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

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13 INTERVIEW OF: KEN CUCCINELLI

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Tuesday, December 7, 2021

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Washington, D.C.

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22 The interview in the above matter was held in room 4480, O'Neill House Office
23 Building, commencing at 2:03 p.m.

24

Present: Representatives Schiff, Lofgren, Luria, and Kinzinger.

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2 Appearances:

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4 For the SELECT COMMITTEE TO INVESTIGATE

5 THE JANUARY 6TH ATTACK ON THE U.S. CAPITOL:

6

7 [REDACTED] CHIEF INVESTIGATIVE COUNSEL

8 [REDACTED], SENIOR INVESTIGATIVE COUNSEL

9 [REDACTED] SENIOR INVESTIGATIVE COUNSEL AND OF COUNSEL TO THE VICE CHAIR

10 [REDACTED] SENIOR INVESTIGATIVE COUNSEL

11 [REDACTED], DETAILEE, TRANSPORTATION SECURITY ADMINISTRATION

12 [REDACTED] INVESTIGATOR

13 [REDACTED] CHIEF ADMINISTRATIVE OFFICER

14 [REDACTED] STAFF ASSOCIATE

15 [REDACTED] RESEARCHER

16 [REDACTED] CHIEF CLERK

17 [REDACTED], RESEARCHER

18

19 For the U.S. DEPARTMENT OF HOMELAND SECURITY:

20

21 JOHN LUCE, ATTORNEY ADVISOR, OFFICE OF GENERAL COUNSEL

22 JACKSON EATON, COUNSELOR TO THE GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL

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2 [REDACTED] Hello, Mr. Cuccinelli. Thank you for being with us today. I am

3 [REDACTED] I am a senior investigative counsel for the House Select Committee to

4 Investigate the January 6th Attack on the U.S. Capitol. And I have a second title, which

5 is I am of counsel to the vice chair of the committee, Representative Liz Cheney.

6 And why don't we go and everybody can introduce themselves.

7 [REDACTED] I am [REDACTED] a researcher on the committee.

8 [REDACTED] Good afternoon. I am [REDACTED] I am a senior

9 investigative counsel on the committee.

10 [REDACTED]. I am [REDACTED] also senior investigative counsel on the committee.

11 Mr. Cuccinelli. Ken Cuccinelli, private citizen these days.

12 Mr. Luce. John Luce with the Department of Homeland Security.

13 [REDACTED] Great.

14 And, Mr. Luce, did you want to say something on the record before we get
15 started?

16 Mr. Luce. I did. I just have one brief statement, and the Department has made
17 available to the committee, consistent with requests from the chairman, information
18 records that the Department would not publicly release. This includes information and
19 records covered under the Privacy Act, personnel, and other personal privacy information
20 for official use only, intelligence, and law enforcement sensitive records, and raw
21 intelligence information. While the Department has made this information and records
22 available to the committee, the Department continues to assert that such information
23 and records provided to the committee and any discussion of such information or records
24 during the course of the transcribed interview is not intended for public disclosure.

25 DHS is not waiving any protections and, for the purposes of administrative

1 efficiency and to promote constructive dialogue during the transcribed interview, is
2 making this assertion at the outset of the transcribed interview to observe all assertions,
3 protections from public release or disclosure over information or records used or
4 discussed during the transcribed interview. The transcript and any attachments are
5 protected from further dissemination to the same extent as the documents and the
6 information they are based on. Please consult with the Department prior to any public
7 release or disclosure.

8 [REDACTED] Thank you, Mr. Luce.

9 I will note that Congressman Adam Schiff has joined us. We will try when we
10 notice members pop up on the screen to announce that they are on so it is on the record.
11 We probably will not be announcing when they drop off because they will just drop off
12 whatever time is convenient for them, or we might not notice. [REDACTED] and I will be
13 leading the questions, but we will pause every once in a while to give opportunities for
14 any members who join to ask questions.

15 So, Mr. Cuccinelli, as you know, we have a court reporter here. She will be
16 making a verbatim transcript of the interview.

17 You are appearing voluntarily, not pursuant to a subpoena. So you are not under
18 oath. But, as you know as a lawyer, you do -- because you are a lawyer you know this,
19 you have an obligation to tell the truth at all times. Any knowing falsehood to the
20 committee could be a violation of 18 U.S.C. 1001.

