scandal,” Nov. 25, 2022

Not provided at the time of publication

An article entitled, “Special counsel Jack Smith’s mixed history pursuing high-profile politicians,” Nov. 22, 2022, *Washington Examiner*

Not provided at the time of publication

An article entitled, “FBI resisted opening probe into Trump’s role on January 6,” Jun. 12, 2023, *The Washington Post*

Not provided at the time of publication

Materials submitted by the Honorable Zoe Lofgren, a Member of the Committee on the Judiciary from the State of California, for the record

A clip entitled, “Mike Pence Criticizes Former President Trump Over January 6 and Stolen Election Claims,” Jun. 7, 2023, *C-SPAN*

A sentencing memorandum, *United States of America v. Cody Mattice*, Jun. 30, 2022, United States District Court, District of Columbia

A Court Appeal document, *United States of America v. Donald J. Trump*, United States Court of Appeals, District of Columbia Circuit, No. 23–3190, Dec. 8, 2023, submitted by the Honorable Pramila Jayapal, a Member of the Committee on the Judiciary from the State of Washington, for the record

The *Hawaii* case, 1960, submitted by the Honorable Thomas P. Tiffany, a Member of the Committee on the Judiciary from the State of Wisconsin, for the record

Not provided at the time of publication

An article entitled, “Fulton County admits to Verifying 315,000 votes in the 2020 without poll workers’ signatures,” Dec. 6, 2025, *Atlanta News First*, submitted by the Honorable Barry Moore, a Member of the Committee on the Judiciary from the State of Alabama, for the record

Not provided at the time of publication

An article entitled, “Barr says Trump’s First Amendment argument in Jan. 6 case is not valid,” Aug. 2, 2023, *Axios*, submitted by the Honorable Sydney Kamlager-Dove, a Member of the Committee on the Judiciary from the State of California, for the record

Materials submitted by the Honorable Deborah K. Ross, a Member of the Committee on the Judiciary from the State of North Carolina, for the record

A tweet from the Honorable Andy Biggs, a Member of the Committee on the Judiciary from the State of Arizona, Jan. 7, 2021

A link to the interview entitled, “The Capitol Hill Show|Episode 2: Jim Jordan,” Mar. 15, 2024, *TRT World*

Materials submitted by the Honorable Lucy McBath, a Member of the Committee on the Judiciary from the State of Georgia, for the record

An article entitled, “Wall Street Journal editorial board calls out MAGA’s latest 2020 stolen election ‘nonsense,’” Dec. 29, 2025, *The Independent*

An article entitled, “Fact Check: Fulton County’s 315,000 Unsigned Early Votes Are NOT Proof Of Electoral Fraud,” Dec. 23, 2025, *Yahoo News/Lead Stories*

Materials submitted by the Honorable Jesús G. “Chuy” García, a Member of the Committee on the Judiciary from the State of Illinois, for the record

A Staff Report entitled “Where Are They Now: The Perpetrators of January 6th and the Defenders of Democracy Who Stopped Them,” Jan. 2026, *House Judiciary Democrats*

A Staff Report entitled, “One Year Later: Assessing the Public Safety Implications of President Trump’s Mass Pardons of 1,600 January 6th Rioters and Insurrectionists,” Jan. 2026, *House Judiciary Democrats*

Materials submitted by the Honorable Daniel S. Goldman, a Member of the Committee on the Judiciary from the State of New York, for the record

An article entitled “With AG Bondi Next to Him, Trump Says ‘Deranged’ Jack Smith Must be Investigated,” Oct. 15, 2025, *Democracy Docket*

A tweet from Marco Rubio, “There is nothing patriotic about what is occurring on Capitol Hill. This is 3rd world style anti-American anarchy,” Jan. 6, 2021, *X.com*

Materials submitted by the Honorable Jasmine Crockett, a Member of the Committee on the Judiciary from the State of Texas, for the record

The DOJ press release entitled, “Houston Man Sentenced to Prison for Assaulting Law Enforcement with Dangerous Weapons During January 6 Capitol Breach,” Jun. 5, 2024, *U.S. Department of Justice*

An article entitled, “They ransacked the US Capitol and want the government to pay them back,” Jan. 21, 2026, *The Washington Post*

Materials submitted by the Honorable Becca Balint, a Member of the Committee on the Judiciary from the State of Vermont, for the record

A First Superseding Indictment, *United States of America v. Thomas Caldwell, Donovan Crowl, Jessica Watkins, Sandra Parker, Bennie Parker, Graydon Young, Laura Steele, Kelly Meggs, and Connie Meggs*, United States District Court, District of Columbia, Feb. 19, 2021

The Superseding Indictment, *United States of America v. Donald J. Trump*, U.S. District Court, Department of Justice, Aug. 27, 2024

APPENDIX

An article entitled, “I was Donald Trump’s Lawyer, Jack Smith should be celebrated, not vilified,” Dec. 16, 2025, *MS Now*, submitted by the Honorable Jamie Raskin, Ranking Member of the Committee on the Judiciary from the State of Maryland, for the record

An article entitled, “F.B.I. Director Sees No Evidence of National Mail Voting Fraud Effort,” Sept. 24, 2020, *The New York Times*, submitted by the Honorable Henry C. “Hank” Johnson, Jr., a Member of the Committee on the Judiciary from the State of Georgia, for the record

QUESTIONS AND RESPONSES FOR THE RECORD

Questions for Jack Smith, Former Special Counsel, U.S. Department of Justice, submitted by the Honorable Andy Biggs, a Member of the Committee on the Judiciary from the State of Arizona, for the record

Response from Jack Smith, Former Special Counsel, U.S. Department of Justice

OVERSIGHT OF THE OFFICE OF SPECIAL COUNSEL JACK SMITH

Thursday, January 22, 2026

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

Washington, DC

The Committee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, the Hon. Jim Jordan [Chair of the Committee] presiding.

Members present: Representatives Jordan, Issa, Biggs, Tiffany, Massie, Roy, Fitzgerald, Cline, Gooden, Van Drew, Nehls, Moore, Kiley, Hageman, Lee, Fry, Grothman, Knott, Harris, Onder, Schmidt, Gill, Baumgartner, Raskin, Nadler, Lofgren, Cohen, Johnson, Swalwell, Lieu, Jayapal, Scanlon, Neguse, McBath, Ross, Balint, Garcia, Kamlager-Dove, Moskowitz, Goldman, and Crockett.

Chair JORDAN. [Presiding.] The Committee will come to order. Without objection, the Chair is authorized to declare a recess at anytime.

We welcome everyone to today's hearing on Oversight of the Office of Special Counsel Jack Smith. The Chair now recognizes the gentlelady from Florida to lead us in the Pledge of Allegiance.

ALL. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation, under God, indivisible, with liberty and justice for all.

Chair JORDAN. We'll begin today's hearing with opening statements. The Chair is now recognized for an opening statement.

It was always about politics, and to get President Trump, they were willing to do just about anything.

On January 7, 2023, Kevin McCarthy becomes Speaker of the House. Sixteen days later, Jack Smith issues a subpoena for his phone records—phone records from two years prior for a two-month timeframe, Election Day 2020 to January 7, 2021

Jack Smith and the Biden Justice Department get the phone records of the top Republican in government, the guy second in line to the President. They know who he called, who called him, when the call took place, and how long it lasted.

You can pattern an individual's life. They knew who the Speaker talked to before big votes, who he talked to after big votes, when he called his colleagues, and when he called his family.

To add insult to injury, they go to the judge for a subpoena for a gag order on the carrier. AT&T, don't tell your customer, the

Speaker of the House, that you just gave his phone calls to Jack Smith and Joe Biden.

Here's the kicker. They say to the courts: We need this gag order because he's a flight risk. Someone might tamper with witnesses or with evidence.

Are you kidding me? The Speaker of the House is going to run?

They got my phone records for 2½ years. Even the Democrats said this was wrong.

Of course, we shouldn't be surprised. The Democrats have been going after President Trump for 10 years—for a decade. The country should never ever forget what they did.

Over the next few hours, we're going to hear a lot of yelling and screaming, I assume, from the other side, but we should never forget what took place, what they did to the guy "We the People" elected the President twice.

It all started in 2016 when they spied on his campaign. The Clinton campaign hired the law firm Perkins Cole, who hired the public relations firm Fusion GPS, who hired a foreigner, Christopher Steele, to put together the fake dossier.

A bunch of garbage in that document, but that was used by Jim Comey's FBI. We all know Jim Comey. He was the guy who just last year was strolling along the beach, when the Good Lord had the waves wash up onshore seashells in the formation of "86 47." That guy took that dossier to the FISA Court, lied to the Court, and then, spied on the other party's campaign.

This, of course, led to the Mueller investigation—2½ years, 19 lawyers, 40 agents, and \$30 million—to find nothing, no conspiracy, and no coordination whatsoever.

Then, it was impeachment one, the anonymous whistleblower. We couldn't even know who was bringing the charge against the guy they were trying to take—the guy we elected who they were trying to kick out of office. We couldn't know. Secret hearings in the bunker, in the basement of the Capitol. Again, nothing.

Then, it was impeachment two. No secret hearings here because they didn't have any hearings. It was a snap impeachment, and the Senate trial actually took place after President Trump wasn't in office.

Of course, it was Alvin Bragg, who said before he got elected district attorney that there was no case here. Then, he gets elected and changes his mind, when the Left starts pressuring him to go after President Trump.

He hires Michael Colangelo, former Democrat National Committee consultant, and the No. 3 guy at the Department of Justice.

Of course, it's Fani and Nathan, Fani Willis and Nathan Wade in Fulton County, Georgia. We actually deposed Mr. Wade, one of the most interesting depositions I've sat through.

We said to him, "You know, you billed taxpayers in Georgia thousands of dollars for meetings in D.C. with the January 6th Committee and with the Biden Administration."

We asked him some questions. "Who did you talk to, Mr. Wade?" He couldn't remember. We said, "Where did you meet? Did you meet at the Capitol? Did you meet at the White House? Where did you meet?" He couldn't remember that, either. We said, "Were these meetings in person, on the phone, or did you have a Zoom

meeting?” Couldn’t remember, couldn’t remember, couldn’t remember.

We finally just asked him, “Did you really come to D.C. and meet people?” He said, “Oh, yes, I came and I billed the taxpayers. I know I came.” He has no idea who he talked to or what he did.

Then, there was the raid on President Trump’s home where they searched Barron’s room and the First Lady’s closet.

In our deposition with Steven D’Antuono, head of the FBI Washington Field Office, he told us: None of the normal process, none of the normal protocol was followed in the investigation.

He said, first, “the case was run out of D.C.” Normally, you run it out of the Miami Field Office. No, no, no, we’re going to run it out of D.C.

He said, “he recommended, and the people in the FBI at the time in the Washington Field Office recommended, they give the President notice before they do the search, or at least when they got there, before they start the search, call the President’s lawyers; ask them to come there and meet them, and conduct the search together.” Again, the answer from Main Justice was no.

Which brings us back to Mr. Smith. On November 18, 2022, three days after President Trump announces he’s running for President, Attorney General Garland names Jack Smith Special Counsel.

One of the first things Mr. Smith does is put on his team the very people responsible for the raid on President Trump’s home—the very people.

Then, Jack Smith also puts on his team the people responsible for getting the phone records of dozens of Members of Congress—people like Thomas Windham, who when we deposed him, took the Fifth 71 times. We’ve actually referred him to the Justice Department for obstructing our investigation.

Jack Smith then gets a gag order in his investigation on President Trump from Judge Chutkan without filing a single affidavit with the court from a witness, or a potential witness, that they felt threatened by statements from the President.

Stop and think about it. Jack Smith restricts the speech of the former President while he’s a candidate for President. Thank goodness Mr. Smith was slapped down on appeal, and the order was changed.

In fact, just two weeks ago, *The Washington Post* editorial page, “Jack Smith would have blown a hole in the First Amendment.” I just want to read two sentences from this:

Mr. Smith seemed unconcerned about interfering in the democratic process by seeking to muzzle a candidate for a high office. Three Appellate judges, all nominated by Democrat Presidents, ruled that Mr. Smith’s proposed gag order infringed on President Trump’s First Amendment rights.

Of course, they did.

This wasn’t the only time Mr. Smith lost in court. In the classified documents case in Miami, Judge Cannon held that Mr. Smith was not permitted to be Special Counsel. Jack Smith was never properly appointed. In fact, he couldn’t be properly appointed because he was never confirmed by the Senate for any position in the Executive Branch, as the law requires.

Here's what Judge Cannon stated, quote:

The Special Counsel's position effectively usurps that important legislative authority transferring it to a Head of Department, and in the process threatening the structural liberty inherent in the separation of powers.

Of course, on July 1, 2024, the U.S. Supreme Court ruled that President Trump had immunity for actions taken in his official capacity as the President.

One month later, after this decision by the Supreme Court, Jack Smith files a superseding indictment on August 27, 2024.

Mr. Smith doesn't stop there. He does something unprecedented. On October 2nd, he files a motion with the court before President Trump's defense counsel has even responded to the indictment. Everyone knows the normal process is the government indicts. The defense responds with some motions, and then, the government responds to the defense.

Mr. Smith skips the second step, and the brief that he files is 165 pages—almost four times the court limit. Even liberal Judge Chutkan, who's given Jack Smith everything he's asked for in the course of this investigation, even she called it "atypical" and "irregular."

Now, why would Jack Smith do that? Why would he abandon proper procedure? Why would he ignore court rules? Why would he do that?

Because he's running out of time. There's an election around the corner. It's coming in 33 days, and he's got to get President Trump. He's got to stop President Trump from running, tie him up in court. He's got to get to trial or, at a minimum, insert a 165-page political document into the Presidential campaign.

It was always about politics. The good news is the American people saw through it. They saw through it.

For so long, the Left has controlled so much in this country. The Left controlled big media, controlled big tech, controlled academia, Hollywood, and certainly the Democrat Party, and all too much the Federal bureaucracy.

The Left doesn't control "We the People." In spite of the Left, and the weaponization efforts of Jim Comey, Alvin Bragg, Fani Willis, and Jack Smith, "We the People" saw through it all and we elected President Trump twice.

Before turning to the Ranking Member for his opening statement, I would just ask unanimous consent to enter into the record *The Washington Post* editorial, "Jack Smith would have blown a hole in the First Amendment."

With that, I yield to the gentleman from Maryland.

Mr. RASKIN. Well, thank you kindly, Mr. Chair.

I want to start by recognizing the presence of four American heroes here today, four of the hundreds of officers who defended us on January 6, 2021: Michael Fanone, Aquilino Gonell, Daniel Hodges, and Harry Dunn. I thank them for being here today.

Mr. Smith, thank you for appearing before the American people. I'm glad that the Committee has finally granted you the same chance to report your findings to the American people that every other Special Counsel investigating an American President has had.

The good Chair started by saying it's all about the politics. Well, maybe for them, but for us, it's all about the rule of law, and who's going to stand by the rule of law and who's going to oppose it.

Mr. Smith, you're one of America's great prosecutors. For nearly three decades, you worked for Justice under both Republicans and Democrats; the Manhattan DA, where you prosecuted sex crimes and domestic violence cases; the Eastern District of New York, where you prosecuted murderers, rapists, gang bangers, and other violent criminals. Leading the Public Integrity Section at the Department of Justice, you brought prosecutions against corrupt public officials across the political spectrum.

When you went to The Hague as Chief Prosecutor in the Kosovo trial, you prosecuted war crimes and crimes against humanity perpetrated against thousands of innocent victims.

While others may have devoted their lives to corrupt self-enrichment, you have devoted your life to the rule of law and to public service.

You've never been prosecuted for anything. You've never been convicted of anything. As far as I can tell, you've never even been the subject of a disciplinary proceeding over the course of your multidecade career.

Donald Trump says you're a criminal and you belong in prison. He says you belong in prison—not because you did anything wrong, mind you, but because you did everything right.

You pursued the facts. You followed the law. You stuck with extreme caution to every rule of professional responsibility. You had the audacity to do your job.

Everybody here knows what you did wrong in Donald Trump's eyes and why he says you belong in prison. You found, and I quote from your sworn testimony before the Committee, you found, "proof beyond a reasonable doubt that President Trump engaged in the criminal scheme to overturn the results of the 2020 election and to prevent the lawful transfer of power."

When asked whether you believed the evidence was enough to obtain a criminal conviction against Donald Trump at trial, you had a one-word answer, "Yes."

When asked if Donald Trump was responsible for the violence that took place at the Capitol on January 6th, you said, "Our view of the evidence was that he caused it and that he exploited it, and that it was foreseeable to him."

You found that Trump knew he had lost the election. How? Well, he's own Attorney General William Barr repeatedly told him so, and described all Trump's theories as BS.

Trump's top campaign advisors told him he lost the election. The Vice-President Pence told him he lost the election. More than 60 Federal, State, and court decisions, including eight rendered by judges he appointed to the bench, rejected every outlandish election fraud and corruption claim that he made.

Trump himself even privately acknowledged it, gesturing to Joe Biden on TV and saying, quote, "Can you believe I lost to that F—in' guy?" He knew he lost.

He threw everything into his big lie, which some people, even in this room to this day, will stand by and swear by.

Well, when the big lie wasn't enough to convince officials like Georgia's Secretary of State Brad Raffensperger, a Republican, to commit election fraud and just find Trump 11,780 votes; when it wasn't enough to convince Trump's DOJ to, quote, "Just call the election corrupt and leave the rest to me and the House Republicans"; when it wasn't enough to force Vice President Mike Pence to announce, and then, exercise lawless powers to reject Electoral College votes and use counterfeit slates to anoint Trump the winner—that's when Trump incited mass violence on January 6th.

While more than 140 officers were being brutally assaulted by Trump's mob, while rioters beat them with flagpoles and sprayed them with chemical agents, and crushed them in doorways, and while they chanted, "Hang Mike Pence," and chased the Vice President out of the Capitol, Trump and his team worked the phones, calling not the National Guard, which was under the direct unilateral control of Donald Trump, but calling Members of Congress, urging them to delay certification and to nullify the election results.

Special Counsel Smith, you pursued the facts. You followed every applicable law, ethics rule, and DOJ regulation. Your decisions were reviewed by the Public Integrity Section. You acted based solely on the facts.

The opposite of Donald Trump, who now has purported to take over the Department of Justice. He's in charge of the whole thing under his unitary executive theory, and he acts openly, purely based on political vendetta and motives of personal revenge. He doesn't deny it.

Our colleagues have complained about the Special Counsel's review of toll records, which are phone records, like a phone bill showing only the timing and duration of calls and containing no content, no substance whatsoever from the calls. Those records were lawfully subpoenaed because Donald Trump made those Members of Congress relevant to the investigation. It was Trump who chose to call them to advance his criminal scheme. As you testified, Mr. Smith, if Donald Trump had chosen to call a number of Democratic Senators, we would have gotten toll records for them, too.

I trust our colleagues get the point, because America certainly gets the point.

There is much that Mr. Smith still can't talk about, but we know he badly wants to. His investigation developed what he calls "powerful evidence" that Trump stole documents containing our country's most sensitive secrets—hoarded them in the ballrooms and the bathrooms of his well-trafficked Mar-a-Lago social club. He showed them off to visitors.

Then, he obstructed a Federal investigation by instructing his attorney to pluck out anything really bad before turning materials over to the FBI and having his staff delete incriminating security tape footage.

Today, we're not going to hear a lot about that, because you are gagged by an absurd judicial order rendered faithfully by Trump's most servile and sycophantic appointee to the Federal bench, Judge Aileen Cannon. This order not only blocks release of Volume II of your report, which is unprecedented, about the classified document

scam, it also gags you from discussing the report or its contents with us, with America.

We don't know what's in it, but it must be pretty devastating, because Donald Trump is desperate to keep Mr. Smith, or any other DOJ official, for all time from ever releasing it to Congress and to the American people.

Now, Mr. Smith, if any of our colleagues foolishly choose to attack you and vilify you today—and I know that's not going to happen from some serious prosecutors over there, like Mr. Knott and Mr. Schmidt, who understand what Federal prosecutors do and what the rule of law means—but if anybody decides to attack you personally, they will only be revealing their own ignorance of what prosecutors do and their own indifference to what the rule of law requires in America.

They will only be stroking the wounded ego of a lawless, twice impeached, convicted felon President, who not only unleashed a mob against Congress and his own Vice President, but has now pardoned and released into our communities hundreds of extremists, insurrectionists, and cop-beating felons who have proceeded to commit dozens more crimes against the American people since they were pardoned.

Mr. Smith, I understand you are a long-distance marathon runner. I read that you're a triathlete who's done more than 100 triathlons and nine Ironman competitions. You are in the fight for justice and the rule of law for the long distance, for the long haul, and I thank you for that. We should all try to follow your example.

America looks forward to your testimony today. I yield back to you, Mr. Chair.

Chair JORDAN. The gentleman yields back. Without objection, all other opening statements will be included in the record. We will now introduce today's witness.

Mr. Jack Smith was appointed as Special Counsel in November, on November 18, 2022. He served until January 7, 2025. We welcome our witness today.

We will begin by swearing you in. Would you please rise and raise your right hand?

Do you swear or affirm under penalty of perjury that the testimony you're about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Mr. SMITH. I do.

Chair JORDAN. Let the record reflect that the witness has answered in the affirmative. Thank you. You can be seated. Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony. Mr. Smith, you may begin.

STATEMENT OF JACK SMITH

Mr. SMITH. Chair Jordan, Ranking Member Raskin, and the Members of the Committee, thank you for the opportunity to discuss my work as Special Counsel.

I love my country and believe deeply in the core principles on which it was founded. For nearly three decades, I've served as a career prosecutor in both Republican and Democratic Administrations. I've handled cases ranging from domestic assault and gang

violence to public corruption and election crimes across the United States, and I prosecuted war crimes overseas.

I am not a politician, and I have no partisan loyalties. My career has been dedicated to serving our country by upholding the rule of law.

Throughout my public service, my approach has always been the same: Follow the facts and the law without fear or favor. Experienced prosecutors know its specific case outcomes are beyond our control. Our responsibility is to do the right thing the right way for the right reasons. These principles have guided me through my career, including as Special Counsel.

I'm proud of the work my team did, and I appreciate the opportunity to appear here today to correct false and misleading narratives about our work.

During my tenure as Special Counsel, we followed Justice Department policies; we observed legal requirements, and took actions based on the facts and the law. I made my decisions without regard to President Trump's political association, activities, beliefs, or candidacy in the 2024 election.

President Trump was charged because the evidence established that he willfully broke the law—the very laws he took an oath to uphold. Grand juries in two separate districts reached this conclusion based on his actions, as alleged in the indictments they returned.

Rather than accept his defeat in the 2020 election, President Trump engaged in a criminal scheme to overturn the results and prevent the lawful transfer of power.

After leaving office in January 2021, President Trump illegally kept classified documents at his Mar-a-Lago social club and repeatedly tried to obstruct justice to conceal his continued retention of those documents. Highly sensitive national security information was held in a ballroom and a bathroom.

As I testify before the committee today, I want to be clear: I stand by my decisions as Special Counsel, including the decision to bring charges against President Trump.

Our investigation developed proof beyond a reasonable doubt that President Trump engaged in criminal activity. If asked whether to prosecute a former President based on the same facts today, I would do so, regardless of whether that President was a Democrat or a Republican.

No one—no one—should be above the law in this country, and the law required that he be held to account. That is what I did. To have done otherwise on the facts of these cases would have been to shirk my duties as a prosecutor and as a public servant, of which I had no intention of doing.

I remain grateful for the counsel, judgment, and advice of my team. President Trump has sought to seek revenge against career prosecutors, FBI agents, and support staff simply for having worked on these cases. To vilify and seek retribution against these people is wrong. Those dedicated public servants are the best of us, and it has been a privilege to serve with them.

After nearly 30 years of public service, including in international settings, I have seen how the rule of law can erode. My fear is that

we have seen the rule of law function in our country for so long that many of us have come to take it for granted.

The rule of law is not self-executing. It depends on our collective commitment to apply it. It requires dedicated service on behalf of others, especially when that service is difficult and comes with costs. Our willingness to pay those costs is what tests and defines our commitment to the rule of law and to this wonderful country.

Thank you.

[The prepared statement of Mr. Smith follows:]

Statement of

Jack Smith
Former Special Counsel, U.S. Department of Justice

before the
Committee on the Judiciary
U.S. House of Representatives

January 22, 2026

Chairman Jordan, Ranking Member Raskin, and Members of the Committee, thank you for the opportunity to discuss my work as Special Counsel in the investigation and prosecution of President Trump for his alleged unlawful retention of classified documents and obstruction of justice, and role in attempting to overturn the results of the 2020 election and interfere with the lawful transfer of power.

I love my country and believe deeply in the core principles on which it was founded. For nearly three decades, I served as a career prosecutor, spanning both Republican and Democratic administrations. I have handled cases ranging from domestic assault, rape, armed robbery and murder, to gang violence, narcotics trafficking, and civil rights violations. I have prosecuted public corruption and election crimes across the United States, and I have prosecuted war crimes abroad. I am not a politician, and I have no partisan loyalties. My career has been dedicated to serving our country by upholding the rule of law.

Throughout my public service, my approach has always been the same: follow the facts and the law, without fear or favor. Experienced prosecutors understand that specific case outcomes are beyond our control; our responsibility is to do the right thing, the right way, for the right reasons. These principles have guided me in every role I have held—as an Assistant District Attorney in Manhattan; a federal prosecutor in Brooklyn; Chief of the Public Integrity Section at the Department of Justice; Acting U.S. Attorney in Tennessee during President Trump’s first term; an international war crimes prosecutor; and as Special Counsel.

During my tenure as Special Counsel, we followed Justice Department policies, observed legal requirements, and took actions based on the facts and the law. I made my decisions without regard to President Trump’s political association, activities, beliefs, or candidacy in the 2024 presidential election. President Trump was charged because the evidence established that he willfully broke the very laws that he took an oath to uphold. Grand juries in two separate districts reached this conclusion based on his actions, as alleged in the indictments they returned.

Rather than accept his defeat in the 2020 presidential election, President Trump engaged in a criminal scheme to overturn the results and prevent the lawful transfer of power. President Trump attempted to induce state officials to ignore true vote counts; to manufacture fraudulent slates of presidential electors in seven states that he had lost; to force his own Vice President to act in contravention of his oath and to instead advance President Trump’s personal interests; and, on January 6, 2021, to direct an angry mob to the United States Capitol to obstruct the congressional certification of the presidential election and then exploit the rioters’ violence to

further delay it. Over 140 heroic law enforcement officers were assaulted that day, a fact we should never forget.

And, as set forth in the original and superseding indictments issued in the Southern District of Florida, President Trump stored classified documents at his Mar-a-Lago social club after he left office in January 2021 and he repeatedly tried to obstruct justice to conceal his continued retention of those documents. Highly sensitive information was held in non-secure locations, including a bathroom and a ballroom where events and gatherings took place. Tens of thousands of people came to the social club during the time period when those classified documents were stored there.

As I testify before the Committee today, I want to be clear: I stand by my decisions as Special Counsel, including my decision to bring charges against President Trump. Our investigation developed proof beyond a reasonable doubt that President Trump engaged in criminal activity. If asked whether to prosecute a former President based on the same facts today, I would do so regardless of whether that President was a Republican or a Democrat. No one should be above the law in our country and the law required that he be held to account. So that is what I did. To have done otherwise on the facts of these cases would have been to shirk my duties as a prosecutor and a public servant, which I had no intention of doing. This is why I appreciate the opportunity to appear today and to correct the false and misleading narratives advanced about our work. I am prepared to do so while adhering to the Justice Department's authorization governing the scope of my testimony and while constrained by Judge Cannon's order restricting the discussion of Volume II of my report regarding the classified documents case. To that end, and as a result of Judge Cannon's order and the Justice Department's interpretation of that order, I will not be able to discuss the contents of Volume II of my report, and can only discuss matters with respect to that case that are set forth in the indictment or other public filings. Similarly, I cannot discuss the contents of the documents at issue in the case due to their sensitive nature.

I remain grateful for the counsel, judgment, and advice of the career prosecutors, FBI agents, and support staff with whom I worked as I executed my responsibilities. My team exercised independent judgment and acted in the highest traditions of the Justice Department in the face of threats to our safety and unfounded attacks on our character and integrity. I am saddened and angered that President Trump has sought revenge against them, and others who worked on cases related to the attack on this Capitol, for simply having worked on these cases, for simply having done their jobs. In my opinion, these people are the best of public servants, our country owes them a debt of gratitude, and we are all less safe because many of these experienced and dedicated law enforcement officials have been fired.

Adherence to the rule of law is not a partisan concept or endeavor. The Justice Department's core values, and the traditions and norms I was raised on as a prosecutor, are not meant to change from one administration to the next. After nearly 30 years of public service, including in international settings, I have seen how the rule of law can erode. My fear is that we have seen the rule of law function in this country for so long that many of us have come to take it for granted. But, the rule of law is not self-executing—it depends on our collective commitment to apply it. It requires dedicated service on behalf of others, especially when that service is difficult and comes with costs. Our willingness to pay those costs is what tests and defines our commitment to the rule of law and to this wonderful country.

Thank you for the opportunity to testify today. I look forward to your questions.

Chair JORDAN. We will now proceed under the five-minute rule. We have votes coming in any minute now, but I think we'll have time for three or four Members to get their five-minute questions in before the Committee will take a recess to vote. They are not going to close the vote until we get there; I know that. I know that much.

We will start with the gentleman from California, recognized for five minutes.

Mr. KILEY. Good morning, Mr. Smith.

When Attorney General Garland appointed you, he cited the "particularly sensitive matters" at issue and "extraordinary circumstances" as the reason for appointing a Special Counsel. What did you take that to mean?

Mr. SMITH. What I understood that meant to conduct an independent investigation and come to my own conclusions about whether the facts and the law supported a prosecution.

Mr. KILEY. Clearly, he was alluding to the fact that we had an investigation into a leading candidate for President. That was part of the extraordinary circumstances, would you agree?

Mr. SMITH. I will rely on his public statements about that. I understood my role as Special Counsel was governed by the regulations which required me to make an independent decision on my own.

Mr. KILEY. Certainly, you would agree it was important to approach the investigation with humility and restraint. Is that fair?

Mr. SMITH. Yes, that's what I sought to do. I sought to conduct the—

Mr. KILEY. You thought you possessed those qualities. In fact, you testified in your deposition, quote, "I thought I was the right person for the job."

Of course, some disagreed. Constitutional Law Professor Jonathan Turley, for example, has said, quote, "Jack Smith has a reputation for stretching criminal statutes beyond the breaking point." I assume you disagree with that statement by Professor Turley?

Mr. SMITH. I do disagree with that statement. My career speaks for itself. I have been nonpartisan—

Mr. KILEY. That statement was also—and I'm sorry to have to interrupt; I just have a short amount of time—that statement was also echoed by the U.S. Supreme Court in a unanimous opinion in *McDonnell v. The United States*, where the Court overturned convictions that you had pursued against a former Governor, criticizing your "boundless interpretation" of the Federal criminal statute at issue. That opinion was joined by Justices Ginsburg, Breyer, Sotomayor, and Kagan. Do you also disagree with that statement by those Justices?

Mr. SMITH. I have conducted my career in a nonpartisan fashion. That particular case, the legal position that the Department took, that wasn't my personal position. That was the position of the department.

Mr. KILEY. I see. Mr. Smith, I've had the opportunity during my time on this Committee to review the work of two Special Counsels, John Durham during—appointed during the Trump Administration, and Robert Hur, during the Biden Administration. In both

cases, they seemed to exhibit that humility and restraint that we talked about.

In reviewing in detail the way you conducted this investigation, I see a very different mode of operation—one that sought maximum litigation advantage at every turn, one that repeatedly circumvented Constitutional limitations—to the point that you had to be reined in again and again throughout the process.

For example, shortly after you became Special Counsel, you issued a subpoena for the phone records of the Speaker of the House of Representatives over a two-month period, along with for other Senators and Representatives, even though the Public Integrity Section at DOJ cited litigation risk to doing this. What was that litigation risk?

Mr. SMITH. With respect to the toll record subpoenas that we issued, they were approved by the Public Integrity Section. The Public Integrity Section, in approving those subpoenas, noted the fact that the subpoenas were for records for people who were not targets of our investigation.

Mr. KILEY. They said there was a litigation risk, and you moved forward with it anyway. Not only that, but you also sought orders from judges making it so those who were being—having their records seized would not know about it. You even didn't tell those judges that it was Members of Congress whose records you were going after—in apparent contravention of a Federal statute saying that a telephone provider for a Senate office shall not be barred from providing notice that the records have been requested.

Now, if you sought to do that today, would you be able to get away with asking the judges for a nondisclosure order without telling them these are Members of Congress?

Mr. SMITH. When we secured these toll record subpoenas, it was done consistent with the department policy. You're correct in that this policy has since changed.

Mr. KILEY. They changed the policy based on the actions that you took. Similarly, you issued a gag order against President Trump that the D.C. Circuit Court of Appeals vacated as overbroad, is that correct?

Mr. SMITH. Well, the D.C. Court of Appeals, in passing on that order, found that it was justified. They narrowed the order, but they confirmed that the phenomena—

Mr. KILEY. They narrowed the order because it was overbroad.

In addition to that, you sought an early trial date, that the District Court rejected. When you presented your prosecution memo to Attorney General Garland, it's been reported that he was visibly unimpressed and expressed First Amendment concerns.

Mr. Smith, looking at the record, I see that you were reversed and rebuked by the Department of Justice itself, by the Attorney General, by the Solicitor General, by multiple District Court justices—judges, by the Court of Appeals, and by the U.S. Supreme Court itself.

My final question is: Do you believe that you made any mistakes? Do you have any regrets as to how you conducted this investigation?

Mr. SMITH. If I have any regret, it would not expressing enough appreciation for my staff who worked so hard in these investiga-

tions. We followed the facts and the law. These people who worked for me sacrificed endlessly and have endured way too much for just doing their job. If anything, I wish that I had thanked them—

Chair JORDAN. The time of the gentleman has—

Mr. KILEY. No mistakes? There's that humility. Mr. Chair, I yield back.

Chair JORDAN. Yes, the time of the gentleman was right. The Chair now recognizes the Ranking Member for five minutes.

Mr. RASKIN. Well, thank you, Mr. Chair.

The good gentleman from California certainly knows, because he was a student of mine, that lawyers go to court, and sometimes they win motions and sometimes they lose motions. There's no crime in any of that.

I'm just sorry that you had to be lectured about humility and restraint by a politician, because we might not be best poised to lecture you on those particular virtues.

Let's go to the toll records, since that's been raised, Mr. Smith. First, Congress has allowed toll records to be subpoenaed. This Committee has actually tried to limit it over the years, and the Senators who are whining the most over on the Republican side in the Senate, they never went along with our determination to try to limit the government's ability to subpoena toll records.

It's perfectly lawful what you did. Explain, why did you want those toll records.

Mr. SMITH. We wanted to conduct a thorough investigation of the matters that were assigned to me, including attempts to interfere with the lawful transfer of power.

The conspiracy that we were investigating it was relevant to get toll records to understand the scope of that conspiracy, who they were seeking to coerce, who they were seeking to influence, who was seeking to help them.

Mr. RASKIN. That's normal investigative practice, right?

Mr. SMITH. In conducting a criminal investigation, securing non-content toll records, as you described, is a common practice in almost any complex conspiracy—

Mr. RASKIN. OK. Let's go to something else that I've been hearing over the last week by our colleagues. As they've eagerly anticipated your arrival here, they've been saying that there's some kind of First Amendment defense that Donald Trump would have had to the crimes you indicted him for.

Is there a valid First Amendment defense to defraud the public? Is there a valid First Amendment defense to disrupt a Federal proceeding? Is there a valid First Amendment defense to violating the voting rights of the people and cheating the public out of a fair election?

Mr. SMITH. The First Amendment is something we took seriously in our investigation, but the First Amendment does not protect speech that facilitates crime. Speech that is used to facilitate a crime, a fraud crime, in particular, is not protected under the First Amendment. The Supreme Court precedent on that is clear. This is an issue that we litigated before the District Court, and the District Court ruled as I just stated, "that it is not, in fact, protected."

Mr. RASKIN. The case law is perfectly clear on this, right? All frauds are perpetrated by speech, right?

Mr. SMITH. Yes.

Mr. RASKIN. All conspiracies are perpetrated by speech. Just because your criminal conduct is brigaded with speech doesn't somehow mean you've got a First Amendment defense against trying to overthrow the government. The people who attacked the police officers on January 6th were chanting, "Hang Mike Pence." I suppose that was political speech or they were saying, "Stop the steal." Does that mean they've got a First Amendment defense to violent assault against the officers?

Mr. SMITH. It does not.

Mr. RASKIN. William Barr, by the way, was somebody who was perfectly clear about that. The Attorney—Donald Trump's own Attorney General said: There's no freedom of speech that you have to engage in a conspiracy to overthrow an election, to commit crime. He was perfectly clear about that.

Back in those days, in fact, lots of people on that side of the aisle, including my good friend the Chair, denounced the violence that took place on January 6th. The cat's got their tongues these days. My friend Chair Jordan said, "What happened last week was terrible. It was tragic. It's as wrong as wrong can be," He said, "Republicans, we know all political violence is wrong."

I asked my friend Chair Jordan at a Rules hearing, "Are you also not interested in what happened to us on January 6th?" He said, "Of course. Everyone's interested in holding people accountable who did wrong. The FBI is doing that. The Justice Department is doing that, appropriately so."

What do you think about the attack on the Department of Justice and the Special Counsel for doing your jobs?

Mr. SMITH. The attack is unjustified. The people who worked with me as career public servants are people—they're part of the reason I've been a prosecutor for so long, is to work with people like that, not just the prosecutors in my office, but also the agents, FBI agents who are heroes, who have served their country, not only as agents, but also overseas.

Those attacks are unwarranted, based on the facts, and that they have no basis in who we are as Americans, as a country. I don't see attacking people like that as anything appropriate.

Mr. RASKIN. Thank you. Mr. Chair, I yield back to you.

Chair JORDAN. The gentleman yields back.

Mr. Smith, is Cassidy Hutchinson a liar? She was their star witness, the January 6th Committee, their star witness in one of those staged and choreographed hearings they paid the former President of *ABC News* to put together. She was, in fact, the only witness at this special primetime hearing Tuesday, June 28, 2022, eight o'clock in the evening, and she told some stories.

These were some stories. She talked about the President lunged across the backseat, grabbed the steering wheel, tried to drive the car to the Capitol. I just want to know, do you think she was lying?

Mr. SMITH. Chair Jordan, my assessment of that particular issue is that, with respect to the testimony about someone lunge—the President lunging toward the driver, my recollection of her testimony about that is that it was secondhand. She said she had heard that from somebody.

Chair JORDAN. Do you know who—are you familiar with the name Tony Ornato?

Mr. SMITH. I'm sorry, sir?

Chair JORDAN. Are you familiar with the name Tony Ornato?

Mr. SMITH. Yes.

Chair JORDAN. White House Deputy Chief of Operations, Deputy Chief of Staff for Operations, right? Do you remember—do you remember what he said about it?

Mr. SMITH. As I sit here right now, I do not.

Chair JORDAN. Yes, he said it didn't happen. How about Bobby Engel? Are you familiar with that name?

Mr. SMITH. Yes, I am.

Chair JORDAN. The Secret Service Agent who was actually in the car that day. Do you know what he said? He said it didn't happen.

They both said the first time they ever heard this story was when Ms. Hutchinson testified in the primetime hearing as their star witness of the January 6th Committee.

By the way, did you ever confirm her testimony about this particular incident?

Mr. SMITH. We conducted, as I said before, our own independent investigation of all aspects of the case that we felt was relevant. We, attorneys from my office—

Chair JORDAN. Did you ever confirm it? That's a simple question.

Mr. SMITH. Well, we interviewed her. I should say, attorneys in my office—

Chair JORDAN. Did you ever confirm the President leaping across the seat, grabbing the steering wheel, this whole concoction she brought up in the January 6th hearing? Did you ever confirm that?

Mr. SMITH. Right. We interviewed another firsthand witness who was in the car who did not confirm that this happened, but also—

Chair JORDAN. OK. In your deposition to the Committee last month, Mr. Smith, you said this: "My recollection with Ms. Hutchinson was a number of the things that she gave evidence on were secondhand hearsay." Do you remember making that statement to us last month in the deposition?

Mr. SMITH. I did and I was referring, particularly, to what we're talking about now.

Chair JORDAN. Yes, you also said, "Ms. Hutchinson, regarding this particular claim, was a second- or even third-hand witness." We asked you, if you were a defense attorney, how would you handle cross-examining her if she was on the witness stand? You said, "If I were a defense attorney and Ms. Hutchinson were a witness, the first thing I would do was seek to preclude her testimony because it was hearsay." Do you remember saying all that?

Mr. SMITH. Yes, that's correct, sir.

Chair JORDAN. That's correct, right? Were you going to put her on the witness stand, if you ever got to trial?

Mr. SMITH. We had not made final determinations as to who we were going to call as a witness. We had a large—

Chair JORDAN. You were still considering her?

Mr. SMITH. We had a large choice of witnesses in this case.

Chair JORDAN. Are you familiar with what *The Washington Post* reporters Carol Leonnig and Aaron Davis said in their book? They did this book, a 300-and-some-pages book on chronicling the whole

investigation of the Justice Department. Here's what they said. On page 310, they said,

Jack Smith had wondered whether some of Hutchinson's claims might be relied upon at trial. Still, at one point, Smith told the elections team he wasn't ready to give up on Hutchinson's account. Ultimately, however, Trump Administration officials uniformly fiercely disputed her accounts under oath.

Prosecutors on your team, "told Smith they wouldn't want to use Hutchinson as a witness in court, and Smith agreed." Are Carol Leonnig and Aaron Davis, who wrote this, are they lying?

Mr. SMITH. My recollection is that I had certainly, had not made any final determinations about who we were going to call.

Chair JORDAN. That's the point. That is the point. The fact that they used her in a primetime hearing and you won't rule out using her, or didn't rule out using her, putting her on the witness stand, when everybody knows she wasn't telling the truth. That says it all.

That's the degree the Left and Democrats were willing to go to get President Trump—putting on the witness stand someone everybody knows is making it up. Everybody knows that. You were willing to—by the way, do you know how many times Cassidy Hutchinson was mentioned in their report, the January 6th report? Any idea, Mr. Smith?

Mr. SMITH. I do not.

Chair JORDAN. A 185 times, someone that the whole country knows wasn't telling the truth, and you were still considering putting her on the witness stand because you had to get President Trump. Everybody can see that.

We'd better take a recess for votes. We will resume as soon as votes are over. We're back here 10 minutes after. Mr. Smith, you guys can go back to the room that you were in.

[Recess.]

Chair JORDAN. The Committee will come to order. The gentleman from—the Ranking Member is recognized for a unanimous consent request.

Mr. RASKIN. Thank you very kindly, Mr. Chair, and this goes to the question of the hypothetical witness at the trial that didn't happen. *The New York Times*, May 1, 2024, "Trump acknowledges he wanted to go to the Capitol on January 6th."

Carol Leonnig, who you quoted, "Carol Leonnig outlines Tony Ornato's history of lies." That is June 30, 2022.

On July 1, 2022, "The men disputing Hutchinson's testimony are two of Trump's biggest acolytes." Finally, June 29, 2022, *CNN*, "Cassidy Hutchinson stands by her testimony amid push back." Thank you very much.

Chair JORDAN. Without objection. The gentleman from New York is recognized.

Mr. NADLER. Thank you, Mr. Chair. Mr. Smith, over the past few years, Republicans have waged constant attacks on you. Donald Trump has said you are totally compromised, a political hit man, a Left-wing radical, a criminal, a fully weaponized monster, and that you should be considered mentally deranged and thrown out of the country. Just this week he called you a sick bastard. Unfortunately, the rules of decorum prevent me from saying what I

think of Donald Trump, but he is not the only one to launch attacks against you. Chair Jordan has accused you of abusive surveillance and accused you and your team of partisan and politically motivated prosecutions. Despite the mountain of evidence that you laid out in the Special Counsel's Report and in your court filings, President Trump supporters are convinced that the only reason your team tried to hold him accountable is because you have a vendetta against him.

I want to address these allegations today. You have had a long and distinguished career with the Justice Department including serving as the Chief of DOJ's Public Integrity Section for five years. While leading the Public Integrity Section, you led investigations and prosecution of public figures and political leaders from both parties, Republicans and Democrats. Can you give us a couple of examples?

Mr. SMITH. Sorry about that. During my time as the Chief of Public Integrity, I investigated cases involving both Republicans and Democrats. The standard in all those cases was the same, follow the facts and the law. It didn't matter what party you were in; it mattered about the facts of the case. In doing that, there were cases I brought against Democrats and cases I brought against Republicans. There were also cases that I investigated and did not bring against Democrats and Republicans. Party affiliation played no role in my investigations. I can think of multiple cases of prominent Members of Congress that we investigated who were Republicans who upon reviewing the law and the facts, I decided not to go forward in those cases. The same can be said with people on the Democratic side.

I have always tried to follow the facts and the law in my career.

Mr. NADLER. When it comes to deciding whether to pursue a criminal prosecution of an individual, what factors do you consider?

Mr. SMITH. The primary factors are the facts and the law. As a Federal prosecutor in making a prosecutorial decision, you are guided by the Federal principles of prosecution which guide one not only to look at the facts and the law, but the Federal interests and that is exactly what we did in this case as set forth in my final report.

Mr. NADLER. Does partisan politics play a role in your decision whether or not to prosecute someone?

Mr. SMITH. None.

Mr. NADLER. To be clear, did partisan politics play a role in your decision to charge Donald Trump?

Mr. SMITH. It did not.

Mr. NADLER. What does it do to the justice system if political leaders place pressure on prosecutors to file charges against their political enemies? What are the implications if prosecution decisions are based on politics, not the law?

Mr. SMITH. It weakens the rule of law in our country because it weakens the mechanism for us to prosecute, among other things, corruption. When there are political prosecutions, targeting people because they are enemies of the President, the department loses credibility and it can't do its job in all sorts of cases.

Mr. NADLER. According to your deposition before this Committee, it sounds like your problem was not determining if you had enough

evidence to charge Donald Trump, but rather that you might have had too much evidence and struggled to determine how to present the clear narrative to a jury. How would you characterize the evidence against Mr. Trump about inciting an insurrection against the laws of this country? Did you have too much?

Mr. SMITH. Well, with respect to presenting the case that we charged, one of the central challenges was trying to present that in a concise way because we did have so many witnesses. Some of the most powerful witnesses were witnesses who, in fact, were fellow Republicans who had voted for Donald Trump, who had campaigned for him, and who wanted him to win the election. These included State officials, people who worked on his campaign and advisors.

I will say, however, with respect to the charge of insurrection, we did not charge that. As I set forth in my report, while I believe that courts have found that this was an insurrection, and that there is a reasonable interpretation, a reasonable prosecutor could interpret the evidence to support that charge, I chose not to do that looking at the facts and the law. I thought the charges we brought were appropriate given the evidence that we had.

Mr. NADLER. Thank you, Mr. Smith, for your decades' long public service and for working tirelessly to uphold the rule of law. Those who attack and smear you and your team to protect Donald Trump should be ashamed of themselves. I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from California is recognized.

Mr. ISSA. Mr. Smith, do you see criminals to my left, you don't see any. Do you see people who are committing crimes because they continue to believe things that just aren't true? That is paraphrasing Ronald Reagan, that liberals aren't stupid. They just know things that don't happen to be true.

If the President believed that he was cheated in the election, that there was fraud or in some other way a number of items led to his defeat when, in fact, he should have won, according to the Constitution, does that make him a criminal?

Mr. SMITH. Sir—

Mr. ISSA. That is a yes or no. Please, Mr. Smith. These people here are continuing to grapple constantly with things that aren't true, like socialism works, or that somehow everything the Republicans do is evil and everything they do is right. They have never reached a conclusion in a typical partisan case in which we are not evil because we think something different and we are not wrong.

You understand the Constitution. Do you understand the Bill of Rights that someone has the absolute right to believe something whether it is true or not, and to advocate for something whether it is true or not? Do you understand that in addition to your oath to the Constitution, that this is one of the things the First Amendment allows for, isn't it?

Mr. SMITH. Yes, sir.

Mr. ISSA. OK, if you know that people have a right to opine, lobby for, assert, do everything they can legally to ask for people to make different decisions, then why is it you saw criminal conduct on behalf of a President who believed he didn't win? Chair Jordan and myself have something in common along with a num-

ber of others here. We saw a wrongdoing and on January 6th, we voted not to confirm two States because they had violated the U.S. Constitution in how they selected who got ballots. Yet, you are going to come here and say oh, I just followed the law.

When you went after these people and you said well, technically I can do that, you didn't see any selective nature or any separation of powers under the Constitution to spy on the activities and the conversations of the Speaker of the House? To what end would conversations between the Speaker of the U.S. House, second in line to be the President, and the President, and what basis would it be any of your business other than you believe there was a conspiracy without conspiracy as a basic premise?

You, like the President's men for Richard Nixon, went after your political enemies. Maybe they are not your political enemies, but they sure as hell were Joe Biden's political enemies, weren't they? They were Harris' political enemies. They were the enemies of the President, and you were their arm, weren't you?

Mr. SMITH. No.

Mr. ISSA. No? Oh, great. You spied on the Speaker of the House and these other Senators and so on, and informed no one, and in fact, put in a gag order so they couldn't discover it. If they were not subjects of a conspiracy investigation, why did Congress, a separate branch that you, under the Constitution, have to respect, why is it that no one should be informed, including the judges. As you went in to spy on these people, did you mention that you were spying on seeking records so you could find out about when conversations occurred between the U.S. Speaker of the House and the President? Did you inform the judge? Did you hold that back?

Mr. SMITH. My office didn't spy on anyone.

Mr. ISSA. Wait a second. The question I asked you, Mr. Smith, was pretty straight forward. Did you withhold that information from an Article III judge in the process of taking the records of the Speaker of the House?

Mr. SMITH. We complied with the—

Mr. ISSA. Did you—

Mr. RASKIN. Mr. Chair, would you please instruct the gentleman to allow the witness to answer the question.

Mr. ISSA. It is not your time. I would like my time back.

Mr. RASKIN. Mr. Chair, you have repeatedly done that in the past. The witness has the right to answer the question.

Mr. ISSA. There will be due time to answer the question. Would you please put my time back and let me finish this.

Mr. Smith, I asked you a question and you were not responsive to it and I want you to be responsive to it. Did you, whether you think it was legal or not, whether you think it was right or not, did you withhold the name of Kevin McCarthy, Speaker of the House, when you were seeking records on Kevin McCarthy, the Speaker of the House, or Jim Jordan, the Chair of this Committee?

Chair JORDAN. The time of the gentleman is—

Mr. ISSA. No. Please give me back the time.

Chair JORDAN. Your time has expired. We are going to let the witness answer your question because it is an important question. The witness can respond.

Mr. SMITH. We did not provide that information to the judge when we requested a nondisclosure order, consistent with the law and consistent with the—

Mr. ISSA. Mr. Chair, the amazing thing here today is that we have an admission that an Article I—

Chair JORDAN. The gentleman's time has expired by now 34 seconds.

Mr. GOLDMAN. He gets more than five minutes?

Mr. ISSA. How many times are you going to interrupt me?

Chair JORDAN. The time belongs to the gentleman from California.

Mr. ISSA. I will be brief in my address to the Chair. We have the evidence that an Article I representative on behalf of the President—

Chair JORDAN. The gentleman's time was expired.

[Simultaneous speaking.]

Mr. ISSA. I yield back in disgust at this witness.

Chair JORDAN. Sticking with California, the gentlelady from California is now recognized.

Ms. LOFGREN. Mr. Smith, thank you for being here today. Earlier, the Chair spent a lot of time talking about Cassidy Hutchinson who we know is just one of many witnesses. It is important to note that there was testimony that she was told something by Mr. Ornato, not that she had personal knowledge and of course, Mr. Ornato was of very questionable veracity.