21 If you don't understand the question or can't hear the question, just ask us to
22 repeat it or rephrase it. If you don't know the answer or don't recall, obviously please
23 feel free to say so. If at any time you want to take a break, please feel free to say so, or
24 if you need to discuss anything with Mr. Luce off the record, obviously feel free to ask for
25 a break.

1 Just to give you sort of an overview of what we will be doing here, I am going to
2 ask you some questions in the beginning about your background. I will try to keep that
3 very short. I will have a few questions about the Department of Homeland Security.
4 And then I am going to ask some questions about election security and then the
5 November 2020 election.

6 [REDACTED] will ask questions regarding preparations for January 6th and the
7 events of that day.

8 There is no division of time between us. This is not a deposition, so the rules of
9 depositions don't apply. And, in addition to that, for the select committee, there is no
10 majority or minority staff. We are actually one staff that consists -- it is a nonpartisan
11 staff that consists of obviously people who in some cases are Republicans and in other
12 cases are Democrats, but they don't serve under separate staff. But I am happy to say
13 to you that I did vote for you when you ran for Governor.

14 Do you have any questions before we get started?

15 Mr. Cuccinelli. No.

16 EXAMINATION

17 [REDACTED]
18 Q Mr. Cuccinelli, you informed the select committee staff that you don't have
19 custody or control over any records relating to the security of the November 2020
20 election or the events of January 6th, 2021, with the exception at least of one email
21 exchange you had with Mark Meadows that you are not producing at this time because
22 you are asserting privilege.

23 Is that correct?

24 A Well, it was provided to DHS, and my understanding is you all have a
25 redacted version of it, but that is the only item that I am currently aware of, yes.

1 Q Okay. And, as far as you know, did you leave all potentially responsive
2 emails that you might have had with the Department of Homeland Security?

3 A Yes, I did.

4 Q Okay. Other than the one example that we discussed already, did you use
5 a personal email account for anything that could be responsive to the committee's
6 request?

7 A Yeah, I don't think that I did. I certainly didn't remember anything until the
8 one was pointed out to me.

9 Q When you were at Homeland Security, did you text using your phone?

10 A Well, I didn't stop doing ordinary things that I did. So texting would be
11 among them.

12 Q And did you have two phones, a government-issued phone and a personal
13 phone?

14 A I had four phones when I left.

15 Q Wow. Okay. Could you tell me what those four phones were for?

16 A [REDACTED]
17 So that was used just with a limited number of senior officials at DHS.

18 Q Is that a government-issued phone?

19 A Yes, three of the four are government-issued phones.

20 Q Okay.

21 A And then [REDACTED] er

22 [REDACTED] And then what I will call the long-term government phone, which I had during my
23 tenure at DHS, meaning the front office DHS. I don't think I -- I don't remember whether
24 I brought a phone from USCIS to headquarters or not, a work phone. I don't remember
25 that. But that had was the one I used most of the time [REDACTED]

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6 Q Okay. Do you remember whether you used your -- either what you
7 referred to as the long-term government phone [REDACTED] for texting for any
8 official business?

9 A I don't specifically remember any texting, but I would be pretty surprised if I
10 didn't do a lot of texting on those phones.

11 Q And you returned those phones to --

12 A Oh, yeah. I left everything at DHS when I left.

13 Q And then the fourth phone you referred to I assume was a personal cell
14 phone?

15 A Yes, just my cell phone.

16 Q And the one you still have today?

17 A Well, same number, yes.

18 Q So, when you say "same number," do you -- did you transfer any texts that
19 you would have had when you were working there over to your new phone?

20 A I don't know if they reached back. I didn't consciously keep or get rid of
21 them as I went through to a new phone. So I don't really know.

22 Q Okay. And we are not trying to hide the ball here. Part of why I am
23 asking this is your personal cell phone number did show up in some texts with Mark
24 Meadows. I obviously have no knowledge of whether you still have those texts. Do
25 you recall --

1 A I don't actually know either.

2 Q Okay.

3 A But I knew Mark well before either of us were in the executive branch. So
4 those can go back a long way.

5 Q Okay. Have you had a chance to check that personal cell phone to see
6 whether you have any texts that might be responsive to our request?