We had testimony from the Metropolitan Police Department official about an argument, a big argument that the President was having about going to the Capitol and, in fact, the vehicle was delayed going back to the Capitol while that argument occurred. Having said that, I want to focus on something my colleagues across the aisle seem to want to ignore. The fact that your investigation into President Trump's attempt to overturn the 2020 election was built on testimony from the Members of the Republican Party.

In fact, last week, *The New York Times* published grand jury transcripts from Georgia that showed the same pattern in Trump's Georgia criminal case. Georgia's Republican Attorney General Chris Carr testified that he told, this is a quote, "We are just not seeing the things that you are seeing." The late Georgia House Speaker David Ralston, also a Republican testified that Trump's fake election scheme was "the craziest things I have heard."

Then, there is Senator Lindsey Graham, one of the President's closest allies. In his secret grand jury testimony, Senator Graham told the jurors, "I have told him more times than we can count that he fell short." He said this: "If you told him Martians came and stole votes, he would be inclined to believe it." Martians, that is from Senator Graham speaking under oath.

Here is my question. Mr. Smith, in your deposition with this Committee, you testified and here is a quote, "Our case was built on frankly Republicans who put their allegiance to the country before the party." Also, that the President's closest allies are telling him that his claims of election fraud are wrong.

I am just wondering, can you explain what you meant in your deposition that it was Republicans who were putting their allegiance to their country ahead of their party?

Mr. SMITH. Yes. There were witnesses who I felt would be very strong witnesses, including for example, the Secretary of State in Georgia, who told Donald Trump the truth, told him things that he did not want to hear and put him on notice that what he was saying was false. These were people who knew how the elections were conducted in these States and I believe that witnesses of that nature, witnesses who are willing to tell the truth, even if it is going to impose a cost of them in their lives, my experience as a prosecutor over 30 years is that witnesses like that are very credible and that jurors tend to believe witnesses like that because they pay a cost for telling the truth.

Ms. LOFGREN. In terms of the grand jury testimony that has now been released, the fact that Donald Trump, according to Senator Graham would believe that Martians stole the election, what does that tell you about Trump's state of mind?

Mr. SMITH. That statement is consistent with what we found in our investigation in that our investigation revealed that Donald Trump was not looking for honest answers about whether there was fraud in the election. He was looking for ways to stay in power. When people told him things that conflicted with him staying in power, he rejected them or he chose not even to contact people like that who would know if the election was done properly in the State.

On the other hand, when individuals would say things that would allow him to stay in power, no matter how fantastical, he would latch on to those. That pattern over time we felt was powerful evidence that he, in fact, knew that the fraud claims that he was making were false.

Ms. LOFGREN. Who were some of the Republican witnesses who told President Trump that his claims of election fraud were false? Can you share that with us?

Mr. SMITH. Yes. There were a range of witnesses. They ranged from people on his campaign team who had wanted him to win, who were employed to help him win the election. They included State officials, State Republican officials who wanted him to win, voted for him, campaigned for him, asked him to provide—asked him and his coconspirators to provide evidence to support their claims and invariably they never did. It included officials, advisors, people he worked with in the White House who he relied on for important decisions and who he trusted in other contexts. We felt we had strong evidence from a variety of sources—

Chair JORDAN. The time of the gentlelady has expired.

Ms. LOFGREN. Mr. Chair, with my fellow Californian, you were allowing the witness to answer.

Mr. GOLDMAN. That is a good question. Isn't that grounds to let him answer?

Chair JORDAN. I have given him 30 second extra. The gentlelady 30 seconds extra. If the gentleman can be concise and finish up here quickly, we will allow him to finish.

Mr. SMITH. Yes, sir. Just to conclude, saying we felt that constituted powerful evidence of his knowing falsity of his statements in furtherance of the fraud.

Ms. LOFGREN. Mr. Chair, I would like to yield back noting the presence of officers who were severely attacked, protecting our lives on January 6th.

Chair JORDAN. The gentlelady yields back. The gentleman from Texas, Mr. Gill, is recognized for five minutes.

Mr. GILL. Mr. Smith, in January 2023, did you subpoena then Speaker of the House, Kevin McCarthy's toll records?

Mr. SMITH. Yes, sir. We did.

Mr. GILL. Yes, you did. The subpoena covered the time period between November 2020 and January 2021, is that right?

Mr. SMITH. I am sorry, sir. Could you say that again?

Mr. GILL. We are not going to delay like this. The subpoena covered the time period between November 2020 and January 2021. How many days after Kevin McCarthy was sworn-in as Speaker did you subpoena his records?

Mr. SMITH. I don't recall, but those two things had nothing to do with one another.

Mr. GILL. It was 16 days after becoming the highest-ranking Republican in the House of Representatives, you subpoenaed his toll records. Do you agree that this might reasonably be considered a violation of the speech or debate clause?

Mr. SMITH. I do not and I want to be clear that the toll records—

Mr. GILL. You were collecting months' worth of phone data on the Republican Speaker of the House, the leader of the opposition. Right after he got sworn-in as Speaker, all around the time of a major vote, that sounds like a flagrant violation of the speech or debate clause to me, and most people agree with me.

Speaker McCarthy had no recourse, did he, because you issued a nondisclosure order ensuring that neither he nor any of the American people knew about these subpoenas. Is that right?

Mr. SMITH. The toll records, the noncontent toll records subpoenas, we did secure nondisclosure orders for those subpoenas.

Mr. GILL. You did and let me ask you, Mr. Smith, at the time you secured those nondisclosure orders, was Speaker McCarthy a flight risk?

Mr. SMITH. The nondisclosure order was based on concerns about—

Mr. GILL. Was Speaker McCarthy a flight risk?

Mr. SMITH. He was not.

Mr. GILL. He was not, then why did your nondisclosure order refer to him as a flight risk? It says right here, the court finds reasonable grounds to believe that such disclosure will result in flight from prosecution.

Mr. SMITH. When securing a nondisclosure order, the risks don't have to be associated—

Mr. GILL. The Speaker of the House is a flight risk?

Mr. RASKIN. Can he finish answering the question?

Mr. GILL. This is not your time. This is my time. Do you think the Speaker of the House is a flight risk? Do you think he is going to hop on a plane and leave the country?

Mr. SMITH. No. What I was trying to explain is with respect to a nondisclosure order, the risks aren't necessarily associated with the subscriber to the phone. They are at risk to the investigation.

Mr. GILL. OK. That you were using—this is clearly in reference to Speaker McCarthy and you were using clearly false information to secure nondisclosure order to hide from Speaker McCarthy and from the American people the fact that you were spying on his toll records. I have got more, so let's move on.

In May 2023, you also issued subpoenas for toll records of nine U.S. Senators and an additional Representative. is that right?

Mr. SMITH. In May 2023, we did issue—

Mr. GILL. You did. There were nondisclosure orders in conjunction with those subpoenas as well, right?

Mr. SMITH. That is correct, consistent with the department policy and law.

Mr. GILL. Again, nobody would know what you were doing. The Senators wouldn't, the Representatives wouldn't, and the American people wouldn't know what you were doing. Is that right?

Mr. SMITH. The toll records that we secured and the nondisclosure orders were consistent with policy and consistent with—

Mr. GILL. You knew whenever you were doing that there was a risk you were violating the speech or debate clause, is that right?

Mr. SMITH. The toll records subpoenas that we secured were with the concurrence of the public integrity—

Mr. GILL. Your own analysis says that you knew that there was a risk you were violating the speech or debate clause. I have it right here. This is an email from John Keller at Public Integrity Section to your team.

As you are aware, there is some litigation risk regarding whether a compelled disclosure of toll records of a Member's legislative calls violates the speech or debate clause in the D.C. Circuit.

That is from your own analysis right there. You did know, didn't you?

Mr. SMITH. With respect to the item you just put up on the screen, the last sentence states—

Mr. GILL. Oh, we are going to get to the last sentence.

Mr. SMITH. OK.

Mr. GILL. We are going to get to the last sentence. You cite case law in here, "the bar on compelled disclosure is absolute." Is that right or do you think that you didn't have to abide by that precedent?

Mr. SMITH. To be clear, this statement is not from my office. This is the statement of the Public Integrity Section—

Mr. GILL. This is your justification for those subpoenas and NDOs that you ordered. This was part of your analysis. It is a cursory analysis. It is worth noting.

Let's get to that last sentence then:

Given my understanding of the low likelihood that any of the Members listed below would be charged, the litigation risk should be minimal here.

In other words, you are using a novel legal theory which you knew was novel, has never been tested by any court. You are not charging any of these Members. Nobody is going to know about it because you issued NDOs. Nobody is going to sue about it, sue this, so who cares, we are going to do it anyway. We walked all over the Constitution throughout this entire process—

Mr. RASKIN. Mr. Chair, the gentleman's time has expired.

Mr. GILL. Spying on Members of Congress and you know it. It is absolutely disgraceful. I yield back.

Chair JORDAN. The gentleman yields back. They're not going to be charged. They're not going to see it. They're not going to know because we're not going to tell them. Let's go ahead and do it—is exactly what happened.

The gentleman from Tennessee is recognized for five minutes.

Mr. COHEN. Thank you, Mr. Chair.

Mr. Smith, it's great that you've been allowed to come here and testify to the American public. Is there anything you'd like briefly to discuss that Mr. Gill brought up on the reasons why you needed those phone records and the limitations that you thought might have been on you and the prosecution—at risk—because to risk the investigation?

Mr. SMITH. Sure. I would begin by pointing out that the email that was referenced wasn't a justification from my office. It was an email from the Public Integrity Section to my office approving the subpoenas.

The subpoenas that we secured with nondisclosure orders from a judge, because I had grave concerns about obstruction of justice in this investigation, specifically, with regard to Donald Trump. Not only did we have the obstruction of justice that we were investigating in the classified documents case, but I was aware during the course of our investigation of a targeting of witnesses during the course of the conspiracy itself.

There were election workers who had their lives turned upside-down and received vile death threats because they were targeted by Donald Trump and his coconspirators. I had a duty to protect witnesses in this investigation. That risk, that threat to witnesses was only confirmed when we went forward in this case, and Donald Trump suggested that one witness should be put to death, and then, also issued a statement to the effect of: If you come after me, I'm coming after you.

In my mind, I can't think of a more direct threat to witnesses and individuals involved in that proceeding. Given that sort of threats, it was, in my view, completely appropriate to protect the integrity of the investigation, to protect against destruction of evidence, and to protect the witnesses in our case.

Mr. COHEN. Just to make clear, you did not see any of the discussion? There was not any, it was just the content that they made a call to the President, and vice versa, but nothing about any content whatsoever?

Mr. SMITH. That's correct. A toll records subpoena gives you who a call is from, who it is to, and the length of that call. It does not tell you the content of what people are speaking about.

Mr. COHEN. You felt that you had a case that was one that you would win beyond a reasonable doubt and moral certainty. Is there anything in your facts that you've had, that you would have used at trial that you believe has not been presented to the public in the past, or have been misrepresented to the public?

Mr. SMITH. Is there anything—

Mr. COHEN. Essential facts that you had that you felt would have resulted in a conviction of the President on the charges that he was indicted on?

Mr. SMITH. My report, the report of our case, the final report summarizes the evidence in a way that gives a fair reading of the strength of the case.

Mr. COHEN. You have no question, but it would have been successful before a jury?

Mr. SMITH. My review of the case, I came to the conclusion we had proof beyond a reasonable doubt. We were ready, willing, and able to go to trial in the case. Of course, as I said in my opening statement, prosecutors can't control outcomes, but I felt confident in pursuing the case to trial.

Mr. COHEN. Did Merrick Garland ever pressure you to bring an indictment, or to do anything in your investigation?

Mr. SMITH. No.

Mr. COHEN. Did anybody else in the administration—President Biden or Vice President Harris, et cetera?

Mr. SMITH. I was given the independence of conduct my investigation, I came to the decision to bring charges in this case without undue influence from anybody in the department.

Mr. COHEN. You dropped the case. Why did you drop the case?

Mr. SMITH. The cases against Donald Trump were dismissed, pursuant to Department policy.

Mr. COHEN. Department policy, Office of Legal Counsel, said, "If somebody's President, you can't bring a charge against him or they can't be held liable." Is that correct?

Mr. SMITH. That's correct. There had not been a case of this nature ever, where someone was elected President with charges pending. That was slightly different. We consulted with Public—I'm sorry—with the Office of Legal Counsel, and they determined, pursuant to policy, that the cases needed to be dismissed.

Mr. COHEN. You weren't pleased with that, but you had to follow the law, and that's what you did?

Mr. SMITH. We followed policy throughout my investigation. My job was not to set policy. My job was to follow it. That's what we did.

Mr. COHEN. I want to thank you for your service. You're a great American, and you came out of this as being somebody who people can respect and look up to in a fashion that we should be instilling people's desire to go into justice, to go into law, and to go into government. You're example of the type of person they should follow.

I yield back the balance of my time.

Chair JORDAN. The gentleman yields back. The gentleman from Wisconsin is recognized.

Mr. FITZGERALD. Mr. Smith, there's something that's really bothering me since your deposition. It's how and why you got the position of Special Counsel.

In your personal relationship with Marshall Miller, let's go back to 1999, when you were working for the United States Attorney's Office for the Eastern District of New York. Is that when you first met Marshall Miller?

Mr. SMITH. Yes.

Mr. FITZGERALD. After ED New York, did the two of you ever work together again prior to becoming Special Counsel? According to the public bios for you and Mr. Miller, you overlapped at DOJ from 2014–2015, when you were Chief of DOJ's Public Integrity

Section and Mr. Miller was Chief of Staff for DOJ's Criminal Division. Is that accurate?

Mr. SMITH. I believe that is accurate, yes.

Mr. FITZGERALD. OK. Were the two of you social outside of work?

Mr. SMITH. I would say intermittently, yes.

Mr. FITZGERALD. OK. After 20 years of knowing each other, it's safe to say you were friends, correct?

Mr. SMITH. Yes.

Mr. FITZGERALD. OK. Let's fast forward to 2022. Mr. Miller is appointed Principal Associate Deputy Attorney General at DOJ, the No. 3 at DOJ. You call your friend to congratulate him, and according to the deposition transcript, you say you'd be interested in a position at DOJ. Is that correct?

Mr. SMITH. Yes. What I recall is that I expressed an interest, if the right position came up, I would be interested in considering it.

Mr. FITZGERALD. At that point, there is no discussion about Special Counsel, is that correct?

Mr. SMITH. This is some time ago and I don't have a specific recollection of all these conversations. I've—

Mr. FITZGERALD. You were first approached about Special Counsel, and that role, before the 2022 midterm elections. According to the deposition transcript, in October 2022, you fly to D.C., meet with the AG and the Deputy Attorney General, is that correct?

Mr. SMITH. Yes, I flew to D.C. I believe it was in October and I met the Deputy Attorney General and, also, I met the Attorney General.

Mr. FITZGERALD. In multiple conversations with your friend Marshall Miller, he never once tipped you off that the Attorney General, or Deputy Attorney General, have you on the short list for Special Counsel? That never came up?

Mr. SMITH. Again, this was some time ago, but my recollection is I came to Washington and I met with those individuals, as well as the Human Rights Section. Marshall Miller is the person who set that up.

Mr. FITZGERALD. He was at the meetings? Was he at the meetings? Just to tie all this together, you've known Mr. Miller since you were both AUSA in New York. You stayed in touch over a 20-year career in Federal Government. He gets a job with the Biden Administration, and just a few short months later, you're offered the role of Special Counsel.

I'm having a hard time believing that this is some big coincidence and that there wasn't a back-and-forth on the Special Counsel. Maybe you never received directives explicitly from the AG or the Deputy Attorney General, but was Marshall Miller—did he become a two-way conduit throughout the investigation with DOJ?

Mr. SMITH. No, I would not take direction from a political person, a political figure, about how I should conduct an investigation.

Mr. FITZGERALD. You never spoke to him throughout the entire time you were conducting an investigation?

Mr. SMITH. No, I didn't say that. What I said was that he was—

Mr. FITZGERALD. OK.

Mr. SMITH. I think you asked if he was a conduit of information. He was present, to my recollection, at meetings, briefings that I

had with the Attorney General and Deputy Attorney General during my time as Special Counsel.

Mr. FITZGERALD. I don't want to assume anything, but Mr. Miller wanted you in that position, not because you're necessarily the best lawyer he ever met, but because of the long-term friendship that you have with him?

Mr. SMITH. What I can tell you is I have been a prosecutor for 30 years. I have been an apolitical public servant for 30 years. I've prosecuted cases against Democrats and Republicans all the same. I've had, in my view, the experience necessary for this position, and that's why I accepted it.

Mr. FITZGERALD. He knew that you would pursue—he had to have an idea that you would pursue exactly what the Biden Administration wanted, which was criminal charges against President Trump?

Mr. SMITH. That anybody who knows me well knows the idea that I would take direction from a political figure about how an investigation should come out. I don't think anybody who knows me thinks that's true.

Mr. FITZGERALD. Well, Chair Jordan, the next deposition should be with Marshall Miller at this point.

I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from Georgia is recognized.

Mr. JOHNSON. While we are deposing Marshall Miller, maybe we can depose Donald Trump about why he chose his personal lawyer to be the head of the DOJ.

On January 6, 2026, the fifth anniversary of the insurrection, the White House launched a taxpayer-funded website that attempts to rewrite history about what happened on that day of infamy.

On January 6, 2021, there was an insurrection at the United States Capitol that resulted in a police officer dying the next day, another four officers dying by suicide in the months thereafter, with at least 140 police officers being injured by the insurrectionists, with 15 of them requiring hospitalization.

I'm proud that we have four former officers, as well as on-duty Capitol Hill police officers, here today.

Mr. Smith, I want to ask you about this website. Because the Trump Administration is using taxpayer dollars to lie to the American people about the events leading up to, and the events taking place on January 6, 2021.

For example, this Trump propaganda site claims that the 2020 election was, quote, "stolen." Mr. Smith, did your investigation undercover evidence sufficient to prove beyond a reasonable doubt that Donald Trump knew that his claim that the election was stolen was false?

Mr. SMITH. Yes, it did.

Mr. JOHNSON. Did your investigation uncover evidence sufficient to prove, beyond a reasonable doubt, that Donald Trump publicly claimed that the 2020 election was stolen from him, while he privately acknowledged that he had lost the election?

Mr. SMITH. Yes. We cited instances of that in our case.

Mr. JOHNSON. Here we see that, on the fifth anniversary of the insurrection, the Trump White House propaganda machine is still

promoting the stolen election theory on this government webpage, with a text box titled, quote, “Fraudulent Election: Stolen Election Certified.” The site also has a subsection reading, in part, quote: “FBI entrapment operation exposed.”

Mr. Smith, did your investigation develop any evidence to support the allegation that the FBI entrapped insurrectionists into committing crimes on January 6th?

Mr. SMITH. Our investigation revealed that Donald Trump is the person who caused January 6th; that it was foreseeable to him, and that he sought to exploit the violence.

Mr. JOHNSON. This website also accuses you of being a, quote, “Biden prosecutor” who brought, quote, “weaponized charges against Mr. Trump.” Mr. Smith, were you a Biden prosecutor, who weaponized the Department of Justice against Donald Trump?

Mr. SMITH. Absolutely not.

Mr. JOHNSON. Did Attorney General Merrick Garland direct you to prosecute Trump, because Donald Trump was running against Joe Biden in the Presidential election?

Mr. SMITH. No.

Mr. JOHNSON. There are also allegations that President Trump was the victim of, quote, “lawfare,” and accusations that the Department of Justice lawyers, who prosecuted Donald Trump used, quote, “fabricated indictments, and rigged show trials.”

Did you, Mr. Smith, or the men and women working on your team, work to fabricate indictments or put on rigged show trials?

Mr. SMITH. No. We secured indictments from grand juries, and we were prepared to prove our case in court beyond a reasonable doubt.

Mr. JOHNSON. Did you use your appointment as Special Counsel to conduct a politically motivated witch hunt, scam investigation and prosecution of Donald Trump?

Mr. SMITH. I did not. We followed the facts; we followed the law. Where that led us to an indictment of an unprecedented criminal scheme to block the peaceful transfer of power.

Mr. JOHNSON. Those indictments have been dismissed. Can they be rebrought or resurrected after Trump leaves office?

Mr. SMITH. They were dismissed without prejudice.

Mr. JOHNSON. They can be refiled? He can be prosecuted after he leaves office. Is that correct?

Mr. SMITH. I’m not going to speak to that. I can only speak about what we did, which was dismiss the case without prejudice.

Mr. JOHNSON. All right. The website put out by the Trump White House on the anniversary of January 6th, is nothing more than a pack of lies. It proves that Donald Trump is hellbent on misusing taxpayer dollars in a feeble attempt to rewrite his criminal history, and the history of what happened on January 6, 2021.

With that, I yield back. I would like to, Mr. Chair, offer for the record an unanimous consent.

Chair JORDAN. Unanimous consent?

Mr. JOHNSON. A statement from the Cybersecurity and Infrastructure Security Agency, released on November 12, 2020, that states, “The November 3rd election was the most secure in American history.”

Also, testimony from—I would like to request unanimous consent to enter into the record the September 24, 2020, testimony of Trump’s former FBI Director Chris Wray, who told the Homeland Security Committee of the Senate, that the FBI had, quote, “not seen or historically had any kind of coordinated national voter fraud effort in a major election.”

Last, but not least, Mr. Chair, I’d like to ask unanimous consent to enter into the record this article titled, “Disputing Trump: Barr Says No Widespread Election Fraud.”

Chair JORDAN. Without objection. The gentleman yields back. The gentleman from Texas is recognized for five minutes.

Mr. GOODEN. Thank you, Mr. Chair. Mr. Smith, on November 18, 2022, AG Garland appointed you as Special Counsel. Can you tell me about your swearing-in, or the oath of office that you took after that?

Mr. SMITH. I don’t recall the specifics of it. I know I was sworn-in. I don’t recall the specifics of how that was done.

Mr. GOODEN. You don’t remember who swore you in?

Mr. SMITH. I don’t.

Mr. GOODEN. Would you agree that taking the oath of office is a legal requirement for the job that you had?

Mr. SMITH. I have taken oaths of office regularly. I haven’t researched whether it’s required or not, but I have done that in every government case to the present.

Mr. GOODEN. Well, it is required. The terms I heard earlier today were “atypical,” “irregular,” and “no proper procedure.” In your opening statement, you said that “We followed Justice Department policies.” I would assume you meant the law as well.

It strikes me as odd that you don’t remember who sworn you in, how you were sworn-in. It’s pretty significant. We all get sworn-in here and I remember every day. You don’t remember who swore you in?

Mr. SMITH. I don’t remember the details of it, as I sit here today. I know I—

Mr. GOODEN. You did take the oath of office before you got rolling?

Mr. SMITH. My recollection is it was when I was appointed.

Mr. GOODEN. It strikes me as odd that Attorney General Garland had you retake the oath of office on the 14th of September of the following year. Why did he make you do that?

Mr. SMITH. As I am sitting here right now, I do not recall. I know that there is the oath of office that I signed; I believe it was on the 18th, the day that I was appointed. I know the department had me do a second one. I don’t know the particulars of why they asked me to do it again, but I know—

Mr. GOODEN. Well, you signed it on November 20, 2022. There was no witness, which you have to agree it’s a little odd if there’s no witness saying that you took the oath of office, it would maybe make someone like me question whether or not you were legitimately doing the job, until you finally took the oath of office.

It sounds like the Attorney General had the same question and thought, “Oh, shit, we’ve got to have him sign this,” on the 14th day of September of the following year.

Why did you take the oath of office again on the 14th of September of the following year, when you say you took the office in November 2022? Why did you need to do it twice?

Mr. SMITH. My recollection is that I took the oath of office—as you said, it was the 18th or the 20th—and felt I was under the oath of office. I believe, if you have it in front of you, I signed an oath.

Mr. GOODEN. You signed, but there was no witness. There was—it's supposed to be either notarized or witnessed. Apparently, Attorney General Garland thought it was significant enough to have you do another oath—11 months later. That struck—that's strange, right?

Mr. SMITH. I don't know why they asked me to sign it again. I don't recall ever discussing this issue with Attorney General Garland.

Mr. GOODEN. Well, that is just wild to me. I'd like to yield the balance of my time to Mr. Jordan.

Chair JORDAN. Well, which one was the official one? Which one counted? I think that's what the gentleman is asking.

Mr. SMITH. I understood myself to have taken the oath of office when I assumed the job—

Chair JORDAN. How much money did—OK. How much money did you spend in the—investigating President Trump? How much money did your office spend?

Mr. SMITH. I do not recall, as I sit here now, but I know that, pursuant to—I believe it's the Special Counsel regulations—reports were issued each six months detailing how much—

Chair JORDAN. We have gathered \$35 million. What I want to know is, how much of that \$35 million of taxpayer money did you skiv to confidential human sources? We know you gave \$20,000 to someone. It just got reported last week. How much more money did you give confidential people, people we don't know about, with American tax money going after the guy we elected President?

Mr. SMITH. My recollection regards the \$20,000, which was not a payment from me. It was me approving a payment by the FBI to a confidential human source who was reviewing video and photographic—

Chair JORDAN. Who's the source?

Mr. SMITH. I do not know the identity of the source. What I—

Chair JORDAN. How many other payments went to this source or other sources?

Mr. SMITH. As I sit here, I do not know the answer to that question. My role as Special Counsel, I didn't—

Chair JORDAN. Thirty-five million dollars and you're giving money to people—the country doesn't know who they are, and you're giving their hard-earned money to these folks?

The main question I have, too, with this is, why did you have to do it? You subpoenaed bank records from the RNC, phone records for Members of Congress. You got subpoenas for bank records for people sitting right there in the front row. Why did you have to pay people for information when you could subpoena people and get it?

Ms. JAYAPAL. Time, Mr. Chair. Time has expired.

Chair JORDAN. Time has expired. You can answer the question, though. The country would like to know why you had to do it.

Mr. SMITH. My recollection and understanding is the payment, the \$20,000 that I approved, was for a confidential human source to assist in the review of video and photographic evidence, showing people who were attacking the Capitol, attacking police officers, obstructing the proceeding, and seeing if we could prove that some of those people had come directly—

Chair JORDAN. That wasn't my question, but my time has expired. The gentleman from California is recognized.

Mr. SWALWELL. Mr. Smith, I want you to have the utmost confidence in what you did. You did everything right.

Harry Dunn, Danny Hodges, Sergeant Gonell, and Mike Fanone, they did everything right. These guys, my Republican colleagues, are a joke. They're wrong. History will harshly judge them.

I want you to lean in today. You have nothing to be ashamed of. You did everything right, sir.

I am so—these guys are so lucky they're not under oath, because they would have to tell you what they really think of Trump. They call him "crooked." They call him "cruel." They call him "a scumbag." I've heard you all say it. You're lucky you're not under Trump—but when the lights go on and the cameras are on, you're tiny; you're small; you shrink.

Everyone remembers Matt Gaetz coming over here after a Committee hearing. He would laugh at how stupid he thought Trump was. This is all a show. Mr. Smith, you're just the latest act that they've brought in. They can't erase what happened on January 6th because we saw it with our own eyes.

Mr. Smith, after the mainstream media called the race for Biden about a week after the election, did Donald Trump concede the election?

Mr. SMITH. He did not.

Mr. SWALWELL. The next month, the Electoral College met in every State and voted Biden as the winner. Did Donald Trump concede then?

Mr. SMITH. He did not.

Mr. SWALWELL. Shortly after that, the last court case that Donald Trump brought was thrown out. Did he concede then?

Mr. SMITH. No.

Mr. SWALWELL. Is it your judgment, then, that only Donald Trump could have convened the mob, in the size that it was assembled, on January 6th?

Mr. SMITH. Our assessment of the evidence is that he is the person most responsible for what happened on January 6th. He caused what happened. It was foreseeable to him, and then, when it happened, he tried to exploit it in furtherance of the conspiracy.

Mr. SWALWELL. You actually obtained indictments from a grand jury, right? You went to a grand jury and did something that the Trump Administration has not been able to do. As they go after their enemies, their cases are being thrown out. You obtained criminal indictments against the President, is that right?

Mr. SMITH. That's correct.

Mr. SWALWELL. Mr. Smith, do you know who Edward Loya is?

Mr. SMITH. I'm sorry?

Mr. SWALWELL. Edward Loya, L-o-y-a?

Mr. SMITH. I believe Mr. Loya worked at the Public Integrity Section when I was there.

Mr. SWALWELL. Did you know that he said of you, "When it comes to investigating allegations of sophisticated Federal criminal matters, Jack Smith is the gold standard"?

Do you know who Mr. James McGovern is?

Mr. SMITH. Yes. He was a prosecutor I worked with in New York.

Mr. SWALWELL. Did you know that he said of you, "I have no idea what Mr. Smith's political beliefs are because he's completely apolitical"? Sir, are you a registered Independent?

Mr. SMITH. I have no partisan loyalties. I don't know if I'm registered as Independent or not registered at all.

Mr. SWALWELL. Are you glad you accepted Attorney General Garland's request to be a Special Prosecutor, even though you've been dragged over political barbed wire and your family's been subjected to death threats?

Mr. SMITH. I don't regret it.

Mr. SWALWELL. Do you remember where you were on September 11th?

Mr. SMITH. I do.

Mr. SWALWELL. What did you think of that day?

Mr. SMITH. I was in Brooklyn when that happened. I was at the Command Center that night. I worked on that investigation. Yes, I remember pretty clearly.

Mr. SWALWELL. Do you remember where you were on January 6th?

Mr. SMITH. On January 6th, I was living in Europe, working for the State Department, seconded to a War Crimes Tribunal.

Mr. SWALWELL. What did you think, as you watched on television, what happened at the Capitol that day?

Mr. SMITH. To be honest with you, I don't recall if I saw it that day or a later day, because of the time period.

Mr. SWALWELL. What did you think when you saw it?

Mr. SMITH. I was shocked. I was shocked by it. I, obviously, being in Europe and not following things as closely, I was not, frankly, up-to-speed on the events leading up to it.

Mr. SWALWELL. What shocked you about it?

Mr. SMITH. I'd just never see anything like that happen in our country.

Mr. SWALWELL. Mr. Smith, I don't know if I'll ever have the honor to talk to you again. If I don't, please know that I and my colleagues on the Democratic side—and even my Republican colleagues when they speak privately—have nothing but respect and appreciation for what you tried to do and how you did it. You, unlike many here, are a man of honor.

I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from Alabama is recognized.

Mr. MOORE. Thank you, Mr. Chair.

Mr. Smith, you appear before this Committee today not as a neutral observer of the law, but at one point you were one of the most powerful prosecutors in the Federal system—armed with enormous discretion, minimal oversight, and a mandate that goes to the very heart of our Constitutional order.

You brought charges during an active election cycle. You relied on legal theories that had never before been tested in context. You did so while disregarding longstanding Department of Justice policies designed to prevent prosecutors from influencing elections.

Mr. Smith, you claim in your investigation you developed proof beyond a reasonable doubt that President Trump engaged in a criminal scheme to overturn the results in the 2020 election and to prevent lawful transfer of power.

However, a few weeks ago in Georgia, Fulton County Election Board officials stated that 315,000 ballots were certified without required signatures on the tabulator tapes for poll workers. These signatures were required by the Georgia statute. If not counted, this could have turned the State of Georgia red, and I won't doubt there were similar schemes in many other States.

You were illegally appointed to serve as Special Counsel, since you were not confirmed by advice and consent of the Senate and stated in the—as is stated in the Appointments Clause.

You also issued an indictment against then-President Biden's most formidable political opponent. The candidate was President Trump. You issued a gag order for President Trump during a 2024 election cycle. This is a major violation of President Trump's First Amendment rights and a poor attempt to outright censor the leading political candidate. These actions were nothing short of election interference.

Nine Senators, including Senator Tuberville from my State of Alabama, and multiple Republican Members of the House of Representatives had their phones subpoenaed—or their records subpoenaed. Some, you seized their phones.

Even then, Speaker of the House Kevin McCarthy, one of the highest-ranking Republicans in the country, had his phone records subpoenaed—all for political gain. These subpoenas clearly violated the Speech and Debate Clause.

As John Keller of the DOJ's Public Integrity Section addressed, they sent you an email, dated May 17, 2023, D.C. Circuit President stated that the Speech and Debate Clause—and the bar is this—are compelled—I'm sorry—"bar on compelled disclosure is absolute."

These instances are not only the tip of the iceberg about you and your team's flagrant disregard of the Constitution, Mr. Smith, your actions have changed and damaged confidence in our justice system.

Today, this Committee will determine whether that damage was a result of reckless judgment, political biased, or deliberate misuse of authority.

With that, Mr. Chair, I'll give you the balance of my time for questions.

Chair JORDAN. The gentleman for yielding.

I want to go back to that email. If could put that up? This email that Mr. Gill highlighted a few minutes ago.

This is the justification from the Public Integrity Section—if you look at the bottom, John Keller, Public Integrity Section—for going and getting the phone records and toll records of the Members of Congress.

There's a couple things I want to highlight.

That first highlighted area, "There is some litigation risk." They admit there's some concern here. They send this copy to Jack Smith's team.

Then, you go down later, as Mr. Gill pointed out, "The case law is clear a legislator may intervene and oppose such use." The risk is real.

Now, here's the deal: There was really no risk because we weren't going to know. They weren't going to tell us. They made sure they didn't tell us because they went to the judge and got a gag order.

Look at the last sentence. The last sentence: "Low likelihood that any of the Members listed below would be charged." They're not going to know because we're not going to charge any of these guys; they didn't do anything wrong.

Therefore, "the litigation risk should be minimal." They're not going to be charged. They're not going to—we're not going to go after them. They're not going to—litigation risk is minimal. It's minimal because, frankly, it's nonexistent, because they're not going to know, and we're going to make sure they don't know because we're not even going to tell the judge who we're getting the gag orders on.

Yet, Mr. Smith thought that was A-OK. That was just fine. That was in the letter and the spirit of the Constitution. I find that hard to believe.

Do you know why? Do you know why? Do you know why everyone knows it's wrong? Because the Public Integrity Section at the Justice Department has now changed its policy. You can't do this anymore. They've changed their policy, but it was OK for Jack Smith to do it because we've got to get Trump. We've got to get the President. That's what this was all about.

I yield back to the gentleman from Alabama.

Mr. MOORE. Thank you, Mr. Chair. I yield back.

Mr. NADLER. Mr. Chair, I have some—Mr. Chair, I have a unanimous consent request.

Chair JORDAN. The gentleman from New York is recognized.

Mr. NADLER. Mr. Chair, I ask unanimous consent to enter into the record a transcript of the voicemail that President Trump's lawyer Rudy Giuliani left Senator Tuberville on January 6th, in which he states, "I'm calling you because I want to discuss with you how they're trying to rush this hearing and how we need you, our Republican friends, to try to just slow it down, so we can get these legislatures to get more information to."

Chair JORDAN. Without objection. The gentleman yields back.

Mr. NADLER. Thank you.

Chair JORDAN. The Chair now recognizes the gentleman from California.

Mr. LIEU. Thank you, Mr. Chair.

The House Judiciary Committee is responsible for helping to ensure the rule of law. Unfortunately, the Chair of this Committee ignored a bipartisan Congressional subpoena directed at him. His actions have made it harder for this Committee and other Congressional Committees to get witnesses, and testimony and damaged the rule of law.

Now, before I ask questions of Mr. Smith, I just want to make a simple observation. How scared are Republicans of talking about the Epstein files? They are so scared that they literally are calling Jack Smith, a distinguished Federal prosecutor, who secured multiple indictments against Donald Trump, with multiple felony counts.

Republicans would rather talk about the criminality of Donald Trump in trying to steal an election, of trying to stop the peaceful transfer of power, and the criminality of Donald Trump in stealing classified documents, obstructing justice, than about Donald Trump's associations with Jeffrey Epstein and his pedophilia ring.

I demand this Committee, this Chair, and Republicans to call an immediate hearing asking why the Department of Justice is refusing to release 99 percent of the Epstein files, and why the DOJ is violating the law right now.

I have questions, Mr. Smith, for you, and thank you for being here today. My questions center on interactions, or lack of interactions, between the Biden Administration and yourself.

Did President Biden or anyone in the Biden White House ever direct you to seek retribution against anyone perceived to be Biden's political opponent?

Mr. SMITH. No.

Mr. LIEU. Did the Biden Administration, or President Biden, or anyone in the White House, ever write a social media post—directing you to seek retribution against any particular individual?

Mr. SMITH. No.

Mr. LIEU. Did President Biden or anyone else in the Biden White House, ever direct you to take any prosecutorial step whatsoever?

Mr. SMITH. No.

Mr. LIEU. OK. Donald Trump made it clear he wanted to seek retribution against New York Attorney General Tish James.

Trump relentlessly attacked her saying quote, "she should be prosecuted," arrested and punished because she dared to hold Trump accountable for Trump's fraud in New York.

Trump weaponized the Department of Justice, and the Trump DOJ opened a sham investigation into her alleged mortgage fraud.

We know it's a sham investigation because they couldn't even get twice, grand juries to secure indictments against her.

When interim U.S. Attorney Erik Siebert, who Donald Trump himself appointed, spent five months investigating Tish James, he concluded there was not enough evidence to go forward.

What did Trump do? He fired his own U.S. Attorney. Mr. Smith, did President Biden or anyone else in the Biden White House, ever tell you that Donald Trump should be quote, "arrested and punished"?

Mr. SMITH. No.

Mr. LIEU. Did President Biden or anyone else in the Biden White House, ever threaten to fire you based on any action you took, or did not take?

Mr. SMITH. No.

Mr. LIEU. Donald Trump also directed the Trump DOJ to open investigations into his own appointees who refused to do his bidding.

His DOJ recently investigated Federal Reserve Chair Jerome Powell, because Powell won't cede to Trump's bullying on interest rates.

Did President Biden or anyone else in the Biden White House, ever direct you to go after any Biden appointee?

Mr. SMITH. No.

Mr. LIEU. OK. I just want to say a little bit about what the other side brought up about these phone toll records. Do you believe the Speaker of the House is above the law?

Mr. SMITH. No, I don't believe anybody should be above the law.

Mr. LIEU. That's right, U.S. Senators are not above the law, correct?

Mr. SMITH. No.

Mr. LIEU. The Members of Congress are not above the law, right?

Mr. SMITH. No.

Mr. LIEU. Yes, that's right because we're not. What Republicans are trying to argue is somehow if you're doing an investigation, you can't do stuff to Senators, or the Members of Congress.

Get out of here. We're just under a law like everybody else. By the way, the Speech and Debate Clause only applies to legislative acts, communications with legislative acts.

Stealing a fucking election, or trying to do so, is not a legislative act. It is a crime. I don't know what the heck they're talking about.

This is so stupid. I'm a former prosecutor. You never had an investigation go and try to get someone's toll records, or phone records, and then tell them, "hey dude, we're about to get your phone records."

Of course, you wouldn't tell them. What the Republicans are saying today is just idiotic. I am so pleased you're here on national TV telling the American people that Trump was indicted. He was indicted lawfully, and multiple grand juries secured those indictments.

Thank you for your service, and history will look on you well. I yield back.

Chair JORDAN. The gentlelady from Florida is recognized for five minutes.

Ms. LEE. Mr. Smith, you have a long tenure at the Department of Justice. Would you agree that the statement that DOJ charging policies require prosecutors to bring charges, only where the admissible evidence is expected to be sufficient to obtain and sustain a conviction? Is that right?

Mr. SMITH. That is correct. That's from the Federal Principles of Prosecution.

Ms. LEE. In this case, you brought against President Trump, one of the charges you pursued was under Title 18, Section 371, which requires an agreement to interfere with the lawful function of the United States through deceit or dishonesty. That the defendant knowingly and intentionally joined in an overt act.

What I'd like to ask you about is this. You would agree that Section 371 requires dishonesty or deceit, and also proof that a criminal defendant acted knowingly and intentionally, is that right?

Mr. SMITH. I believe that's correct. It requires knowing deceit targeted a lawful government function.

Ms. LEE. You would then also agree would you not, that opinion, disagreement, or even mistake, is insufficient to satisfy the burden of criminal intent set forth in that statute?

Mr. SMITH. A mistake certainly would. We needed to prove and intended to prove at trial, that the false statements that Donald Trump made were knowingly false.

Ms. LEE. That they were false and that it was done knowingly. Even under your theory of the case, even if we took your facts as true, you still would have been required to prove that the President said something false, and that he or did knowingly.

Going on to your next charge, let's talk about obstruction. There-to, that charge requires proof of wrongful intent, does it not?

Mr. SMITH. That's correct.

Ms. LEE. If a defendant there actually believes a factual claim is true, that will mean he could not be convicted of that charge, isn't that right?

Mr. SMITH. Well, I—

Ms. LEE. Not correctly convicted?

Mr. SMITH. The defendant for that charge would have to behave corruptly. Corruptly could include seeking unlawful benefit, seeking a benefit to benefit themselves.

In this case, to stay in office when they had, in fact, not won the election.

Ms. LEE. Thereto, there's a requirement of intent that this conduct must be knowing and intentional, isn't that right?

Mr. SMITH. There is an intent requirement, yes. Corrupt intent.

Ms. LEE. Didn't you also acknowledge in your deposition, that the President was receiving information from multiple advisors? Giuliana, Eastman, Clark, and Powell.

In your deposition, you said he was almost just regurgitating what they told him. Isn't that right?

Mr. SMITH. I don't believe I said he was regurgitating what they told him. What I said is that he was making knowingly false claims, that he was believing anything that would keep him in office, and he was rejecting anything—

Ms. LEE. You would agree that those people or some people, were giving the President conflicting advice at that time, would you not?

Mr. SMITH. You are correct in that his original campaign staff told him he had lost. He fired them and brought in people who would—

Ms. LEE. Criminal liability under the statutes you used in your indictment, requires on proving intent. Not simply the undermining of democratic norms or expressing an opinion with which you do not agree.

Is it not correct sir, that here, you charged two intent-based crimes without any direct proof whatsoever, that the conduct charged was knowing, intentional, or that you were going to have an adequate basis to sustain a conviction at trial?

Mr. SMITH. I felt we had proof beyond a reasonable doubt. I felt that the proof included direct testimony from a number of witnesses, to prove his, the knowing falsity of his claims.

Ms. LEE. Despite the fact that in your own deposition, you acknowledged the existence of conflicting advice? If this defendant were anyone other than Donald J. Trump, Mr. Smith, I find it hard

to believe that we would be sitting here today having a hearing about an indictment that was returned, knowing that the elements of the offenses could not be demonstrated.

Now, let's talk about this. I assume you're also familiar with the Department of Justice policy that prohibits prosecutors from selecting the timing of investigative or prosecutorial actions for the purpose of affecting any election?

Mr. SMITH. Yes, I am. That's the Election Year Sensitivities Policy, and we followed it in all respects. The Public Integrity Section, who administers that policy, concurred that we followed it in all respects.

Ms. LEE. Chair, my time is expired.

Chair JORDAN. Gentlelady yields back. The Chair recognizes the Ranking Member for UC.

Mr. RASKIN. Thank you, kindly, Mr. Chair. This is from John Dowd: "I was Donald Trump's lawyer, Jack Smith should be celebrated, not vilified," December 16, 2025, last month.

I have another unanimous consent to enter into the record, a criminal complaint filed by the Trump Department of Justice in December 13, 2025, detailing how Kash Patel and the FBI used a confidential human source in an undercover FBI agent to investigate a bomb threat.

In Los Angeles. Then, finally, this is an article published by *The Verge* on October 19, 2023, titled, "Peter Thiel Was Reportedly an FBI Informant," which reports that Peter Thiel served as a confidential human source for the FBI.

Chair JORDAN. Without objection, the gentleman from Arizona is recognized for unanimous consent.

Mr. BIGGS. Thank you, Mr. Chair.

First, from *msn.com*, "Biden's FBI Paid Anti-Trump Seditious Hundreds as Informants in J6 Arctic Frost Probes."

Second, "Jack Smith Team Approved \$20,000.00 Payment to Informant to Snitch on Trump During Arctic Frost Probe."

Third, "AT&T Turned Kevin McCarthy's Cell Phone Records over to Jack Smith."

Fourth, "Biden's Legal Team Met with Jack Smith Aide Before Trump Indictment."

Fifth, "Jack Smith Deposition Gives Insight into Failed Effort to Hold Trump Accountable."

Sixth, "Trump Special Counsel Jack Smith was Involved in Lois Lerner IRS Scandal."

Seventh, "Special Counsel Jack Smith's Mixed History Pursuing High Profile Politicians."

Eighth, "FBI Resisted Opening Probe into Trump's Role on January 6."

Chair JORDAN. Without objection. The gentleman from North Carolina is recognized for five minutes.

Mr. KNOTT. Thank you, Mr. Chair. I think it's your turn. Do you yield her turn. Do you yield your time?

Chair JORDAN. I lost track after all those unanimous consent replies. Gentlelady from Washington is recognized, and then the gentleman from North Carolina.

Ms. JAYAPAL. Thank you, Mr. Chair. Mr. Smith, thank you for coming here today. Your willingness to speak directly to us and to

the American people about your investigation, is professional, it's courageous, and it's patriotic.

It's high time that the American people hear directly from you about the results of your investigation of President Donald Trump, for his criminal actions leading up to and the day of January 6, 2021.

The facts according to your report are simple. Without a single piece of evidence, Trump sowed doubt about the 2020 election results, and urged his followers to quote, "walk down to the Capitol and fight like hell, on January 6th."

That's exactly what they did. Thousands of insurrectionists violently tried to stop Congress from certifying the 2020 election and doing our duty.

They assaulted law enforcement officers, some of whom are sitting right here in the chamber with us.

I was trapped in a House gallery with a small number of Members that day. I will never forget the pounding on the doors. The insurrectionists threatening to kill us right outside.

My Republican colleagues keep trying to rewrite history. They claim that, somehow, Trump's words and actions did not legally rise to the level of criminal activity. That he did not directly cause violence at the Capitol.

I want to set that record straight with your right now. First, you successfully secured indictments against Donald Trump in two major Federal cases, election interference in the 2020 election, and mishandling of classified documents after leaving office. Is that correct?

Mr. SMITH. Yes.

Ms. JAYAPAL. You've been a Federal prosecutor for nearly 30 years. You've led this investigation, combing through hundreds of thousands of documents, photos, videos, and communication.

Did your investigation find that Donald Trump attempted to manufacture fraudulent State slates of Presidential electors in seven States that he lost?

Mr. SMITH. Yes.

Ms. JAYAPAL. Did he pressure State officials to ignore true vote counts in those States?

Mr. SMITH. Yes.

Ms. JAYAPAL. Did he spread lies and conspiracies to his followers, to make them believe that the election had been illegally rigged against him?

Mr. SMITH. Yes.

Ms. JAYAPAL. Did he pressure DOJ officials to stop the certification of the election?

Mr. SMITH. He did.

Ms. JAYAPAL. Did he pressure his own Vice President Mike Pence, to stop the certification against the oath of office that he had sworn to the Constitution?

Mr. SMITH. He did.

Ms. JAYAPAL. When all this didn't work, did he, Donald Trump, motivate and inspire an angry mob to the U.S. Capitol to stop the certification?

Mr. SMITH. Our proof showed that he caused what happened on January 6th, that it was foreseeable, and that he exploited that violence.

Ms. JAYAPAL. Did Donald Trump know that his allegations of election fraud were lies when he spread them?

Mr. SMITH. Our proof was that he did, and we intended to prove that at trial.

Ms. JAYAPAL. In fact, as the quotes from your report behind me show, he even privately admitted that he lost the election, correct?

Mr. SMITH. Yes.

Ms. JAYAPAL. He said quote, "it doesn't matter if you won or lost the election, you have to fight like hell." He said, "can you believe I lost to this f---ing guy?"

During your closed-door deposition last month, you and I had an exchange about the impact on our democracy, the toll on our democracy for not holding the President accountable for trying to steal an election. Do you remember that exchange?

Mr. SMITH. I do.

Ms. JAYAPAL. I want to return to it because what you said in the closed-door deposition is important for the American people to hear, right here in your public testimony.

How would you describe the toll on our democracy if we do not hold a President accountable for attempting to steal an election?

Mr. SMITH. My belief is that if we do not hold the most powerful people in our society to the same standards as the rule of law, it can be catastrophic.

Because if they don't have to follow the law, it's very easy to understand why people would think they don't have to follow the law as well. The law should be applied equally to everyone.

Ms. JAYAPAL. What do you think the toll is for future elections, and future Presidents who try to steal an election?

Mr. SMITH. If we don't hold people to account when they commit crimes, it sends a message that those crimes are OK. That our society accepts that.

I believe that if we don't call people to account when they commit crimes in this context, it can endanger our election process. It can endanger election workers. Ultimately, our democracy.

The attack on this Capitol on January 6th was, and the Court of Appeals in Washington, DC, said this, "It was an attack on the structure of our democracy."

Ms. JAYAPAL. We could experience much worse results down the road if this happens again. I thank you for your work, for your courage, and for your patriotism, and I yield back.

Chair JORDAN. Gentlelady yields back. The gentleman from North Carolina, excuse me, North Carolina is recognized.

Mr. KNOTT. Mr. Smith, just briefly, if there was no mob on January 6th that attacked the Capitol, we would not be here today, would we?

Mr. SMITH. I can't speak to hypotheticals. The case I investigated involved a mob of supporters, of Donald Trump supporters that did attack the Capitol.

Mr. KNOTT. Sure, I understand that. Had there not been a mob that rushed the Capitol, if they had just stayed on the original speech, if they had obeyed the instruction go peacefully and patri-

otically and make your voices heard, we would not be here. Isn't that correct?

Mr. SMITH. Well, in that case Donald Trump wouldn't have done many of the things that—

Mr. KNOTT. I'm just, no, no, I'm just asking. If they had gone peacefully and patriotically, we would not have had a special prosecutor, President Trump would not have been indicated.

There would not have been quote, "the attack on the foundations of our democracy," correct?

Mr. SMITH. That's hypothetical and it's counter-factual hypothetical.

Mr. KNOTT. Well, second point, in regards to what we just heard from my colleague from Washington, it's noteworthy that the Vice President, despite the enormous toll that he has taken in these events, was against charging the President criminally in this case.

In regards, to my own experience, Mr. Smith, I've charged many conspiracies. There's obviously a lot of benefit to that charge.

It's a useful tool for fact finding, scrutinizing evidence, figuring out exactly what happened. Trying to form charges. Trying to prove charges, trying to solidify the evidence.

In your case, sir, you detailed No. 1, "the unprecedented criminal scheme," your words, not mine. In the press conference you said, "there was an unprecedented assault on the seat of American democracy."

Do you remember saying that?

Mr. SMITH. I believe so, yes.

Mr. KNOTT. In regard to your investigative authority, it was quite broad. We've already established that you had millions of dollars at your disposal. You had teams of lawyers.

You had total subpoena power. You used campaign officials as witnesses. You subpoenaed millions of documents. You had civilian witnesses.

You had political leaders. You had campaign officials that work with the President. Folks who were in the room. After all of this, sir, you charged a conspiracy and notably absent, there was no insurrection charged. There was no seditious conspiracy charged.

There was only one defendant, correct? Donald Trump?

Mr. SMITH. That is correct.

Mr. KNOTT. Despite six coconspirators identified in the indictment, only one person was charged. Is that correct?

Mr. SMITH. Yes.

Mr. KNOTT. Despite there being an unprecedented criminal scheme, you did not find it necessary to charge anybody else who was admittedly by your own evidence, involved in a criminal conspiracy that amounted to an unprecedented assault on the seat of American democracy?

Mr. SMITH. Yes. At the time of the conclusion of our work, my lawyers had determined, had believed that we did have proof to charge other people.

I was in the process of making that determination when our work was concluded. You are correct that the only person charged in this case, was Donald Trump, who in my estimation, was the person most culpable for the crimes charged.

Mr. KNOTT. Well, I understand your position, sir, but again, you start at the very top and only charged the top conspirator in your opinion. You didn't charge anybody underneath him, correct?

Mr. SMITH. Correct, I—

Mr. KNOTT. Despite that charge requirement, you would agree that a criminal conspiracy federally is a criminal agreement, correct?