7 A No, I have not looked at texts.

8 Q Okay. Would you be willing to do that after this interview?

9 A I would be willing to do searches. You know, you all can identify what
10 you'd like to search, and I'll search it. I mean, I have thousands and thousands and
11 thousands of texts, so if there's some means of going through them, sure.

12 Q Okay. Thank you. And we will follow up with you afterwards to try to
13 identify that because we don't want it to be overly time consuming for you.

14 Before I move on from personal devices and email retention and things like, does
15 anybody have any other questions?

16 Mr. Schiff, did you have any questions on that?

17 Mr. Schiff. No, thank you.

18

19 Q Mr. Cuccinelli, you have a long and impressive background, both as a
20 politician and as an attorney. That is at pretty well publicly known, so I don't want to
21 take up your time with that. So I am going to focus on your time at the Department of
22 Homeland Security, which I may refer to for ease as DHS.

23 Roughly when did you start at DHS?

24 A I started in early June of 2019 at USCIS.

25 Q And what was your position -- USCIS, for the record, is United States

1 Citizenship and Immigration Services. Is that correct?

2 A Yes.

3 Q And I will note that Ms. Lofgren has joined us as well.

4 What was your first position at USCIS?

5 A I forget the formal title. But it was the acting director of the agency was
6 the position that I filled for about 6 months.

7 Q So would it be correct, were you appointed Principal Deputy Director and, by
8 virtue of that, Acting Director?

9 A That sounds accurate.

10 Q And so would that be an SES, or Senior Executive Service, position?

11 A I don't -- I jokingly didn't learn the Federal employment --

12 Q Right.

13 A -- this or that. One the beauties of Virginia: at-will employment.

14 Q So were you a political appointee?

15 A Yes.

16 Q But not Senate confirmed?

17 A Correct.

18 Q Okay. And how long were you at USCIS?

19 A Very close to 6 months, within a couple of days. Let me think.

20 Q So late 2019 --

21 A So 5 months, actually. November of 2019, I moved over to become the
22 Acting Deputy Secretary, Senior Official Performing the Duties of the Deputy Secretary.

23 Q Okay. So that is --

24 A That title I remember.

25 Q Okay. So is there a difference between Acting Deputy Secretary and the

1 Senior Official --

2 A No.

3 Q Performing the Duties of --

4 A Acting Deputy Secretary is just a shorthand for it. It is a whole lot easier
5 than the six-word title.

6 Q And I know that, at the Department of Homeland Security, S2 is sometimes
7 used to refer to the Deputy Secretary. We have seen in emails AS2. Does that stand
8 for Acting Deputy Secretary?

9 A Yes. At least it did while I was there.

10 Q And were you Acting Deputy Secretary all the way until the end of the Trump
11 administration?

12 A I left on the 19th of January, 2021. So 1 day short.

13 Q And --

14 A And I do not believe the position was filled for that day.

15 Q And why did you leave one day before the end of the administration?

16 A For the potential to be appointed to things that might require being out of
17 the Federal Government when those appointments were made.

18 Q So it was related to your next position, not anything related to your service
19 at Homeland Security.

20 A Yes.

21 Q And just, if you can, wait until I finish the question before you answer, just to
22 make it easier for the court reporter.

23 And what were your responsibilities as the Acting Deputy Secretary?

24 A Budget, personnel, strategic planning. Also, because I had law
25 enforcement experience and the Secretary did not, I was more deeply engaged in

1 interacting with the operational components in those areas. Just skewed work
2 responsibility. Some by default, it wasn't necessarily defined that way, but -- but I had
3 just a greater familiarity with all of that material from my time as Attorney General so.

4 Q Aside from the Secretary and his immediate staff, did you oversee the entire
5 Department of Homeland Security?

6 A Aside from that, yes, at least technically. I mean, there is, you know, the
7 Secretary frequently operated, he didn't go through me going downward, down the chain
8 of command. And so, you know, there were all sorts of -- one of things about the
9 Department of Homeland Security is it is a very nonhomogenous mission set or set of
10 missions. And so you have things like the whole immigration world and FEMA, and, you
11 know, you can keep going around the horn. So sometimes those responsibilities got
12 divided up. For instance, the Secretary had served in TSA. So he had a rather --

13 Q I am just am going to interrupt you briefly. So, when you are saying "the
14 Secretary," who was the Secretary at that point?