Mr. SMITH. Yes.

Mr. KNOTT. By extension, people, under your theory, people besides the President, were involved in the unprecedented assault on American democracy.

You didn't find it necessary to charge them criminally?

Mr. SMITH. I had not yet charged anyone besides the President.

Mr. KNOTT. You didn't, you decided not to charge anybody but Donald Trump in that indictment?

Mr. SMITH. Consistent with the Federal Principles of Prosecution, which emphasize the degree of someone's culpability in making a charging decision, Donald Trump is the person that was charged.

Mr. KNOTT. I understand that. I understand your position. You made the decision to charge one person, and nobody else, correct?

Mr. SMITH. I made the decision to make the charges in this case.

Mr. KNOTT. In regard to the, the way that the case handled from there, sir, I just want to get this on the record. In regard to your press conference, politics played no role, correct?

Mr. SMITH. That is correct.

Mr. KNOTT. The charges you brought, politics played no role, correct?

Mr. SMITH. Correct.

Mr. KNOTT. The expedited trial date played no role, politics played no role, correct?

Mr. SMITH. I followed the facts and the law, the department policy in—

Mr. KNOTT. The speedy trial request, there was no role in politics, correct?

Mr. SMITH. That's correct. Supreme Court precedent emphasizes that—

Mr. KNOTT. Even your brief that the court found atypical, politics played no role?

Mr. RASKIN. Mr. Chair, the time has expired.

Chair JORDAN. The time of the gentleman is expired. The gentlelady from Pennsylvania is recognized.

Ms. SCANLON. Thank you, Mr. Chair. Thank you, Mr. Smith, for being here today. I believe it's important for the American people to finally hear from you directly about your investigations that you and your office conducted with integrity, following the facts and the law without fear or favor, as is department policy.

As people do hear from you, they're going to better understand why the White House and Congressional Republicans are trying to rewrite history.

Seeking to discredit you in your investigation so that they can help the President avoid accountability for his crimes against the American people.

I'd like to move on from some of these baseless conspiracy theories we've been hearing and focus on your actual work as Special Counsel.

In Volume 1 of your report, you concluded that when it became clear that Mr. Trump had lost the election and that lawful means of challenging the election results had failed, he resorted to a series of criminal efforts to retain power.

Chief among those criminal efforts was Mr. Trump's dissemination of demonstrably and often obviously false claims of election fraud in key States. Claims that Donald Trump himself knew weren't true.

To pressure officials to ignore vote tallies and submit fraudulent certificates of fake electors to Congress, he repeated these false claims.

Ultimately, used them to direct an angry mob to attack the Capitol.

I represent Southeastern Pennsylvania, which was one of the States targeted by Mr. Trump's criminal efforts. Being mindful of the clock, I wanted to try to explore three topics:

First, the evidence that Trump made false claims of election fraud in Pennsylvania, knowing they were false.

Second, the evidence concerning the submission of fake elector certificates from Pennsylvania to Congress.

Third, why the evidence and witnesses concerning Trump's efforts in Pennsylvania were so compelling.

First, in your report and deposition, you detailed the overwhelming evidence that Trump had lost Pennsylvania, and he knew it.

Despite this, he and his coconspirators continued to make false statements about that result to advance their criminal plan.

Can you describe the evidence that these were false claims, and they knew they were false, including statements by election officials, court cases, and conversations between Trump and his Republican allies in the State?

Mr. SMITH. Sure. What springs to mind most immediately is I recall one particular claim that there were more votes than ballots that had been sent out.

This was a claim that was obviously false because many, even in the campaign, knew that the reason for that discrepancy is we were talking about two different elections.

One was the primary, and one was the general election. My team interviewed Rudy Giuliani regarding that claim, and he admitted it was wrong. He admitted flat out that was a mistake.

That's one of several. With respect to witnesses in Pennsylvania, what springs to mind is the Chair of the Republican party I believe in Pennsylvania.

This is relatively early, shortly after the election, had informed Donald Trump that the idea that fraud was the reason, was not accurate.

It was because of the counting of mail-in ballots, which was totally normal in this process. Again, this is someone who is a Republican, who supported Donald Trump, wanted him to win. I submit he would have been a credible witness at trial.

Ms. SCANLON. A second part of this. In addition to making false claims about election results that they knew were at fault, and your deposition and report go into this in some detail, there was also this fraudulent elector plan where Trump and his coconspirators solicited folks who had been planning to be Trump electors if he won, and asking them to submit fake certificates to Congress.

What you found was pretty remarkable, including a former Congressman who told the coconspirators that this was illegal, and it was an attempt to overturn the government. Is that right?

Mr. SMITH. That's correct. That particular elector, who was signed up to be a legitimate elector had Donald Trump in fact, won the election, was a former U.S. attorney, and former Member of this Congress.

Ms. SCANLON. The bottom line is that despite the facts and over objections from his allies, Trump still went to the Ellipse on January 6th and lied about Pennsylvania's votes, to direct his angry mob to attack the Capitol.

I just want to thank you for your work and your years of service to the country, and I would like to invite everyone to read your deposition and to read the report. Because it tells a very different story than what our colleagues do, Ms. Lofgren. Mr. Chair, I have a unanimous consent.

Chair JORDAN. Gentlelady is recognized.

Ms. LOFGREN. Mr. Chair, I have, I ask unanimous consent to enter into a record, a speech by former Vice President Pence published on C-SPAN in June 1923, in which he calls the President's comments on January 6th reckless, as Trump was wrong then, he's wrong now.

Anyone who puts themselves over the Constitution should never be President, and anyone who has someone else to put them over the Constitution, should never be President.

Chair JORDAN. Without objection. The gentleman from Virginia is recognized for five minutes.

Mr. CLINE. Thank you, Mr. Chair. Mr. Smith, you've said several times in your deposition that you believe that the facts and the law, your interpretation of the law, would lead to a conviction of President Trump, is that correct?

Mr. SMITH. Yes.

Mr. CLINE. Did you believe that same thing, that your interpretation of the law, your reading of the law, would have resulted in the conviction when you went after Virginia Governor Bob McDonnell, back in 2014? Did you believe it at the time?

Mr. SMITH. I did believe and—

Mr. CLINE. Ultimately, you got a conviction in the lower court, but that was overturned by the Supreme Court, correct?

Mr. SMITH. Yes. The Supreme Court changed the law on what constituted an official act and as a result, that conviction was overturned.

Mr. CLINE. Actually, that's incorrect. That's incorrect. They applied the law and they said in their ruling, our concern is not with tawdry tales of Ferraris, Rolexes and ball gowns, it's instead with the broader legal implications of the government's boundless interpretation of the Federal bribery statute.

A more limited interpretation of the term official act leaves ample room for prosecuting corruption while comporting with the text of the statute, and the precedent of this court.

They accused you of using a boundless interpretation of the Federal bribery statutes. Now, did you believe when you went after John Edwards, that your interpretation of the facts and the law were correct and that you would convict John Edwards of corruption?

Mr. SMITH. Yes.

Mr. CLINE. In fact, that case resulted in a jury deadlock on five charges, an acquittal on another charge. Is that correct?

Mr. SMITH. That is my recollection. That's correct.

Mr. CLINE. Let's move on to the court's interpretation of your gag order requests. Mr. Smith, America was founded on the principle that the government doesn't silence political speech, and in particular, speech before it happens.

You sought a prior restraint against President Trump without a single violation of pretrial release. In fact, there was no real-world harm that you could articulate, justify, giving the Federal Government the power to silence him as a Presidential candidate, was there?

Mr. SMITH. The court granted those motions and found that the prosecutor did not have to wait until someone was harmed to make such a motion.

Mr. CLINE. Actually, the request was rejected when the case was actually, when you were not able to, it was restricted, correct? The gag order was restricted, correct?

Mr. SMITH. Well, we, we filed an order in the District court. The District court granted an order. President Trump appealed that order. The Court of Appeals absolutely agreed that there was a basis, and that the threats to witnesses that came from the targeting by Donald Trump, were real. That we had a duty to protect them.

You are correct in that the Court of Appeals narrowed the order, so the order covered witnesses, court staff, the judge, and my staff. The difference was that it didn't cover me anymore, which I was fine with.

Mr. CLINE. Did you have any evidence that President Trump's statements about the cases against him intimidated witnesses, or prevented them from coming forward?

Mr. SMITH. I had evidence that he said if you come after me, I'm coming after you. He asked, he suggested a witness should be put to death.

The courts found that those statements not only deter witnesses who have come forward, they deter witnesses who have yet to come forward.

Mr. CLINE. You weren't able to identify a single witness who didn't come forward because they were intimidated by President Trump?

Mr. SMITH. We had extremely thorough evidence that his statements were having an effect on the proceedings that is not permitted in any court of law in the United States.

Mr. CLINE. Don't you think it's a pretty low bar to clear if you're trying to silence a candidate for President? If you can't identify a

single witness who is intimidated, that maybe you should reconsider the gag order?

Mr. SMITH. Both courts upheld the orders, and it is not incumbent on a prosecutor to wait until someone gets killed, before they move for an order to protect the proceedings.

Mr. CLINE. Did anyone on your team raise concerns that this expansive gag order you were seeking, would infringe on President Trump's First Amendment rights?

Mr. SMITH. My recollection is that we, of course, discussed First Amendment issues regarding this application because I and my staff respect the First Amendment.

The First Amendment does not allow one to make statements that interfere with the administration of justice in a judicial proceeding.

My interpretation was supported and agreed on by the District court and the Court of Appeals in terms of the phenomena of the statements being made, targeting individuals, causing threats to happen to them.

I would also add, sir, that in the days after Donald Trump made some of these statements, the District court in this case received vile threats. Threats to the District court's life.

In that environment, I felt a duty as a prosecutor to make that motion and I make no apologies for that.

Mr. CLINE. The court stayed that motion on August 3, 2024. I yield back.

Chair JORDAN. Gentleman yields back. I should have mentioned this a little bit earlier. Mr. Smith, if ever you need a break, you need a restroom break, you or your counsel can just let us know.

It's now the gentleman from Colorado gets five minutes.

Mr. SMITH. Yes, can we take a short break?

Chair JORDAN. About 5–10 minutes recess, then we'll be right back at it.

[Recess.]

Chair JORDAN. The Committee will come to order.

Ms. JAYAPAL. Mr. Chair?

Chair JORDAN. The witness will go ahead and take the stand. We want to make sure the Capitol Police stay in the room, just in case we have any other concerns.

The gentlelady from Washington is recognized.

Ms. JAYAPAL. Thank you, Mr. Chair. I have a unanimous consent request.

Chair JORDAN. The gentlelady is recognized.

Ms. JAYAPAL. This is an order of the D.C. Circuit, dated December 8th, 2023, in which the court recognizes that Donald Trump's statements about the judge in his case have led to threats against the judge, where callers labeled the judge and clerk, quote, "Nazis, dirty Jews, and child molesters," and represent, quote, "Mr. Trump's documented pattern of speech and its demonstrated real-time, real-world consequences pose a significant and imminent threat to the functioning of the criminal trial process in this case."

Chair JORDAN. OK. Without objection. That's a lot. The gentleman from Colorado is recognized for five minutes.

Mr. NEGUSE. Thank you. Mr. Smith, thank you for being here. Thank you for your service to our country.

My colleague from Virginia, who's a Republican colleague who was questioning you right before the break, do you know what he said in the days after January 6th? Let me share this with you.

This is a quote of his from a press release on January 8th,

Congress stands united in our rejection of the violence that occurred this week, and I'll continue to urge the swift prosecution of those involved to the fullest extent of the law.

Mr. Smith, this is theater. Republicans are trying to rewrite history. That's what this is. Many of them were with us in the House Chamber on January 6th. I remember it well. The Chair was there, as was I.

There's been a lot of discussion about witnesses today. Perhaps the Chair could muster the courage to call the four witnesses who I see—the American public may not see—I see standing behind you, Mr. Smith, the four police officers who risked everything—life and limb. To do what? To protect the Republican Members on the dais. It's an outrage that they now sit here and have the audacity to try to rewrite history in front of the very officers who sacrificed everything to protect them.

Mr. Smith, you're, of course, aware that President Trump was impeached for his conduct connected to January 6th, right?

Mr. SMITH. Correct.

Mr. NEGUSE. Do you know how many Members of Congress voted to impeach him?

Mr. SMITH. I don't recall.

Mr. NEGUSE. Two hundred and thirty-two. Do you know how many Republican Members of Congress voted to impeach him?

Mr. SMITH. I don't recall.

Mr. NEGUSE. Ten Republican Members of Congress voted to impeach him for his conduct related to January 6th, including at the time, the sitting Republican Chair of their Conference.

There was a trial in the U.S. Senate. Senators sat as jurors. I remember it well because I was one of the prosecutors who prosecuted that case.

Do you know how many Senators voted to convict President Trump of high crimes and misdemeanors during the trial, Mr. Smith?

Mr. SMITH. I don't recall.

Mr. NEGUSE. Fifty-seven Senators. Do you know how many Republicans voted to convict him?

Mr. SMITH. I don't recall.

Mr. NEGUSE. Seven Republican United States Senators voted to convict President Trump of high crimes and misdemeanors. It was the most bipartisan vote for conviction of a President in the history of the Republic.

They can engage in as much histrionics as they want to try to rewrite history, but facts are facts.

They talk about weaponization. They accuse you of weaponization of the justice system, while the Federal Reserve Board Chair rings the alarm about political retaliation by this Department of Justice.

Mr. Smith, I don't know if you're aware of this. I don't know if your counsel has made you aware. That President Trump is live

tweeting, I guess you'd call it "Truth Socialing," as we speak. Are you aware of this about this hearing?

Mr. SMITH. No.

Mr. NEGUSE. Let me read to you what he posted an hour and a half ago,

Deranged Jack Smith is being decimated before Congress. It was over when he discussed his past failures and unfair prosecutions. He destroyed many lives under the guise of legitimacy. Jack Smith is a deranged animal who shouldn't be allowed to practice law. If he were a Republican, his license would be taken away from him, and far worse. Hopefully, the Attorney General is looking at what he's done.

We have a word for this. It's called "weaponization." It's called corruption.

Mr. Smith, if you care to respond, I'll give you an opportunity.

I will simply say we are grateful for your service to this country. We appreciate your fidelity to the rule of law. I would like to echo the comments that have been made by my Democratic colleagues to ignore the noise that you hear from so many of my colleagues who would debase themselves in this way. It is, in my view, subversive of the oaths that we took to defend the Constitution.

I'm happy to give you an opportunity, Mr. Smith, if you'd like to respond.

Mr. SMITH. I don't have anything to add.

Mr. NEGUSE. Thank you for your service. I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from Wisconsin is recognized.

Mr. TIFFANY. Thank you, Mr. Chair. In 2010, Mr. Smith, did you work for the President—President Obama's Department of Justice?

Mr. SMITH. Yes. In 2010, I was the Chief of the Public Integrity Section.

Mr. TIFFANY. During that time, did you have any contact or connection with Lois Lerner with the Obama IRS?

Mr. SMITH. Yes. I was new to the Public Integrity Section. I was the Chief. I was trying to learn about issues I had been at—

Mr. TIFFANY. Did you attempt to work with Lois Lerner and the IRS to investigate nonprofits?

Mr. SMITH. What I did was asked for a meeting with the IRS about nonprofits.

Mr. TIFFANY. The simple answer is yes, correct?

Mr. SMITH. Well, I didn't ask to work with Ms. Lerner. They sent Ms. Lerner. That's the person who came to this meeting. I met her once.

Mr. TIFFANY. They went after Second Amendment groups, correct? If you remember correctly, that's what was the offshoot of it, that Second Amendment groups that tried to gain nonprofit status, they were slow-rolled through the IRS. Do you recall that?

Mr. SMITH. Separate from this, there was an investigation of that, that I was a part of Public Integrity.

Mr. TIFFANY. You prosecuted Virginia Governor Bob McDonnell? This was asked earlier. You prosecuted him, correct?

Mr. SMITH. I was a part of the prosecution, yes. There was—

Mr. TIFFANY. That ended up with a—that decision ended up being unanimously overturned by the Supreme Court, correct?

Mr. SMITH. That is correct, sir.

Mr. TIFFANY. Yes. Including Justice Ginsburg joined in on that opinion, correct?

Mr. SMITH. I believe that's correct.

Mr. TIFFANY. Yes. You also prosecuted John Edwards and Bob Menendez, and those both ended in mistrials, is that right?

Mr. SMITH. The *John Edwards* case did. The *Menendez* case, I had left the Public Integrity Section by the time that case was tried.

Mr. TIFFANY. Mr. Chair, what we heard from the other side here is that this gentleman is the gold standard for prosecution here in the United States. Think about it. We had a witch hunt done by the IRS going after Second Amendment groups, unanimously overturned by the Supreme Court. They prosecuted two prominent political figures, and they ended up as mistrials. That's the gold standard here in America?

I would just say this, Mr. Chair. If Mr. Smith ever works for the Department of Justice again, I would recommend a remedial course on the First Amendment to the Constitution.

Before I yield the rest of time, Mr. Smith, I just have one other question. Is there any historical precedent for an alternate slate of electors to be sent to Congress? Has that ever happened before?

Mr. SMITH. That had happened, not anything similar to this situation, but you're correct, it was in Hawaii. I think it was Hawaii in—I want to say the 1960 election.

Mr. TIFFANY. It has happened before, that there was an alternate slate of electors that was sent to Congress, which does the electoral count. Correct?

Mr. SMITH. There was a prior time that an electoral slate was sent where there were litigation and recounts going on.

Mr. TIFFANY. Actually, there's twice that had happened, Mr. Chair. It happened in 1876 and 1960, that these alternate electors happened. I'd like to ask unanimous consent to introduce the 1960 *Hawaii* case here.

Chair JORDAN. Without objection.

Mr. TIFFANY. With that, I yield to the Chair.

Chair JORDAN. I appreciate the gentleman yielding. The gentleman from Colorado talked about noise from this side. It's not noise; it's facts.

The fact is you approved a \$20,000 payment to a confidential human source, and I think you said earlier the reason this individual or entity or person was paid was to review photo and video evidence. Why did they have to be confidential? Why didn't you just contract with them?

Mr. SMITH. My understanding is that this person was a confidential human source with the FBI. I do not know why they were confidential, but it would make sense to me, given that this person was assisting—

Chair JORDAN. Well, confidential just raises the question of, what were you trying to hide? Why not tell us? We know you hid the fact that you were getting phone records for Members of Congress. We want to know why this payment had to be hidden. Why couldn't you just contract, which would be the customary and normal way I think of doing it?

Mr. SMITH. I did not make the determination that this source would be confidential. Given that this person was working on an investigation involving attacks on the Capitol, and given the violence in that, it makes complete sense to me that the Bureau would want a civilian who is—

Chair JORDAN. Do you know of any of the other Special Counsels who approved payments to—like I don't remember Robert Mueller approving payments to confidential human sources. I don't remember Durham. I don't remember Hur. We brought all those guys to the front of this Committee. This is the first time I've ever heard of a Special Counsel having to pay secret money to someone to get information, when you had the broadest subpoena power you could possibly have. Are you aware if any of the other Special Counsels had to do this?

Mr. SMITH. I am not aware whether confidential sources were or were not used in those investigations.

Chair JORDAN. That's because I don't think they were. I don't think they were.

Mr. SMITH. I'm not aware one way or the other. I can say that the use of confidential human sources is a standard thing done by the Federal Bureau of Investigations.

Chair JORDAN. The time of the gentleman from Wisconsin has expired. I now yield to the gentlelady from Georgia for five minutes, Ms. McBath.

Ms. MCBATH. Thank you, Chair. Mr. Smith, thank you for appearing today to speak publicly about the major issues that you handled as Special Counsel.

Your work on election interference in my home State is especially important, as Georgia still today remains ground zero for voting rights. My State has a long history of voter suppression, including violent tactics and legislation that has actively disfranchised our voters.

In fact, the Department of Justice filed a lawsuit against Georgia in 2023 challenging recently passed voter suppression legislation. That lawsuit was later withdrawn by Donald Trump's Attorney General Pam Bondi.

This is not the first time that Donald Trump has encouraged voter suppression. In the 2020 Presidential election, which many have accepted that he lost, he pressured his Party members to overturn a legal election. Thankfully, several public servants upheld our Constitutional process and respected the voice of the people.

Your investigation revealed how far he is willing to go. In your final report, you wrote that quote, "The throughline of all Mr. Trump's criminal efforts was deceit—knowingly false claims of fraud."

Mr. Smith, what did your investigation reveal about President Trump's interactions with Georgia's officials regarding his frauds claims?

Mr. SMITH. As I sit here now, I can recall two specific officials.

The first was the Secretary of State, who is a fellow Republican. My understanding, he voted for and supported Donald Trump in the election, but told Donald Trump in a conversation that was recorded, in no uncertain terms, the results of the election and de-

bunked many of the fraud claims that Donald Trump had to him in real time.

In addition to that, I recall that Donald Trump also spoke firsthand with the Attorney General of your State, also a Republican, who informed Donald Trump that he had supported him and voted for him twice in the past. He also told Donald Trump he did not see an outcome determined with fraud in that State.

Ms. MCBATH. I have an audio from a phone call between Trump and the Georgia Secretary of State regarding the 2020 election. Could you please play the audio?

[Audio played.]

Ms. MCBATH. Mr. Smith, you explained in your deposition that Georgia's Secretary of State was one of the witnesses who disabused President Trump's false claims. How did Georgia's Secretary of State push back against Trump's efforts?

Mr. SMITH. I think my recollection is in this same call President Trump repeatedly raised fraud claims, and the Secretary of State repeatedly explained, not only that they weren't true, but I believe, my recollection is, in several instances, explained why they weren't true.

I believe that call ended—my recollection is that it ended with President Trump, in essence, threatening the Secretary of State that he might be a target for criminal prosecution if he didn't do what President Trump wanted him to do.

Ms. MCBATH. See, that raises a very critical point. President Trump didn't just spread lies about the election. In your words—and I'm quoting, "He preyed on," in quote, "Republican officials in Georgia and other States who believed would help him."

Mr. Smith, Donald Trump thought these officials would break the law out of Party locality. When those officials, his own political allies, told him the truth, he dismissed them, and continued to spread the lies anyway. Is that correct?

Mr. SMITH. That is correct.

Ms. MCBATH. Mr. Smith, if your case had gone to trial, would the evidence from Georgia have helped prove that President Trump knowingly engaged in a criminal scheme to overturn the 2020 election?

Mr. SMITH. Yes. After an investigation following the facts and the law, we believed we had proof beyond a reasonable doubt to prove those charges.

Ms. MCBATH. In your deposition, you mention a fake elector witness in Georgia who you thought would have been a very powerful witness at trial. Can you tell us a little bit more about that in a very limited amount of time?

Mr. SMITH. Sure. It was a witness who had been made to understand that his electoral vote, his alternative electoral vote, would only be used if they won in court, if they won in litigation. That didn't happen and President Trump and his coconspirators tried to use those alternative fake electoral certificates to get Mike Pence to perjure himself.

Mr. ISSA. Mr. Chair, regular order.

Ms. MCBATH. OK. Well, Mr. Smith, thank you so for the work that you and your team of career prosecutors have put forth in covering this evidence. The American people need to know what hap-

pened and they need to know how their President pressured Georgia's State officials to overturn their free and fair election. I yield.

Chair JORDAN. The time of the gentlelady has expired. The gentleman from Alabama has a unanimous consent request.

Mr. MOORE. Thank you, Mr. Speaker. December 6, 2025, *Atlanta News First*, "Fulton County admits to Verifying 315,000 votes in the 2020 without poll workers' signatures."

I yield back.

Chair JORDAN. Without objection. The Chair now recognizes for five minutes the gentleman from Arizona.

Mr. BIGGS. Thank you, Mr. Chair.

Mr. Smith, isn't it true that, for a Federal criminal conspiracy charge, it requires more than one individual. In other words, you're making a contractual agreement of some kind with somebody other than yourself. Correct?

Mr. SMITH. That is correct, there has to be an agreement.

Mr. BIGGS. When you made the determination to charge President Trump with conspiracy, you surely knew that you had somebody else that he must have agreed on somewhere to engage in this act that generated the conspiracy. Right?

Mr. SMITH. That's correct. We alleged specific individuals in the indictment as coconspirators.

Mr. BIGGS. When you knew what you were going to do, when who you were going to charge when you pursued the indictment. You knew who the agreeing parties were, but you chose to list them as coconspirators, but you didn't indict them. How often have you done that in the past?

Mr. SMITH. Charge—in the past, I have had a number of cases where I have charged some members of the conspiracy and not charged others.

Mr. BIGGS. No, no, no. One member of the conspiracy, how many times have you done that, charged one member of the conspiracy and let everybody else off the hook?

Mr. SMITH. I'm sure I—that's happened. That is not an uncommon—

Mr. BIGGS. You don't remember doing that?

Mr. SMITH. That is not an uncommon thing to do in an investigation, in my view.

Mr. BIGGS. OK. I dispute that, but we're going to leave that as it may. Let's just get to this. If a Member of Congress moves to decertify a State's electors, that would not be a crime, would it?

Mr. SMITH. When you say, "to decertify"—

Mr. BIGGS. You make a motion to decertify. On that January 6th—every four years, that's not a crime. Right?

Mr. SMITH. Correct.

Mr. BIGGS. If another elected official urged someone to join them in that decertification, that's not a crime, either, right?

Mr. SMITH. As you stated, it's not.

Mr. BIGGS. Several Members of Congress get together over breakfast. They say, "This is a normal path. We watched because we saw the Democrats do it for every Republican President. We are not sure how to do it; we've never done it before." That's not a crime to sit down at breakfast to talk about that, or any other time together, to talk about decertification, is it?

Mr. SMITH. No, it's not a crime to talk about that over breakfast.

Mr. BIGGS. In your deposition, you made the argument that an elected official who's been deemed to have lost could not knowingly make false statements about election fraud to target a lawful government operation, isn't that true? That's what you said in your deposition, page 27.

Mr. SMITH. I believe it's a lawful government function, is—

Mr. BIGGS. Yes, I'm sorry. Yes, a lawful government function, that's what you said. Do you remember saying that?

Mr. SMITH. I said, "lawful government function." Could you read back what you said again? I'm sorry.

Mr. BIGGS. Yes. An elected official who has been deemed to have lost could not knowingly make false statements about election fraud to target a lawful government function. You said that would be illegal. Do you remember that page? Do you want me to actually read this back? Surely, you remember that position. That's your position?

Mr. SMITH. I'm not denying it and I apologize. I'm just trying to listen to you closely.

Mr. BIGGS. OK. Let's just go right from this. You said there's, "As we've said in the indictment, he was free to say that he thought he won the election." Right?

Mr. SMITH. That is correct.

Mr. BIGGS. He was even free to say falsely—that he won the election. Correct?

Mr. SMITH. That's correct.

Mr. BIGGS. Well, you said this: "What he was not free to do was violate Federal law," and "knowingly use false statements about election fraud to target a lawful government function."

Mr. SMITH. That is correct.

Mr. BIGGS. Yes. For you, that lawful government function is the certification process, I suppose, on January 6th?

Mr. SMITH. Well, it's slightly broader than that. It's the collecting, counting, and certifying of the votes. Our view of the evidence is that it begins from the point of time that the electors are certified through the counting of the votes. That would be—

Mr. BIGGS. The entire certification process from the State to the Feds?

Mr. SMITH. My recollection, as it's pled in the indictment—as I sit here, I don't have it in front of me—but I believe it's from December 14th that was the day—through the voting—

Mr. BIGGS. OK. You can't recall, but for you, it's from the certification moving forward to the actual ratification of the certification process on Inaugural Day?

Mr. SMITH. My recollection, that's what we pled in the indictment, yes.

Mr. BIGGS. OK. You've managed to filibuster us right out of this thing. Your beef was—you said that, "President Trump engendered a level of distrust." You said, "he made false statements to State legislators, to his supporters in all sorts." Somehow, you discerned that his supporters were angry, and that this was somehow related to a criminal offense. I find that absolutely weak. It's misdirected and—

Chair JORDAN. The time of the gentleman—the time of the gentleman has expired. The gentleman yields back.

Ms. KAMLAGER-DOVE. Mr. Chair, I ask unanimous consent to enter into the record an *Axios*, dated August 2, 2023, “Bar says Trump’s First Amendment argument in January 6 case is not valid.”

Chair JORDAN. Without objection. Did you have one? OK. The gentlelady from North Carolina is recognized.

Ms. ROSS. Thank you, Mr. Chair.

Mr. Smith, many of us were here on January 6th and directly experienced what happened. Some of my colleagues across the aisle still insist that Trump had no role in the violence.

In videos of the raging battle against our brave Capitol Police Officers, many rioters were screaming things like, “We were invited here by the President.”

Mr. Smith, did your investigation uncover evidence that some of the rioters had gone to the Capitol because they really believed the President had invited them there?

Mr. SMITH. There were—I believe there’s video of rioters saying, in fact, that.

As we pled in the indictment, the knowing lies that Donald Trump put out in the weeks leading up to that led to a level of distrust, and he, ultimately, knew that the crowd at the Capitol, or at the Ellipse, I should say, was angry before he told them to march toward the Capitol.

Ms. ROSS. We’ve seen report after report of rioters who have said that, if Donald Trump had not convinced them that the election had been stolen, they might not have even come to Washington.

I’m going to share some quotes from some of those rioters.

“I believed I was following up on the instructions of former President Trump,” one rioter said about going to the Capitol.

“I marched to the U.S. Capitol because President Trump said to do so,” another said.

“He personally asked for me to come that day,” said another.

Can you give us a few examples of Trump’s rhetoric and language that inspired people to go to the Capitol, believing that they were going on the President’s direct order?

Mr. SMITH. One instance I can recall is, during the speech he gave to his supporters—and in context, his supporters, he told them to come to Washington, DC, and be wild. He was on notice that they were angry, and he told that crowd, “We can’t let this happen.” He told them that, my recollection is, multiple times—at a time when there was nothing that could be done to stop the outcome of the election, but to obstruct it.

In addition to that, he told them, when there is fraud, you can go by different rules. My recollection is there is a videotape of when he’s making these sort of statements, and he’s saying that they need to fight if they want to save their country. There are, in fact, people in the crowd chanting, “Fight for Trump.”

That all happened during the Ellipse speech before people headed toward the Capitol, and the Capitol was attacked.

Ms. ROSS. Did your investigation find any of the rioters trying to use Trump’s words and calls to action as a defense in the criminal cases against them?

I can read you something from your Special Counsel Report, if you'd like.

Mr. SMITH. I was just going to say I think we cited a number of rioters who, ultimately, admitted that they had committed their crimes at the behest and in the name of Donald Trump.

Ms. ROSS. OK. It happened several times, and many of those accounts are on pages 86–87 of the Special Counsel Report.

Even the lawyer for Jacob Chansley, also known as the QAnon Shaman, highlighted that his words—how the words affected his client. He heard the words of the President; he believed them. He genuinely believed them, and he thought that the President was actually going to walk with them to the Capitol.

For my final question, Mr. Smith, do you believe that Donald Trump motivated and was responsible for the violence that occurred on that day, even if he didn't walk with them to the Capitol?

Mr. SMITH. Yes. As stated in our report, the results of our investigation following the facts and following the law was that he was the person most responsible for what happened at the Capitol, and that he caused what happened at the Capitol, and that it was foreseeable to him.

Ms. ROSS. Thank you. Mr. Chair, I have two UCs.

Chair JORDAN. The gentlewoman can State her unanimous consent requests.

Ms. ROSS. I ask unanimous consent to enter into the record a tweet from Representative Biggs on January 7th, 2021, in which he said, quote, "Yesterday, criminal rioters hijacked a Joint Session of Congress."

The second one is a unanimous consent to enter into the record an interview from March 2024 on The Capitol Hill Show in which you called on those who attacked the Capitol on January 6th to be, quote, "held accountable" because, quote, "that's the way our system does work and should work."

Chair JORDAN. Without objection

Ms. ROSS. Thank you very much—

Chair JORDAN. Now, the Chair now recognizes the gentleman from Texas.

Mr. ROY. I thank the Chair. Mr. Smith, how many Members of Congress or the Senate did you subpoena phone toll records?

Mr. SMITH. As I sit here right now, do not recall a specific number.

Mr. ROY. Is this the complete list right here? Well, let me ask you this: Am I on this list? Did you target my records and subpoena my phone toll records?

Mr. SMITH. My understanding is your records were subpoenaed by prosecutors before I became Special Counsel.

Mr. ROY. Well, if the staff would put this up on the screen?

I'm thankful for the great staff who discovered the email, where I learned for the first time a few weeks ago that my phone records were, indeed, targeted.

We called AT&T and we've learned that they were given to the Department of Justice, as this email indicates, because I had been in communication with Scott Perry, one of my colleagues here in Congress, who literally had his phone taken from him in front of his family.

Of course, we've already talked about in this document it talks about whether you could be in violation of the privilege by even obtaining or possessing this information, if the Member objected to the disclosure.

This happened four years ago in May 2022, and I couldn't object because I didn't know. I didn't know until about three weeks ago.

My question here is: Was there any limits to your investigation or the investigation that preceded you, Mr. Smith? Because as egregious as a violation of separation of powers this is, as egregious and abusive power it is far more concerning you were clearly targeting American citizens for merely being conservative or supporting the President.

We've got memos that we've already been talking about in this hearing from April 2022 that preceded you, that established and opened the investigations, one of which has Attorney General Merrick Garland's signature on it. The focus was the electors.

Now, that was six months before you were appointed. You testified earlier you met and interviewed Merrick Garland and Deputy AG Lisa Monaco, and you briefed the AG and Deputy multiple times. Did you brief them on the electors and the prosecution of their supposed crimes?

Mr. SMITH. I'm sorry, sir.

Mr. ROY. Did you brief them on the electors and their supposed crimes?

Mr. SMITH. I don't recall specific conversations, but I'm sure that in the course of briefing them, I discussed—

Mr. ROY. Yes, wasn't that the purpose of the entire investigation as it was set out? Because, putting aside that in 1960, as we've already talked about, my friend, Mr. Tiffany, that Hawaii put forward an alternate slate of electors, the investigation pivoted to President Trump, and frankly, anybody who knew him.

Do you know who Cleta Mitchell is?

Mr. SMITH. Yes, I do. She's an election lawyer that was involved in filing an election contest on behalf of President Trump in Georgia in December 2020, a 64-page complaint with over 1,100 pages of exhibits, witness affidavits, and expert witness reports, documenting thousands of votes cast in violation of Georgia law, but which were, nevertheless, included in the vote totals.

Now, notwithstanding the disposition of the case that was filed, is that a criminal act? Filing an election contest on behalf of candidate for office, a client, is that a criminal act, yes or no?

Mr. SMITH. No. In fact, we stated—

Mr. ROY. Why did you deem it appropriate to monitor Cleta Mitchell's long distance phone records in 2023, 2½ years after the election contest was filed, and after the Presidential electors were certified?

What about Jenna Ellis? What about Sidney Powell? What about Bill Stepien? What crime did you suspect had been committed by them that would warrant monitoring their phone records 2½ years after the 2020 election was certified?

Mr. SMITH. With respect to Sidney Powell, she is one of the co-conspirators alleged in the indictment. I don't know what you mean by monitoring, sir, if you're talking about—

Mr. ROY. Well, there were some 400-plus Republican conservative groups and leaders who were targeted by your investigation. Their financial records were obtained, records of the RNC, the Trump Campaign, Cleta Mitchell, the Conservative Partnership Institute, the America First Policy Institute, RNCC, RNNC, PACs, conservative groups, people all across the country, citizens.

Because we hear a lot about Members of Congress, and we should because of separation of powers and the egregious abuse of power. What we're not talking about enough, in my opinion, are the American citizens that have been targeted.

Because, frankly, are there any limits to the power of a Special Prosecutor or a Special Counsel? In your abuse of power, that in the Summer 2024, the indictment involving classified documents was dismissed after determining your appointment violated the Appointments Clause of the Constitution, but you continued to sign your name on court filings until the time you resigned from office in January 2025.

A Federal judge just recently stated a prosecutor who continues to sign his name in court filings after it a disqualification order should face disciplinary action or disbarment.

I yield back.

Chair JORDAN. The gentleman yields back.

Mr. RASKIN. Could the gentleman have the opportunity to respond to the—

Chair JORDAN. If the gentleman wants to respond, he can.

Mr. SMITH. With respect to the last point, Judge Cannon's order specifically limited her finding to that proceeding. There would be nothing improper about continuing to litigate the cases in Washington—the case in Washington, DC. With respect to Florida, there was nothing improper about making an appeal of that very decision.

Chair JORDAN. The gentlelady from Vermont is recognized for five minutes.

Ms. BALINT. Thank you, Mr. Chair.

Mr. Smith, I want to discuss Volume II of your report, which summarizes the findings of your investigation into President Trump's hoarding of classified documents at Mar-a-Lago and his efforts to obstruct the FBI's investigation.

Mr. Smith, is it generally the practice for a Special Counsel's report to be made public to the American people?

Mr. SMITH. I want to say, first, I am limited in what I can say about Volume II because of Judge Cannon's order.

Ms. BALINT. I understand.

Mr. SMITH. I can say, generally, that with respect to Special Counsels, there are regulations that direct a Special Counsel to draft a report. Whether that report becomes public is determined—the Attorney General has the authority to determine that.

Ms. BALINT. To the best of your knowledge, was Special Counsel Mueller's report made public in full?

Mr. SMITH. I know it was made public. I'm not sure if it was made public in full.

Ms. BALINT. What about Special Counsel Hur's report?

Mr. SMITH. My recollection is his report was made public in full. I believe that's correct.

Ms. BALINT. Special Counsel Weiss' report?

Mr. SMITH. I do not know.

Ms. BALINT. OK. Now, I understand that the District Judge Aileen Cannon, the Trump appointee who oversaw the case in Florida, issued a gag order that prevents you from discussing any parts of the classified documents investigation that is not already public—I understand that—including your findings that you laid out in Volume II of that report.

Am I correct that the reason your report is not available in full to the public is because of this gag order?

Mr. SMITH. I wrote a report. The Attorney General, it was submitted to him. I understand, generally, that there's been litigation about whether this report would be public or not. I have not been a party to that litigation. I just know that there is an order, and I know the Department of Justice, the current Department of Justice, has interpreted that order in a way that I cannot speak about anything that could possibly be in that report and its findings.

Ms. BALINT. When Judge Cannon issued that gag order, she cited pending cases against Trump's codefendants, is that correct?

Mr. SMITH. I'm sorry?

Ms. BALINT. When Judge Cannon issued the gag order, she cited pending cases against Trump's codefendants, is that correct?

Mr. SMITH. That's my recollection.

Ms. BALINT. Are those cases still pending?

Mr. SMITH. No, they're not.

Ms. BALINT. No, they're not. There is no reason, from where I sit, for this important information to be not made public.

At this point, I want to turn now to President Trump's attacks on you. Trump has a playbook for how he handles people who try to hold him accountable. In August 2023, right after your office indicted him, President Trump shared that playbook on social media for everyone to see. He wrote, "If you go after me, I'm coming for you."

Trump has said that you, Mr. Smith, should be investigated and put in prison. He called you "a disgrace to humanity," "a radical left Marxist," and "a criminal." In fact, Trump has used the words "deranged Jack Smith" 185 times on Truth Social.

How do you think that these statements have impacted you, your staff, and your investigation?

Mr. SMITH. I want to say first I am limited to what I can say about Volume 2 because of Judge Cannon's order.—

Ms. BALINT. Judge Cannon.

Mr. SMITH. I can say generally that with respect to the Special Counsels there are regulations that direct the Special Counsel to draft a report. Whether that report becomes public is determined, the Attorney General has the authority to determine that.

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Ms. BALINT. No, they are not. There is no reason, from where I sit, for this important information to be not made public. At this point I want to turn now to President Trump's attacks on you.

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How do you think that these statements have impacted you, your staff, and your investigation?

Mr. SMITH. With respect to me, I think the reports—I am sorry, the statements are meant to intimidate me. I will not be intimidated.

These statements are also made as a warning to others what will happen if they stand up. I am, as I say, I am not going to be intimidated. We did our work pursuant to Department policy. We followed the facts; we followed the law. That process resulted in proof beyond a reasonable doubt that he committed serious crimes.

I am not going to pretend that didn't happen because he is President.

Ms. BALINT. Mr. Smith, do you believe that President Trump's Department of Justice will find some way to indict you?

Mr. SMITH. I believe that they will do everything in their power to do that because they have been ordered to by the President.

Ms. BALINT. That is very concerning, obviously. It is very concerning to all of us, at least on this side of the aisle.

This is Trump's playbook at work: Complain loudly, gin-up hatred and resentment, then express a hope that somebody will do something, but never explicitly order anyone to act. Then, watch as his followers and loyalists go after their targets.

This is what happened on January 6th. Trump stood at the Ellipse and gave a campaign speech to his supporters. He said, "if you don't fight like hell, you are not going to have a country anymore."

It is clear that his intimidation will stop at nothing. I want to speak on behalf, in closing, I want to speak on behalf of people—

Mr. ISSA. No closing. Mr. Chair, regular order.

Ms. BALINT. No, I am sorry.

Mr. ISSA. Mr. Chair, regular order.

Mr. BALINT. I am sorry. You have gone over numerous times.

Chair JORDAN. I am allowing the gentlelady from Vermont. I will let you go a couple of seconds.

Ms. BALINT. I am taking my few moment. Thank you, Mr. Chair.

Chair JORDAN. I have all day.

Ms. BALINT. Thank you. On behalf of the people of the State of Vermont, thank you for all your 30 years of service to this country. To the police officers sitting here, I am ashamed, I am ashamed that you have not gotten your due.

Chair JORDAN. The time of the gentlelady has expired.

Ms. BALINT. I yield back.

Chair JORDAN. The gentleman from New Jersey is recognized.

Mr. RASKIN. I have a UC request.

Chair JORDAN. The gentleman, the Ranking Member, is recognized for a UC.

Mr. RASKIN. Thank you kindly, Mr. Chair.

The first is from *The New York Times* article titled, "Hunting Leaks. Trump DOJ officials seize records of Democrats," explaining how the Trump Administration subpoenaed Apple for data from accounts of at least a dozen people tied to the House Intelligence Committee in 2017–2018, including Representative Swalwell and Senator Adam Schiff.

The other, similarly, is "Trump's DOJ secretly obtained phone and text message logs of 43 Congressional staffers and two Members of Congress." That is December 10, 2024.

Chair JORDAN. Without objection. The Chair now recognizes the gentleman from New Jersey.

Mr. VAN DREW. Thank you, Chair. I don't even know where to go because there is so much, Mr. Smith, there really is. What I do know is it is much more than how much people like or hate you, or like or hate Donald Trump, or like or hate Republicans, or like or hate Democrats. This is about the system. It is about what the Department of Justice did. It is about what you did.

The core of the hearing is all about can Americans still trust the justice system. Is it fair? Was it fair under you?

All they expect, they don't expect you to be perfect, but they expect you to treat everyone the same, Republicans and Democrats, liberals and conservatives. That wasn't the case. When you treat people differently because of their political status, their political party, their ideals, that is hypocrisy.

I am sorry to say, and I don't say it lightly, I do consider you to be a hypocrite.

With that being said, the prosecutors and the people around you stretched norms, changed standards, depending on who was under investigation. You don't like Donald Trump, and so you are a liberal Democrat—whatever the case may be. They went after him.

By the way, it is interesting, in all those Congressional Records that were subpoenaed, all those Congressional Records that were looked at, was one of them a Democrat? No. The answer is no. I will answer for you.

I have a simple questions. I always say I am a simple guy, but it really boils down to this: How much can Americans trust this system?

In your Special Counsel Report, you stated President Trump engaged and was guilty of criminal conspiracy, that he was guilty of criminal conduct. You publicly testified you believed you had the proof, et cetera.

If prosecutors deal this way with cases, if they declare that it is guilty and it is over before a jury verdict, would Americans trust the justice system more or would they trust the system more?

The answer, go ahead, answer, please.

Mr. SMITH. I am sorry, I didn't, I didn't understand what you are asking.

Mr. VAN DREW. When this was all going on before, and I believe it was political before there was an entire case, and we went through the whole case, you pretty much declared—I am not going to read the whole thing through again—that President Trump was guilty.

That wasn't your job. That is a judge's job. It is a jury's job. It is not your job.

Don't you think that is unfair, that is wrong, that it didn't make the playing field level? Did it make people less trustworthy of the system, yes or no?

Mr. SMITH. No. When I announced the charges in the election case, I specifically stated that the case needed to be tried, and that he had a right to go to trial and he was presumed innocent.

Mr. VAN DREW. Thank you. I just want a simple answer because we are limited on time. I disagree with you. I don't think you did.

You also secretly subpoenaed phone records, got records of the Members of Congress. You kept those subpoenas hidden through nondisclosure orders. That is wrong. They should have known. If you want to do that, fine; it is wrong.

First, it is wrong because people have a right, the American public has a right to know, the elected officials have a right to know. It is your right to subpoena them, but they should know.

Second, I brought this up before, not one Democrat. It is all Republicans, all Republicans. Everything you have done, everything you have ever done is always against Republicans. Do you think that puts more trust in the system when you are so partisan in that way? Yes or no?

Mr. SMITH. No. Politics played no role in our investigation. I have prosecuted Republicans and Democrats throughout my career. I have dismissed cases against Republicans and Democrats.

Mr. VAN DREW. Because you didn't have the proof.

If prosecutors routinely relied on politically imbalanced investigations, and by this let me appeal to your sense of fairness. You are saying you are a fair man.

We had a January 6th Committee, Select Committee that was appointed only by a Democrat, the then-Speaker Nancy Pelosi. Everybody on it was a Democrat except two Republicans that hated Republicans. Was that fair? Was that fair?

Look at our system here in Congress. We have got Democrats and they speak up. You have got Republicans; we speak up. You hear both sides. That is the way a Select Committee should be. You based everything on this biased, unfair, and prejudiced system? How is that fair? Tell me how that is fair?

Mr. SMITH. That is not correct. We conducted an independent investigation—

Mr. VAN DREW. Based a lot on that commission? You got all their records.

Mr. SMITH. That is not correct. We did collect their records. We conducted our own independent investigation following the facts and the law. The reality is—

Mr. VAN DREW. You used a lot of their information. Mr. Smith, I don't mean to cut you off. I have got limited time.

Joe Biden took classified records that were not to be taken when he was Vice President and when he was Senate. I know you didn't deal directly with that case.

Ms. LOFGREN. Mr. Chair.

Mr. VAN DREW. Nevertheless you did. Is that fair? Because you let him go, didn't do anything to him. On the other hand, when it is President Trump who did it as President, then there was you raided Mar-a-Lago. Is that fair?

Chair JORDAN. The time of the gentleman has expired.

Mr. VAN DREW. I would like an answer.

Chair JORDAN. If the witness would like to respond, he can.

Mr. SMITH. I have no response.

Mr. VAN DREW. It is damn unfair. That is the answer.

Mr. RASKIN. We have got a UC request.

Chair JORDAN. A UC request from the gentlelady from California.

Ms. LOFGREN. Yes. I have a unanimous consent request.

I ask unanimous consent to enter into the record the Government's sentencing memorandum for Capitol rioter Cody Mattice, who said that "when the former President asked his supporters to March on the Capitol, it was not a call to peacefully and patriotically make your voice heard. To storm and seize the building."

Chair JORDAN. Without objection.

Mr. RASKIN. I have got one, Mr. Chair.

Chair JORDAN. The gentleman is recognized.

Mr. RASKIN. This is a press release from Congressman Jeff Van Drew; a statement on storming the Capitol Building calling it unacceptable, un-American, and disrespectful of democracy.

Chair JORDAN. Without objection. The Chair now recognizes the gentleman from Illinois.

Mr. GARCIA. Thank you, Chair. Thank you, Mr. Smith, for being here today.

Let's remember why we are here today. Donald Trump incited an insurrection in 2020 because he refused to accept that he lost that election. When he took classified documents with him and put them in Mar-a-Lago.

Republicans support impunity for criminals, not accountability. There is no clearer example than that of the blanket pardon of nearly 1,600 insurrectionists on day one of this disgraceful Presidency. Trump pardoned people convicted of seditious conspiracy, who brutalized police officers—there are four of them who can testify to that here—and who wanted to kill Vice President Pence. People who have committed more crimes since the insurrection: Sexual assault, child molestation, and aggravated kidnapping.

That is what Trump pardoned and that is whose side Republicans are on. They may not want to, but they are, because they refuse to tell the truth.

Mr. Smith, let me ask you something. Does pardoning violent rioters who brutalize law enforcement officers, spray peppering them, tasing them, beating them up, kicking them, and smashing them in door frames make our country safer?

Mr. SMITH. Absolutely not.

Mr. GARCIA. As a prosecutor, can you describe why these pardons make our communities less safe and undermine our criminal legal system more broadly?

Mr. SMITH. The people who assaulted police officers and who were convicted at their trial, in my view, and in the view of the judges who sentenced them to prison, are dangers to their community.

As you have mentioned, some of these people have already committed crimes against their communities again. I think all of us who are reasonable know that there is going to be more crimes committed by these people in the future.

I do not understand why you would mass pardon people who assaulted police officers. I don't get it. I never will.

Mr. GARCIA. That is exactly right. None of this is a coincidence.

The entire purpose of the Republican Party, unfortunately, has become to help criminals and corporate interests evade accountability. Republicans want impunity, not accountability. They want impunity for the January 6th people, for the classified documents case, for the Epstein files, for billionaires and big corporations, and for terror that DHS is sowing on our streets.

The Gestapo tactics by ICE and CBP are the obvious result of President Trump and the Republican Party that protects anyone who helps them turn our country into an authoritarian gangster State. Whether it is storming the Capitol to overthrow an election, or murdering people in broad daylight, Republicans will back you if you back their political mafia and racketeering operation.

That is why Democrats must fight for accountability through oversight, through legislation, evidence collection, and through prosecution for the openly criminal acts that we are seeing in our communities every day.

Democracy doesn't exist without accountability. You have got to have a spine.

I thank you, Mr. Smith, for doing your part. Our fight continues for accountability, not for impunity.

Thank you. I yield back.

Mr. GOLDMAN. May I have time?

Mr. GARCIA. Mr. Chair, I would yield to the gentleman from New York.

Mr. GOLDMAN. Mr. Smith, I just want to take a minute and allow you to explain why you requested the toll records of those officials for January 6th?

Mr. SMITH. For the January 6th investigation, correct?

Mr. GOLDMAN. Yes.

Mr. SMITH. Well, with regard to the toll records that were subpoenaed regarding the period of the 4th, it was through the 7th, we had evidence that the President had directed Rudy Giuliani, one of his coconspirators, to contact the Members of Congress to try to further delay the proceedings and exploit the violence that happened in the Capitol.

We had evidence that those calls had happened. We wanted to get more evidence of that to corroborate at the trial. That is, again as I mentioned earlier today, a standard part of an investigation, to understand who a conspiracy is trying to reach out to, how they are trying to influence people.

Mr. GOLDMAN. You wanted documentary confirmation?

Mr. SMITH. Yes. Correct.

Mr. GOLDMAN. I yield back.

Chair JORDAN. The time of the gentleman is expired. The gentleman from Texas, Mr. Nehls, is recognized.

Mr. NEHLS. Thank you, Mr. Chair. Mr. Smith, I will just cut right to the chase here.

Your investigation and attempt at prosecution of President Trump it wasn't about justice, it was about politics. Politics. From day one under the Biden-Harris DOJ you weaponized the law to go after their top political opponent.

You pushed flawed legal theories. Even the far-Left *Washington Post* called you out. They called you out, sir, for violating the First Amendment.

You tried to criminalize political speech, slap unlawful gag orders on a Presidential candidate, and spy on Republican Members of Congress in violation of the speech or debate clause, including the sitting Speaker of the House.

Mr. Smith, you mishandled documents, pressured defense lawyers, and dumped a massive trove of so-called evidence right before the election. You did it to sway voters. That is why you did it.

Don't get me started on that raid at Mar-a-Lago or your unconstitutional appointment, which a Federal judge in Florida rightly tossed out. A very bad day for you.

This wasn't, Mr. Smith, about upholding the law. It was about treating down President Trump and anyone close to him. You even tried to ram through a politically motivated final report after your cases collapsed, including the Presidential Transition Act and basic fairness.

Here is the good part, America. Here is the good part.

The American people saw right through it. They rejected, sir, your witch hunt loud and clear in November, handing President Trump a commanding victory. The voters spoke loud and clear: They wanted an end to the weaponization of our justice system.

In your opening statement you spoke about proof of beyond a reasonable doubt. Mr. Smith, I will give you proof beyond a reasonable doubt: Donald Trump winning the popular vote by over two million votes; the Electoral College by 85 votes; along with every single swing State.

Now, sir, that is proof beyond a reasonable doubt that the crap you were shoveling did not pass the smell test with the American people. To put it bluntly, Mr. Smith, the stink remains on you.

Last, I would like to quickly address the police officers of January 6th, Mr. Dunn, Mr. Fanone, Mr. Gonell, and Mr. Hodges, I am a Member of the new Select Committee to actually examine, actually examine what happened that day. I can tell you, gentlemen, that the fault does not lie with Donald Trump. It lies with Yogananda Pittman and the U.S. Capitol Leadership Team.

We know they had the intelligence, and there was going to be a high propensity for violence that day. Claim my time, yes.

Chair JORDAN. We will be in order. The time belongs to the gentleman from Texas. We have had some disruptions already. We don't need that. The gentleman may continue.

Mr. NEHLS. We know the Capitol Leadership Team, specifically Yogananda Pittman, had the intelligence and there was going to be a high propensity for violence that day. The Capitol itself was the target. We knew the extremist groups were going to be there.

Why do I say that? It was your report from your Intelligence Section, the IICD, which was run by Pittman, in the January 3rd, special event section. It was in it. It was in it.

Mr. Dunn, I believe that you thought that day would be like just any other. In your testimony to the January 6th Committee, you said you found out how ugly it was going to get on a cell phone. Somebody sent you some information on social media.

The point is you were all unprepared to deal with that day. That is because your leadership failed to share the intelligence with you.

It was their fault, folks. It was their fault. It was not President Trump. We are going to expose it for the first time because the Bennie Thompson, the sham Committee, didn't do it.

Mr. RASKIN. Will the gentleman yield for a question?

Mr. NEHLS. The sham Committee didn't do it. The report is 845 pages. Donald Trump's name is mentioned 4,207 times. We know what the Committee wanted to do is to not allow Donald Trump to come back and win again. They failed; they failed miserably. I hope you now can see that.

With that, Mr. Chair, I yield the balance to my distinguished colleague out of Jersey.

Mr. VAN DREW. I just want to quickly go over something because we keep rewriting history.

The President said, "peacefully and patriotically." What don't we understand about "peacefully and patriotically"? He asked for the National Guard. That was ignored. He asked Speaker Pelosi. Why don't we understand that?

Mr. RASKIN. Will the gentleman yield for a question?

Mr. VAN DREW. No, I—

Mr. RASKIN. Are you saying Nancy Pelosi controls the National Guard?

Mr. VAN DREW. Wait a minute.

Mr. RASKIN. The President could have called the National Guard if he wanted to, and you know that.

Mr. VAN DREW. Can I reclaim my time? I lost some of my time.

Chair JORDAN. The time belongs to the gentleman from New Jersey. You have a few more seconds.

Mr. VAN DREW. Finally, how many elected officials say we are going to fight to win an election? This is terminology used all the time, seriously. Of course, if they were guilty, they should be prosecuted. The problem was there were many in the mix.

Chair JORDAN. The gentleman yields back.

Mr. NEHLS. Last, your hand gestures, Mr. Fanone.

Chair JORDAN. No, no, no. The time has expired.

Mr. NEHLS. You need medication.

Chair JORDAN. The time of the gentleman has expired. The audience will be in order. The Committee will be in order.

The gentlelady from Georgia is recognized for a unanimous consent.

Ms. MCBATH. Thank you, Mr. Chair. I have two unanimous consent requests to enter into the record two articles.

Chair JORDAN. Without objection. The gentlelady can proceed.

Ms. MCBATH. First, an article dated December 29, 2025, titled, "Wall Street Journal Editorial Board calls out MAGA's latest 2020 stolen election nonsense."

Second, an article dated December 23, 2025, titled, "Fact Check: Fulton County's 315,000 unsigned early votes are not proof of electoral fraud."

Chair JORDAN. Without objection. The gentleman from Illinois is recognized for an unanimous consent.

Mr. GARCIA. Thank you, Chair.

First, under unanimous consent I ask to enter into the record the Judiciary Democrats' January 2026 report titled, "Where are they now? The perpetrators of January 6 and the defenders of democracy who stopped them," which profiles the illustrious career trajectories of some of the key actors from January 6 who were pardoned by Donald Trump.

Second, a report dated January 2026, report from Judiciary Democrats, "One Year Later: Assessing the public safety implications of President Trump's mass pardon of 1,600 January 6 rioters and insurrectionists."

Chair JORDAN. Without objection. Without objection. The gentlelady from California is recognized.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair. Thank you, Mr. Smith, for joining us.

Now, most people are wondering why you are even here today. It is because we have heard conspiracy, after conspiracy that the 2020 election was rigged. Capitol Police officers were harmed and died because of those conspiracies.

We have important elections coming up. The people want them to happen, and they want them to be fair. The one person who should be telling the truth about elections is the President. Donald Trump has not and is still not telling the truth about the 2020 elections.

In fact, there is a January 6th page on the taxpayer-funded White House website that says the election was stolen from Trump, a blatant, disproven lie he knows is totally false.

One of my Republican colleagues earlier brought up Trumps mind State, that he knew he lost and he knew that what he was saying was untrue, but that you have no proof.

Mr. Smith, what evidence did you develop to suggest Trump knew he had lost the 2020 election?

Mr. SMITH. We had evidence from a variety of sources, evidence from people who were close to Donald Trump and who he relied on, people who wanted him to win the election, people who were employed by his campaign to help him win the election.

Our evidence is that this was a conspiracy and that Donald Trump specifically sought to prey on party loyalty.

Our investigation involved interviewing and subpoenaing records of Republicans because that is who Donald Trump sought to prey on to stay in office. The reality is certain people refused to do that.

The Vice President refused to go along with that. People in various State legislatures refused to go along with that.

The reality is that if we took this case to trial a good number of our witnesses would be Republicans.

If a Democrats had committed these crimes, had done these things, I would have subpoenaed a number of Democrats. I would have subpoenaed their records.

Ms. KAMLAGER-DOVE. Yes, I am going to ask you about that. Correct, it is not like he was calling Nancy Pelosi. Why is it legally important to know that Trump knew he was lying when he said the election was stolen?

Mr. SMITH. That was part of our proof at trial. It was relevant to the charges, specifically to the first charge, to defraud the United States.

It is permissible for someone to lie, but when they use speech to commit a crime, to facilitate a crime, that is not protected by the First Amendment. The Supreme Court has been very clear on that.

This very issue was litigated in the case. The defense raised this very issue.

One thing I want to be clear about today, the case that I investigated and the case we had, it was built to be tried in a courtroom.

Ms. KAMLAGER-DOVE. Uh-huh.

Mr. SMITH. Not in the media.

Ms. KAMLAGER-DOVE. Uh-huh.

Mr. SMITH. Our case was built to withstand the crucible of litigation. Our assessment is that we had proof beyond a reasonable doubt that we would do that.

Ms. KAMLAGER-DOVE. Uh-huh. What I heard you say is that when you lie and you know you are lying, and then you act on that lie to overturn the democratic process, that this is a felony.

A January 6er actually said, "if I can't trust him, then who can I trust?" Exactly. We cannot even trust our own President.

In fact, there are so many other things that you can say that you are not allowed to say because Trump, a Trump-appointed judge sealed the documents, refusing to release the files yet again. Which is why we could probably ask you far more questions if those were unsealed.

I don't have that much time. I want to now shift to these allegations from my Republican colleagues about the collection of phone records of Republican Senators, I guess some of the ones that were trying to get \$500,000 of taxpayer dollars.

Many of the phone records of the Members were requested before you were appointed as Special Counsel; yes or no? That is true? Is that accurate?

Mr. SMITH. Yes.

Ms. KAMLAGER-DOVE. Yes.

Mr. SMITH. Some subpoenas occurred before I was Special Counsel.

Ms. KAMLAGER-DOVE. What do you say to those who claim you chose to target Republicans because you only collected phone records for Republicans?

Mr. SMITH. The conspiracy I was investigating targeted Republicans.

Ms. KAMLAGER-DOVE. Right.

Mr. SMITH. As I mentioned earlier.

Ms. KAMLAGER-DOVE. That is right. You would have requested any relevant call records necessary for your investigation of a Republican or of a Democrat?

Mr. SMITH. That is correct. To be clear, if a Democrats committed these acts we would have sought those.

I could just add one thing. We interviewed Rudy Giuliani in the course of this investigation. We asked him why did you say, why did you in one of the voicemails you left for the Senator mention the fact that it was Republicans you were reaching out to?

He said because the Democrats weren't going to help us. Even some Republicans wouldn't help us. Our evidence showed repeatedly that the plan was to see if he could play on people's party loyalty.

Chair JORDAN. The time of the gentlelady has expired. The gentlelady from—

Ms. KAMLAGER-DOVE. Thank you. I yield back.

Chair JORDAN. The gentlelady yields back. The gentlelady from Wyoming is recognized for five minutes.

Ms. HAGEMAN. Mr. Smith, it was during your deposition with our Committee that you revealed that you tasked your team, specifically J.P. Cooney, to engage with the partisan January 6th Committee. You had to have known at the time the controversy surrounding this Committee, including the fact that all the Members had been appointed by Nancy Pelosi, who disallowed the Republicans from being able to engage.

You proceeded anyway, raising numerous questions as to your strategy for conspiring with the J6 Committee.

You had every possible resource available to you. Your prosecution of President Trump was clearly a priority for the Biden Administration. It is clear that you had an unlimited budget. You also left no stone unturned, even subpoenaing records from the sitting Members of the House and Senate.

What information could the J6 Committee possess that you and the Nation's top law enforcement agency could not obtain on your own?

Mr. SMITH. I did request J.P. Cooney—

Ms. HAGEMAN. What did they have that you couldn't obtain on your own?

Mr. SMITH. In any investigation—

Ms. HAGEMAN. What information did they have that you did not, you were not able to obtain on your own?

Mr. SMITH. I couldn't know that until I had their information.

Ms. HAGEMAN. Was there anything there? Did you find that they had information that you were not able to obtain?

Mr. SMITH. I don't recall specifically every bit of information. What I can tell you is we took in their information because we wanted to collect any information that could be relevant. We made our own independent assessment of the—

Ms. HAGEMAN. OK. From the time that you were appointed as Special Counsel, up to the date of your resignation in January 2025, did you personally have any contact with any of the Member's staff or contractors of the House January 6th Select Committee? If so, who?

Mr. SMITH. I do not believe I had contacted anybody personally from the January Select—

Ms. HAGEMAN. The January 6th Committee failed to archive or preserve its video recordings of witness interviews, deleting or destroying as many as 900 interview summaries or transcripts, involving more than one full terabyte of digital data. I repeat, the J6 Committee destroyed evidence. Let that sink in.

Why would they do such a thing? We have a dang good idea.

The Committee actually used selected clips from these videos and transcripts during their hearings and, yet, by destroying this evidence they have denied Congress and the public the ability to obtain their full content and context. They created their narrative by selected use of the evidence before them.

How very convenient.

Did you or your team receive any of those witness transcripts or video recordings of transcribed interviews from the Select Committee that were not released to the public?

Mr. SMITH. What I can tell you is that I requested J.P. Cooney to contact the Select Committee.

Ms. HAGEMAN. Do you know if you received any of the evidence or testimony that the J6 Committee eventually destroyed?

Mr. SMITH. I don't have any information that the J6 Committee—

Ms. HAGEMAN. You don't know one way or the other as you sit here today?

Mr. SMITH. No, what I am telling you is that I requested all the information we could get from the January 6th Committee.

Ms. HAGEMAN. Has all the information that you requested been preserved? All the information from the J6 Committee has that been preserved?

Mr. SMITH. The information that we requested and received, we reviewed it. It was part of—

Ms. HAGEMAN. Has it been preserved?

Mr. SMITH. Yes.

Ms. HAGEMAN. Thank you.

Mr. SMITH. As part of our files and—

Ms. HAGEMAN. Were you or your team advised, or did you get the impression from anyone affiliated with the January 6th Committee that these documents were not for public release, even though portions of them had already been shown to the American people? Were you advised to keep any of the information from the J6 Committee confidential?

Mr. SMITH. As I am sitting here right now, I don't recall that.

Ms. HAGEMAN. Thank you.

Mr. SMITH. I recall—

Ms. HAGEMAN. Did the J6 Committee provide you with the Cassidy Hutchinson testimony as part of the trove of documents that you received?

Mr. SMITH. As I sit here now, I don't recall. It was very likely—

Ms. HAGEMAN. Well, you are familiar with her testimony, aren't you?

Mr. SMITH. I am.

Ms. HAGEMAN. In fact, wouldn't you agree with me that Ms. Hutchinson's testimony, especially the most explicit allegations made, was comprised of hearsay on hearsay on hearsay?

Mr. SMITH. There was—

Ms. HAGEMAN. Come on, you are an attorney, Mr. Smith. You can answer the question. Of course it was hearsay.

Mr. SMITH. There was—

Ms. HAGEMAN. Hearsay isn't admissible in a court of law, is it. Why? Because it is inherently unreliable and the victim or the target of a prosecution is not able to cross-examine. Isn't that correct?

In fact, Mr. Smith, if you had attempted to walk into court with Cassidy Hutchinson's testimony you would have been thrown out on your ear. No judge, no legitimate judge would have ever allowed the testimony of Cassidy Hutchinson to be admitted in a court of law, would they?

Mr. SMITH. I disagree.

Ms. HAGEMAN. Well, we have already talked about your record. That is why—

Mr. RASKIN. Mr. Chair, the gentlelady's time has long since expired.

Ms. HAGEMAN. I yield back.

Chair JORDAN. The time of the gentlelady has expired. The gentleman from Florida—

Mr. RASKIN. Can I make one UC request first?

Chair JORDAN. The gentleman is recognized.

Mr. RASKIN. This is from *factscheck.org*, "Meme rehashes old false claim that J6 Committee destroyed evidence," from October 15, 2024. This is from the District of Columbia National Guard website stating that this is the only National Guard unit in America which reports exclusively and only to the President.

Chair JORDAN. Without objection. The gentleman from Florida is recognized.

Mr. MOSKOWITZ. Thank you, Mr. Chair. We are definitely not in a court of law today. Half this shit wouldn't come in if we were. Good God, you know?

I want to talk about something one of my colleagues Mr. Nehls said, from Texas. He sits on this new January 6 Subcommittee, which I also happen to sit on. He said the same thing in the Sub-

committee the other week, that it wasn't President Trump that inspired January 6th; right? It wasn't him. He said it in the Subcommittee that it was actually Ray Epps.

Ray Epps. He was the one who told people to break the law, the windows, the doors, and to beat police officers, and hang Mike Pence, and try to break into the floor of the House, and wiping feces on the walls. It was all this guy Ray Epps; right?

Who is Ray Epps? Why is he so powerful?

I just did a quick Google search of Ray Epps, and his Wikipedia page says, "The powerful Ray Epps is a wedding planner to the Oath Keepers." This is the wedding planner, that's the mastermind of Jan—you couldn't, you went from Donald Trump. It wasn't Donald. Who? Well, who are we going to blame? Who could it be?

How about the wedding planner to the Oath Keepers?

It just puts that—but, my colleagues love the past, Mr. Smith. Love the past. That's why you are here before Pam Bondi. OK? We haven't had the Attorney General here. We didn't have her last year. She is the only one in the cabinet to not come in Committee of reference.

They love the past. They love talking about January 6th, Hunter Biden, COVID, Barack Obama, and Hillary's emails. They love the past. These people love the past so much they are still reenacting the Civil War. OK? Love the past.

He is talking about the present.

Let's talk about the past really quick. Here are some quotes, because I heard one of my colleagues call you a hypocrite. Here are some quotes from my colleagues:

Chair Jordan right after January 6th, "Stop the violence toward Capitol Police."

Ted Cruz, "Those storming the Capitol need to stop right now. The Constitution protects but not violence."

Chip Roy, "Today the People's House was attacked, which is an attack on the Republic itself."

Steve Scalise, "The United States Capitol Police saved my life."

Lindsey Graham, "When it comes to accountability, the President needs to understand his actions were the problem."

Troy Nehls, oh my God, him again, "I am happy to stand shoulder to shoulder with Capitol Police."

Darrell Issa, "The violence and turmoil we witnessed in Washington, DC, was completely unacceptable."

Rep. McClintock, "The attack on Capitol strikes at the most sacred act of our democracy."

Former Speaker of the House Kevin McCarthy, whose name we heard a lot today, what did he have to say about it?

Let me be clear, last week's violent attack on the Capitol was undemocratic, un-American, and criminal. And make no mistake, those who were responsible should be brought to justice. The President bears responsibility!

Oh, exclamation point.

Let's talk also about the present. That is the past. Let's talk about the present. These are the guys who created the Weaponization Committee for the DOJ. Let's talk about the present.

Jerome Powell is facing investigation. OK. In fact, we heard about Jonathan Turley, that he is some legal Messiah. Jonathan

Turley called the Jerome Powell thing, “legitimate concerns of retaliation.”

Lisa Cook is under investigation.

Mark Kelly, United States Senator, under investigation.

Adam Schiff, United States Senator, under investigation.

Eric Swalwell, United States Representative, under investigation.

Chris Christie, potentially under investigation.

Jack Smith—oh, that is you—under investigation.

OK? Miles Taylor, former Chief of Staff of the United States Department of Homeland Security, under investigation.

Christopher Krebs, former Director of Cybersecurity, is under investigation.

Indicted: James Comey and Letitia James, John Bolton, it is weird that they indicted John Bolton but stole his foreign policy.

Accused of crimes: The former President Joe Biden and former President Barack Obama.

Revoked or threatened with revocation of Secret Service protection: Kamala Harris; Hunter Biden; Ashley Biden, the daughter of President Joe Biden; Mayorkas; Mike Pompeo; Brian Hook; General Mark Milley; John Bolton; and Dr. Anthony Fauci, the guy Trump gave a medal to.

Security clearance revoked: Joe Biden, Anthony Blinken, Jacob Sullivan, Lisa Monaco, Mark Zaid, Norman Eisen, Letitia James, Alvin Bragg, Andrew Weissmann, Hillary Clinton, Liz Cheney, Kamala Harris, Adam Kinzinger, Fiona Hill, Alexander Vindman, and Miles Taylor.

I can keep going. Any questions about any of that? We know you don’t.

Mr. RASKIN. Will the gentleman yield for a question?

Mr. MOSKOWITZ. I will. Please.

Mr. RASKIN. Because you have a way of synthesizing that nobody else does, Mr. Moskowitz.

Listening to our colleagues today, I wonder if they actually believe any of this would have happened had Donald Trump simply accepted the results of the election?

Mr. MOSKOWITZ. You mean like Al Gore did when he lost five to four at the Supreme Court?

Mr. RASKIN. Yes.

Mr. MOSKOWITZ. Yes.

Mr. RASKIN. Would any of this, would the violence have happened, would the fake counterfeit slates have happened?

Mr. MOSKOWITZ. No, right? None of—

Mr. RASKIN. The threats against Vice President Pence?

Mr. MOSKOWITZ. No, none of it would have happened. Leon Pannetta would still have his security clearance, so would John Brennan, so would Michael Morell and Michael Vickers.

I just, I can’t get them all in, Mr. Chair. I can’t. I can’t get them. I have four more pages of the weaponization of the Department of Justice.

Chair JORDAN. The time of the gentleman from Florida has expired.

Mr. MOSKOWITZ. Yes, sir.

Chair JORDAN. The gentleman from South Carolina is recognized.

Mr. FRY. Thank you, Mr. Chair. Mr. Smith, when was the initial indictment issued on President Trump? August 1, 2023, does that sound about right?

Mr. SMITH. That is in the election case, but that is correct.

Mr. FRY. Right. On that election case, after that you asked for a trial date when?

Mr. SMITH. I don't recall as I sit here right now.

Mr. FRY. On January 2024, does that sound about right?

Mr. SMITH. That sounds about right.

Mr. FRY. OK, so after the indictment you, in August, you asked for a January trial date. That is about five months? Five months? How much evidence did you have? Millions of pages?

Mr. SMITH. As I sit here right now, I don't recall the exact quantity.

Mr. FRY. In your testimony they talk about a number of 13 million pages. Is that a ballpark accurate number?

Mr. SMITH. I think that was the question asked of me. As I sit here I don't have an accurate number.

Mr. FRY. Let's just assume that is true, right? Because you had a bunch of stuff, you had \$50 million that you blew through the Treasury on a trial that went nowhere.

How many pages per day is that, a hundred thousand? Does that sound about right? What if we were to break that down per hour, it's 4,166. Per minute, it's 70 pages. Do you like to read, sir? Do you like to read?

Mr. SMITH. I do.

Mr. FRY. Do you read 70 pages a minute?

Mr. SMITH. I do not.

Mr. FRY. That would be remarkable.

How do you prepare for a trial in five months if you are asking the defense counsel to read 70 pages a minute? How do you do that? Prepare a defense, and look at all the witness testimony and video evidence that you supposedly had, how do you do that?

Do you know what is shocking to me, I think the most, one of the most egregious aspects of this case, Mr. Smith, is that if you get a traffic ticket in Washington, DC, you are not going to trial in five months. You want the President, the former President of the United States to have a trial date with 13 million pages of documents within five months.

I think that is ridiculous. That speaks exactly to what we talk about when we examine not only your record but the things in this case that are deeply troubling. That this was not the pursuit of facts, and law, and letting the judge and the jury decide, that this was an exercise in political, it was a political hit shot, timed perfectly against the President of the United States.

Sir, in the Florida case, in the records case, what happened ultimately in that case?

Mr. SMITH. What happened ultimately in the case?

Mr. FRY. Yes, the Mar-a-Lago records case.

Mr. SMITH. I am going to answer because I don't think this is covered by Jude Cannon's order. We moved to dismiss that case pursuant to Justice Department policy.

Mr. FRY. No, no. The records case in Florida against Donald Trump. The records case in Mar-a-Lago, were you—

Mr. SMITH. Oh, I am, I am sorry.

Mr. FRY. —were you ruled to be, what was the ruling in that?

Mr. SMITH. That was Judge Cannon's ruling. She ruled my appointment unlawful. We sought to appeal that. That appeal was pending at the time that we dismissed the case.

Mr. FRY. From the very beginning were you ever confirmed by the U.S. Senate?

Mr. SMITH. I have never been confirmed by the U.S. Senate. I will say that the history supporting my appointment is over 100 years old. Other Special Counsel—

Mr. FRY. Isn't there a statute on appointment? Do you have to be confirmed by the Senate? I think that is kind of interesting.

The point is from the very beginning, on the documents case and others, you weren't even lawfully appointed. That is why Judge Cannon ruled the way that she did.

From the beginning we talk you, that you followed Department of Justice policy, you followed the facts, you followed the law, you followed the Constitution. That is what you have said all throughout this day, parroted by the Democrats, that you have done nothing wrong.

From the very beginning you weren't even lawfully. You can't even recall who swore you in.

As we sit here today, based on your testimony in a transcribed interview, can you tell us who swore you in as Special Prosecutor?

Mr. SMITH. As I said, I know I took the oath of office. I don't recall who swore me in. What I can share with you?

Mr. FRY. I don't know, sir, call me naive, but, that is a milestone career move for you that you get to do this. You don't remember the circumstances? I just find that a little bit odd.

Here is the thing. I am going to wrap up quickly. You are unconstitutionally appointed.

You breach the 60-day rule releasing this very partisan attack against the President right before the election. You tampered with evidence in the Mar-a-Lago case that you admitted to in court filings.

You subpoenaed the Members of Congress and their phone records in violation of the Constitution, of current statutes. You didn't even let the court know that these were Members of Congress. How are we to assume otherwise that this wasn't political, because it absolutely was, sir.

I yield back.

Chair JORDAN. The gentleman yields back. The gentleman from New York is recognized for five minutes.

Mr. GOLDMAN. I would caution my friend from South Carolina and others against jumping into bed with Judge Cannon, who has been rebuked repeatedly by the 11th Circuit because she is completely lawless.

Let's go back to the actual evidence rather than all the procedural stuff about when you were sworn-in or not. I don't blame you for not remembering that. You have been probably sworn-in a dozen times. It doesn't jump out at you.

I want to go back to the evidence, though, that Donald Trump knew that he was lying about the election. I would ask you to say,

if you could, specifically who gave evidence to you that supported your conclusion that he knew that he was lying?

Mr. SMITH. That came from a number of sources. It came from staff in the White House who talked to him and told him that his fraud claims were not true. It came from staff on his campaign who told him that. It came from members of the Department of Justice.

It came from State officials who when he tried to press them to do things in contravention of their oath but refused to. They asked him for evidence and his coconspirators, and he never provided it.

Over and over again the people who had the best, who were best situated to know how the elections were conducted in these States he either avoided contacting them, or disregarded the clear debunking that was provided to him, such as by the Georgia Secretary of State.

Mr. GOLDMAN. Right. That is a lot of evidence. We know that his Attorney General at the time also concluded "He knew well that he lost the election." Bill Barr. Yet, he incited a riot on January 6th. Four of the brave officers who defended the Capitol and defended my colleagues on the other side of the aisle are here today. Not a single Republican Member of this Committee has recognized them or thanked them for their service. I would like to do so today.

Thank you, gentlemen.

Now, my colleague from California referred to a couple statements from your former colleagues in Penn and the Eastern District about your impeccable reputation as an apolitical career politician. As an alum of the Southern District of New York myself, I can tell you that many of my former colleagues also feel the same. That is saying something, coming from the SDNY to the EDNY, as you know. Mr. Smith, did you ever speak to President Biden about this case?

Mr. SMITH. Never.

Mr. GOLDMAN. Did you ever receive orders or directions from President Biden or anyone else in the White House about this case?

Mr. SMITH. No.

Mr. GOLDMAN. Did you ever receive any directions from Attorney General Merrick Garland regarding how you should—whether or not you should charge this case?

Mr. SMITH. No. I was given the independence to make that decision on my own.

Mr. GOLDMAN. Independent Special Counsel; exactly.

I just want to point out to my colleagues who seem to think this is a politicized investigation that on February 10th, over a month, which is 2021, over a month after January 6th, Marco Rubio said,

The January 6 attack on the Capitol was far more dangerous than most realized. And we have a criminal justice system in place to address it.

Who oversaw the Department of Justice on February 10, 2021? Who was President?

Mr. SMITH. February 10, 2021. That would be Joe Biden.

Mr. GOLDMAN. Marco Rubio wanted Joe Biden's Department of Justice to investigate Donald Trump and his January 6th insurrectionists.

I want to ask you in my last few seconds, Mr. Smith, you are not the first Special Counsel to investigate Donald Trump. Special Counsel Mueller, also of impeccable integrity, concluded that the

2016 Trump campaign welcomed foreign interference from Russia, and used it to help them.

Donald Trump has made it a litmus test to be hired in this Administration to say that the 2020 election was fraudulent, even though you have established it was not. Now, there are senior officials in this Government who are responsible for protecting our elections who are election deniers.

Can you describe in a few seconds what your concerns are about the upcoming election based on your investigation and what we know today?

Mr. SMITH. I believe political litmus tests are not proper for career prosecutors. My experience over 30 years as a prosecutor in the Department of Justice is having people who are not guided by party allegiance, but guided by experience. That is how you can trust the criminal justice system. The same way with our elections system.

Mr. FITZGERALD. [Presiding.] The gentleman's time has expired.

Mr. GOLDMAN. Thank you. I yield back.

Mr. FITZGERALD. The gentleman yields back. The gentleman from Wisconsin is recognized.

Mr. GROTHMAN. Yes. First, just a couple of comments.

There are probably 10 people on this Committee who have more conversations, 15 people on this Committee who have more conversations with Donald Trump than myself. Anybody who says that Donald Trump thought he won that election, that is just plain not true. No way, unless he is the best actor in the history of this building, did Donald Trump believe

Mr. RASKIN. We agree.

Mr. FITZGERALD. Order. Order.

Mr. GROTHMAN. Donald Trump did not believe, Donald Trump did not believe he lost that election. He just didn't. No way.

On January 6th, I can't believe there were any Congressman here who didn't think Joe Biden was going to be sworn-in as President. This was, it was a riot but it wasn't a threat to the future of the Republic.

OK. Now, we should have posted here a document for you to look at. There we are, OK.

This is something we received with regard to Arctic Frost. It is a list of about 70 names. I don't know whether or not you are familiar with the document?

Mr. SMITH. I don't believe I am familiar with this document.

Mr. GROTHMAN. OK. The document contains just about every person who was higher up in the Donald Trump campaign. There is a little more emphasis here on people involved in Wisconsin.

You are not familiar with the document?

Mr. SMITH. I am sorry, sir, what was your question?

Mr. GROTHMAN. Would you know what was in this document, these names? Are you familiar with them at all?

They are under the impression that most of these people, maybe almost all them, were subpoenaed by you at some time or other, if that helps you?

Mr. SMITH. Some of these names are—I am familiar with. Others I am not familiar with or I don't recall as I sit here now.

Mr. GROTHMAN. OK. We will eventually submit another question for you on this matter later on.

From the time you were appointed as Special Counsel to your resignation in January 2025, did you ever have contact with the January 6th Select Committee?

Mr. SMITH. I did not personally. When I became Special Counsel, I directed my deputy to ask the Select Committee to provide us whatever evidence they would provide us.

Mr. GROTHMAN. You directed people to have direct contact?

Mr. SMITH. I directed my deputy to make contact to collect evidence from them.

Mr. GROTHMAN. That is J.P. Cooney?

Mr. SMITH. J.P. Cooney, my deputy. Correct.

Mr. GROTHMAN. OK. Did you have any concern with the evidence collected by the partisan Select Committee that would be in any way tainted by politics?

Mr. SMITH. I apologize, sir. I just couldn't hear because of the door.

Mr. GROTHMAN. OK. I am sorry, we had people going through here. Did you have any concern that the evidence collected by the partisan Select Committee would be in any way tainted by politics?

Mr. SMITH. I intended to conduct an independent investigation. My goal was to collect the evidence, assess it, and consider it with all the other evidence we would collect, and make an independent determination in my investigation, separate from that investigation.

Mr. GROTHMAN. I am going to go back and ask you something about that one before. Because, I know the answer.

There is a person on that list by the name of Vicki McKenna who we believe had her records subpoenaed. Are you familiar with that name at all?

Mr. SMITH. As I sit here right now, I am not familiar with that name.

Mr. GROTHMAN. OK, thank you.

With regard to part of the documents that you received was with regard to Cassidy, Cassidy Hutchinson; right?

Mr. SMITH. We requested that they give us everything they were willing to give us.

As I sit here now, I don't recall if specifically her information was in there, but I am not denying that it was. It may well have been.

Mr. GROTHMAN. OK. We will go back.

Your team issued subpoenas to various financial institutions, telecommunications providers, and identities, requesting communications between them and President Trump's campaign; right?

Mr. SMITH. We did issue subpoenas for various sorts of information. Correct.

Mr. GROTHMAN. OK. The bank records you would say we could describe a fairly broad request?

Mr. SMITH. We issued subpoenas for certain bank records as part of our investigation, yes.

Mr. GROTHMAN. OK. Shortly after you were appointed you issued subpoenas to State and local officials for their communications with President Trump; is that correct? His campaign.

Mr. SMITH. As I sit here now, I am trying to recall specifically which officials. I know we issued a number of subpoenas in our investigation to understand the communications between President Trump and various entities, including State officials.

Mr. GROTHMAN. One final question.

Chair JORDAN. [Presiding.] One quick final question.

Mr. GROTHMAN. Yes. Do you really believe that President Trump thinks he lost that election?

Mr. SMITH. Our investigation following the facts and the law determined that—

Mr. GROTHMAN. No way. Thank you. That is enough.

Mr. GOLDMAN. I have a consent request.

Chair JORDAN. The gentleman from New York is recognized for an unanimous consent.

Mr. GOLDMAN. Actually, I have two. First, an article entitled, “With A.G. Bondi next to him Trump says deranged Jack Smith must be investigated.”

The other is a tweet from Marco Rubio, “There is nothing patriotic about what is occurring on Capitol Hill. This is Third World style anti-American anarchy.”

Chair JORDAN. Without objection. The gentlelady from Texas is recognized.

Ms. CROCKETT. Can I get an extra 33 seconds?

Chair JORDAN. You get your full five minutes.

Ms. CROCKETT. Well, OK, fine. It is curious because you sat here all day. Thank you so much for showing up because this was something that you wanted to do, the Republicans wanted to make sure that you were hid in a room with no cameras, because I was there. They didn’t really want you out in public because they were afraid of what you would say, which is that you could have proven your case because you are a career prosecutor who knows how to prosecute criminals.

Just to be clear, today it seems like the Republicans have not really thought very much about whether or not Trump was guilty or not. In fact, their fight seems to be over whether or not you were authorized to prove their guilt.

Do you recall a number of Republican Members asking about whether or not your appointment was OK, even though we know that you have testified about the more than 100-year precedent that allowed for your appointment?

Mr. SMITH. I was asked questions about that today. Our position as we filed in our appeal. Is that there was strong support for my appointment, including Supreme Court precedent directly on point.

Ms. CROCKETT. Thank you so much. Additionally, everybody’s been all gingerly here today, but I don’t know why we’re acting surprised that a man who had close to 90 allegations out of four different jurisdictions and ultimately ended up with 34 convictions after a jury was able to hear all the evidence would possibly be committing a criminal act on January 6th. In fact, considering the fact that we are now under the impression that he is violating people’s due process rights.

He is ignoring court orders. He’s starting wars without Congressional authority, in contradiction to the Constitution. He’s enriching himself to the tune of over \$1.4 billion. He’s shaking down

electeds to draw maps that will help him stay in power because the Republicans don't understand that they swore an oath to the constitution and that we are supposed to do checks and balances. He's also shaking down TV stations to get money.

Why are we trying to pretend as if it is out of the realm for this particular man to commit the crime that he committed on January 6th? Frankly, the only reason he ran for President was to make sure that he would not be prosecuted. Because I fully believe that you would have put him under the jail based on our long-form conversation that we had.

According to your counsel, your Special Counsel Report on page 137, it states,

The department's view that the Constitution prohibits the continued indictment and prosecution of a President is categorical and does not turn on the gravity of the crimes charged, the strength of the government's proof, or the merits of the prosecution.

That, quote,

But for Mr. Trump's election and imminent return to the Presidency, the office assessed that the admissible evidence was sufficient to obtain and sustain a conviction at trial.

In other words, Donald Trump ran for President like I said, so he wouldn't have to spend the rest of his life in prison. The Chair and other Members of this Committee have spent all day attacking you and trying to rewrite the history of January 6th. Mr. Jim Jordan, the Chair, failed to mention how he was running around the Capitol terrified by the possibility that all those insurrectionists would harm him. In fact, on page 97 of the deposition transcript, you mention how Mark Meadows, the President's Chief of Staff, quote, "never saw Jim Jordan so scared."

The Chair also failed to mention that he was in direct contact with the White House in the days leading up to and on January 6th, which is why his toll records here subpoenaed by your office.

Let me be clear. Because they're trying to act like this is Democrats on Republicans. I guess you are a covert Democrat that knew that he was going to try to steal an election before he tried to steal that election, and so therefore you were somehow put into place. The conspiracy theories make your head spin, but nevertheless, were you going to subpoena the toll records of every single Republican simply because they were a Republican?

Mr. SMITH. No, we subpoenaed the toll records in the course of this investigation because they were relevant to our investigation.

Ms. CROCKETT. Relevant. Oh, OK. All right. That means something about facts. Let's talk about facts. Donald Trump lost to Joe Biden, yes or no?

Mr. SMITH. That's correct.

Ms. CROCKETT. OK. In fact, 60 Federal and State courts have found that there was no evidence of election fraud. Trump's own Attorney General and Vice President knew that he lost the election, but he still tried to steal the election by pressuring State officials, designing fake elector plans, nearly having Mike Pence hanged, and ultimately demanding that his supporters, quote, "fight like hell." Correct?

Mr. SMITH. Correct.

Ms. CROCKETT. We all saw it happened once they reached the U.S. Capitol. As your report outlines, President Trump knew that he would incite violence at the Capitol that day. In fact, some of Trump's Senior Advisers were pushing for violence. For example, page 81 of the report details how coconspirators, No. 2, John Eastman, tried to convince Mike Pence to break the law. Stating that, quote, "violence was necessary."

It isn't just Trump who is responsible for the death of multiple law enforcement officers and the injuries of thousands of people. A lot of Republican Members of Congress are also responsible. The 147 Republicans voted to overturn the 2020 election results, including multiple Members currently serving on this Committee. I will yield.

Chair JORDAN. Gentledady yields. Gentleman from North Carolina is recognized.

Mr. HARRIS. Thank you, Mr. Chair. Mr. Smith, we've heard a lot of information that's gone across this day as we spent it here. We've heard disregard for the First Amendment at times. We've heard talk about solely seeking charges against Donald Trump, obviously targeting. We've talked about the amount of time and reasonable timeframe.

I want to ask you for a moment about some troubling reports that a prosecutor from your office, Jay Bratt, implied to Stanley Wood ward that the administration would look more favorably on a judgeship application if he managed to get his client, Walt Nauta, to cooperate against President Trump and to flip on him. We know this because Stanley Woodward himself came forth with this information. My question for you; is this appropriate behavior for a Special Counsel's office to leverage attorney's future career prospects?

Mr. SMITH. Sir, I believe I can answer this question, even though it's regarding the Florida case, because we did filings on it and I'm not referring to anything in the final report. My answer to you, sir, is that when I was first notified about this issue, which was nine months after it allegedly occurred, this is alleged to have occurred before I was even Special Counsel.

What I did was I directed my deputies to look into it. We made sure the person involved self-referred it to OPR. Then, we did a filing to the court. There was a motion by President Trump's attorneys. We responded and we laid out our position. Our position was that I did not believe that this allegation was credible. At best, it was a misunderstanding because the people in the room did not understand any threat to be made. Even Mr. Woodard, in his allegation, claimed it was only an inference.

Nine months went by when we interacted with Mr. Woodard, in which we had no hearing of a complaint. When the complaint was raised for the first time, which was on the eve of that indictment being brought. It was raised in the guise of asking the court to delay the indictment while an investigation of it happened. I take allegations of misconduct very seriously. I would not want any of my attorneys to threaten anybody.

Ultimately, when I looked at this, I did not credit it. We responded with our position in court. We also, it made was clear that it was referred to the Office of Professional Responsibility. Which are what good prosecutors do in that situation.

Mr. HARRIS. Well, again, to say that you didn't consider it to be credible, I guess we have the United States Associate Attorney General, Stanley Woodward, who claims that this threat was made to him. I don't see what he would stand to gain from not telling the truth there. I understand that you tasked two of your attorneys with investigating those statements made by Bratt. Given the amount of publicity and the scrutiny that was surrounding this entire investigation, why in the world did you not initiate an independent investigation into these very alarming allegations?

Mr. SMITH. Well, two points there. You stated that you don't know why he do this? When he made the allegation—when this allegation first came from President Trump's attorneys and then days later from Mr. Woodward, he did ask for the case, the indictment, to be put off in result of this.

There was a thing he was asking for in result, and with respect to an independent investigation. That's exactly why you refer this to the Office of Professional Responsibility. They conduct an independent investigation outside of my office.

Mr. HARRIS. Well, let me just say, for four years, we watched the Biden Administration politicize and weaponized the Department of Justice. From going after prolife activists to spying on faithful Catholics, the Biden Administration showed disregard for impartiality. This blatant disregard was perhaps no clearer than in the targeting of President Trump.

We've talked about it all throughout this day. They knew they couldn't beat him at the ballot box, so they pursued alternative options. I'm grateful for this Committee's efforts today to investigate this conduct to ensure accountability. While elections are not akin to jury trials, I feel strongly that the results of the 2024 election sent a clear message about how the American people feel about these politicized charges. They absolutely made a difference in those 24 elections.

With that, Mr. Chair, I yield back.

Chair JORDAN. Gentleman yields back, the gentleman from Missouri.

Ms. CROCKETT. Chair, I actually have a UC.

Chair JORDAN. The gentlelady is recognized.

Ms. CROCKETT. This is—let's see. I asked unanimous consistent in terms of the records.

First, this *DOJ* press release titled, "Houston Man Sentenced to Prison for Assaulting Law Enforcement with Dangerous Weapons During January 6th Capitol Breach."

Second, I asked unanimous consent to enter into the record an article titled, "They ransacked the U.S. Capitol and want the Government to Pay Them Back," published by *The Washington Post*, January 21, 2026.

Chair JORDAN. Without objection. Gentlemen, from Missouri's recognized five minutes.

Mr. ONDER. Thank you, Mr. Chair.

Mr. Smith, after indicting the leading Republican candidate for the President of the United States on August 1, 2023, you asked for a trial date of January 2024, just five months later. During your deposition, you did not dispute that this would have given Trump's legal team just five months to review the 13 million pages

and thousands of hours of video evidence working out to nearly 100,000 pages per day.

Mr. Smith, you claim that you acted independently of the upcoming Presidential election, and yet you pushed for a trial date ahead of the election. Why such a rush to charge and try and pursue conviction on President Trump?

Mr. SMITH. I sought to move that case forward expeditiously because the public has a right to a speedy trial as well as a defendant. That is, there is Supreme Court precedent directly on point regarding that, I felt it was my duty to do that. I considered all options. I listened to—

Mr. ONDER. Isn't the right to a speedy trial primarily a right of the defendant? I honestly, before your arguments, I've never heard of the idea that the prosecution has a right to speed up a trial and require the defense to review 100,000 pages a day to get a trial in before an election. I've never heard of such a thing.

Mr. SMITH. The Supreme Court, at least as I sit here now, three different cases, has stated pretty explicitly that the right to a speedy trial is the public's as well as the defendants.

Mr. ONDER. That you were trying to get the President tried, convicted, and hopefully imprisoned before Election Day, I understand, Mr. Smith. It's very telling that during your deposition, you could not articulate any evidence that President Trump instructed individuals to unlawfully enter the Capitol on January 6, 2021.

You claim that President Trump was, quote, "responsible for the events at the Capitol on January 6th," which was not charged in your indictment. How do you reconcile that with the position of the department in other J6-related cases that President Trump wasn't responsible for the events at the Capitol that day?

Mr. SMITH. I'm not aware of the Department taking a position that Donald Trump was not responsible. My recollection is the position that the department took in other cases is other defendants weren't not responsible themselves because of Donald Trump, that blaming him wasn't going to be a valid defense in their case.

That's my recollection.

Mr. ONDER. On January 6, 2021, President Trump tweeted, quote, "please support our Capitol Police and law enforcement. They are truly on the side of the country. Stay peaceful!" This seems to show clearly that Trump urged his supporters at the Capitol to remain peaceful. Is that not right?

It's incorrect, first, that he didn't send that tweet.

Mr. SMITH. He sent that tweet, but he sent that tweet only after being harangued by people to send something to stop the violence that happened.

Mr. ONDER. OK, OK, let's get the timeline straight then. At 1:55 p.m., there was a breach of the bike racks at the Northeast perimeter. At 2:13 p.m., there were protesters breaching the Capitol, breaking into the Northwest Senate window and opening the doors. At 2:38 p.m., President Trump tweeted what I just quoted. That's 25 minutes between the Capitol Building—breach is 25 minutes. That's too slow. Would Trump have been guilty of insurrection if it were 15 minutes? Would it be at five minutes? How quickly was he supposed to send that tweet to remain peaceful?

Mr. SMITH. My recollection, as set forth in the indictment, is the timeline of when the attack of the Capitol happened, including the tweet that endangered Vice President Mike Pence's life.

Mr. ONDER. That tweet was after, of course, the riot had started. President Trump also said, quote,

We've come to demand that Congress do the right thing and only count the electors who have been lawfully selected.

Lawfully selected.

I know that everyone will soon be marching to the Capitol Building to peacefully and patriotically make your voice heard. Peacefully and patriotically.

Is that an incitement of a riot?

Mr. SMITH. That is not.

Mr. ONDER. OK. In November 2016, Hillary Clinton disputed chief for—actually, for years. Called President Trump an illegitimate President. He knows he stole the election as recently as September 2019. Had there been a riot around the 2016 Presidential election, would Hillary Clinton be guilty of inciting. Inciting insurrection?

Mr. SMITH. I'm not going to engage in hypotheticals. I will say that President Trump's conduct was without historical analog.

Mr. ONDER. Thank you, Mr. Chair. I yield back.

Chair JORDAN. Gentleman yields back. Gentlady from Vermont.

Ms. BALINT. Mr. Chair, I ask a unanimous consent to enter into the record the first Super Sighting Superseding Indictment for Capitol rioter and Oath Keeper Kelly Meggs, who brought weapons and armor with him to D.C., and wrote to a friend, "Trump said it's going to be wild." It's going to be wild. He wants us to make it wild. That's what he said: He's calling us to the Capitol and wants to make it wild. Sir, yes, sir. Gentlemen, we're heading to D.C. to pack our shit and—

Mr. Chair, I have a unanimous consent request. I ask unanimous consent to enter into the record this superseding indictment filed by Department of Justice on August 27, 2024, that outlines how Donald Trump, among other felonies, conspired to defraud the United States in his effort to fraudulently and violently overturn the results of the 2020 election that he lost.

Chair JORDAN. Without objection. The gentleman from Washington is recognized.

Mr. BAUMGARTNER. Thank you, Mr. Chair. Well, five hours later, here we are. One of the benefits of being a freshman Member of this Committee with the least amount of seniority is you get the benefit of everyone else, getting to listen to everyone else talk first.

Let me start by saying, that starting out, I was not real familiar with this issue. In fact, when the Chair of the Committee told me we had Jack Smith coming in, my first response privately was, who's Jack Smith? I say that because my wife and I have five young children, we don't have cable television, and by the time we get them to bed we're either watching Netflix or, better yet, reading books.

When I came to this, I wanted to take a real, honest look at what had happened and I should also say that you know a little about what I think happened on January 6th. Like most Americans think

Donald Trump was cruising to reelection in 2019 with the booming economy. Then COVID happened, George Floyd happened, and a lot of things got changed. I do think, in those circumstances, that Joe Biden won that election.

I also think, like most Americans, that January 6th was a terrible attack. It was a terrible riot. I don't believe it was an insurrection determined to overthrow the government, but it was an important day for America. I also, like most Americans, think it was extremely unfortunate for this country that the January 6th Committee was a partisan event, and there was not an ability to put folks from both sides of their choosing on that Committee so there could have been a full and honest debate for the American people. It was politically motivated, what Nancy Pelosi did with that Committee.

When I came to this issue with a fresh look, with those kind of my priors and what I got into, what I wanted to find was that in the goodness of the rule of law, that you as an investigator, carried this out to the highest ideals, and it was not a politically motivated investigation. A lot about that in the 250th Anniversary of America. About what the framers would have thought of this and the State of the rule law, what makes America special with checks and balances, and what keeps us from being a banana republic.

What I was disappointed to find when I looked into this issue and how you conducted the investigation was that it was a politically motivated investigation determined to influence the election in 2024. I say that—and the thing I cannot get around as I look into this is the timing that you fought for when the court cases would be held.

Now, to my understanding, the Department of Justice says you're not supposed to have politically motivated timing of a court case. When I look at the timing that you pushed for and the jurisdictions between New York and Florida, and with all the other things that President Trump was engaged in, that looks very politically motivated to me. The American people, as they take a look at this issue, to try to influence the election. That's where I come down after intell—today's hearing, my own independent investigation, in your commentary, I sincerely hope that this conclusion is incorrect, but that's the conclusion I come to. When most people, if they look through this not through a partisan lens, they'll come to, they will not be able to get around the fact of how you timed these elections, that's really to the detriment of the American republic and for where we sit today as a country.

My one question for you, Jack Smith, is: Are you familiar with the Vietnamese city of Ben Tre?

Mr. SMITH. I am not.

Mr. BAUMGARTNER. Well, Ben Tre was the site of an intense fire-fight in early 1968. After that intense fire-fight that destroyed the town, a reporter from the *Associated Press* interviewed a U.S. Major and he said, "it became necessary to destroy the village in order to save it."

Now, historians do not know what was the name of that U.S. Major, but when they look back at your engagement with our democracy in this republic, they will remember your name. When it

comes to the rule of law that is the foundation of this country, they will remember someone who helped destroy the rule of law.

With that, Mr. Chair, I yield back.

Mr. RASKIN. Gentlemen.

Chair JORDAN. Gentleman yields back. Making Members recognized for—

Mr. RASKIN. Oh, I was just. I was wondering whether you would yield for a question.

Mr. BAUMGARTNER. I will defer on. I'll just yield to the Chair.

Chair JORDAN. Gentleman yields back. I thank the gentleman.

Mr. RASKIN. Yes. Then, I've just got one UC request Mr. Chair.

Chair JORDAN. Then, the gentleman from Wisconsin has a request.

Mr. RASKIN. OK. This is from *Politico*, October 20, 2023, "Kenneth Chesebro, an architect of Trump's fake elector scheme." The pleads guilty to the offense in Georgia.

Chair JORDAN. Without objection. Gentleman from Wisconsin.

Mr. GROTHMAN. I just have to clarify something I said.

Chair JORDAN. Yep.

Mr. GROTHMAN. I've talked to Donald Trump over a period of time. Donald Trump is 100 percent certain he won that election. There is zero percent chance that he believes he lost. I say that based on private conversations which just boom. I want to clarify.

Chair JORDAN. Noted for the record. We appreciate that. This concludes today's hearing. We thank you.

Mr. RASKIN. Mr. Chair. For me, I just have one final question for you that begins really just as a point of order, as you—

Chair JORDAN. Point of order? Is it a point of order or a question?

Mr. RASKIN. It's a point of order leading to a question.

Chair JORDAN. That's innovative.

Mr. RASKIN. OK.

Chair JORDAN. I don't think that's an order, but because I'm such a nice guy.

Mr. RASKIN. Well, I appreciate that you stated good faith.

Chair JORDAN. OK, look, in good faith,

Mr. RASKIN. Because of nothing you've done and nothing that I've done, Jack Smith has not been able to answer the vast majority of questions about what's in Volume 2, of his Special Counsel Report relating to the stolen documents. Now, it's been said that the judicial order that Aileen Cannon imposed will be lifted in February.

I guess my point of order is, do we intend to bring him back so he can answer questions about Volume 2, and about the stolen documents case?

Chair JORDAN. We'll take it under advisement.

Mr. RASKIN. OK. Well, then—

Chair JORDAN. We will see what the court decides to do, frankly.

Mr. RASKIN. I got you. Well, then, in that event, I've got the signatures of every Member on our side who are writing to notify you of our intent to call him to testify in continuation of this hearing to answer all the unanswered questions about the second half of his work.

Chair JORDAN. Certainly, factor in tremendously when we make our decision.

Mr. RASKIN. OK. OK. Because we have a right on the Minority day to have a witness. We will exercise that right.

Chair JORDAN. You're going to call him back again?

Mr. RASKIN. Yes.

Chair JORDAN. Wow. OK. We'll see, we'll see.

Mr. RASKIN. I'm citing Rule 11, Clause 2J.

Chair JORDAN. We look forward to seeing the letter and we'll find out. We'll take it all under advisement, as we said.

That concludes today's hearing. We thank the witness for appearing before the Committee today. Without objection, all Members will have five legislative days to submit additional written questions for the witness or additional materials for the record. Without objection, the hearing is adjourned.

[Whereupon, at 3:13 p.m., the Committee was adjourned.]

All materials submitted for the record by Members of the Committee on the Judiciary can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118881>.