15 A Chad Wolf, who was the Secretary Acting during my entire tenure, except for
16 last week when Pete Gaynor moved up from FEMA to close out, I don't know a week,
17 week and a half of the term. So he just naturally had more institutional knowledge in
18 that space. So frequently perhaps some things wouldn't need to be studied to the same
19 degree to present something to the Secretary in that space that they would if it were me
20 who did not work in TSA before arriving as Deputy Secretary. So those kinds of just
21 accounting for the knowledge base of Acting Secretary Wolf and myself, and duties as
22 assigned from the Secretary as well. So, you know, when he's unavailable, people would
23 come to me for temporary approvals for one thing or another. Then, in any given time,
24 for instance related to the border, one of the things that USCIS tends to handle on the
25 part of the Homeland Security is a lot of the regulatory work. I was made the

1 chief -- again, a euphemism, Chief Regulatory Officer for the Department. That is
2 actually two positions, just again generically referred to that way. The general counsel
3 left or was removed not long before I became the Acting Deputy Secretary. And he had
4 been acting in those two capacities, but given my background, I took those over and ran
5 the entire regulatory structure.

6 Q Sir, which two capacities of the previous general counsel --

7 A So the things I am conflating to be Chief Regulatory Officer, there was -- I
8 don't remember the two titles, honestly, but they were both regulation responsibilities.
9 I think one was reporting, and one was a leadership position. But, again, [REDACTED] the
10 general counsel before I had arrived, occupied both of those hats, wore both of those
11 hats. And I wore both of them when I moved up to the Deputy Secretary level.

12 Q So, in terms of the formal reporting on an organization chart, if there was
13 such a thing, did all of the component heads report either directly or indirectly up
14 through you to the Secretary?

15 A By org chart, yes; practice could vary widely across the Department.

16 Q Did [REDACTED] report directly to you?

17 A In the same way the others did, yes.

18 Q So formally yes?

19 A Correct. In the org chart, I can't think of anything that it doesn't run
20 through the Deputy.

21 Q And did Cybersecurity and Infrastructure Security Agency, or CISA -- C-I-S-A,
22 as we will call it -- did that report directly to you or through someone else?

23 A No, there were eight agencies. Of course, it was made of full-fledged
24 agency in 2018 and before I arrived. And, from that point, like the other seven, it would
25 report up to and through the Deputy Secretary on the org chart.

1 Q Before 2018?

2 A I don't know. I don't know.

3 Q And did the White House liaison report to you?

4 A No.

5 Q Was he considered part of the Secretary's Office?

6 A I am not sure how to answer that, honestly. Certainly was frequently
7 interacting with White House liaison, so, but whether you'd characterize that position as
8 part of the Secretary's Office, I am not sure.

9 Q During part of your tenure, the White House liaison was, I guess
10 coincidentally, also named Whitehouse, was Josh Whitehouse?

11 A Yes, that was amusing. Yes, it was Josh Whitehouse for at least part of the
12 time. My rough recollection is spring of 2020 until the late part of 2020.

13 Q And do you know how he was appointed?

14 A No.

15 Q Were you involved in his selection?

16 A No.

17 Q Okay. Do you know why he left?

18 A All I know is he went over to DOD.

19 Q Did he say anything to you about why he was leaving?

20 A Other than going over to DOD, no.

21 Q Did he ever tell you that he was going over to DOD in order to fire Secretary
22 Mark Esper?

23 A He didn't say that to me.

24 Q Did anyone else tell you that he had said that to them?

25 A I don't such a remark.

1 Q And do you remember who became White House liaison when
2 Mr. Whitehouse left?

3 A Troup, I am guessing here a little bit, but I am not confident in my memory.

4 Q How do you spell that?

5 A Or Cooper Smith -- Cooper. Well, there's a T-r-o-u-p. There is a Cooper.
6 But the answer to your question is I don't remember.

7 Q Okay. Before I start turning to election security, does anybody have any
8 questions on sort of the DHS structure or functions before I move on?

9 Any members?

10 Okay. Mr. Cuccinelli, if you could turn your attention to exhibit 1 in your binder,
11 and this is your testimony before the United States Senate Committee on Homeland
12 Security and Government Affairs, dated September 24th, 2020. And, if you look at page
13 5, under the heading "Election Security," second paragraph, second sentence of that
14 paragraph says, quote, "The 2018 midterm elections were the most secure in modern
15 history, and DHS is working diligently with State and local election officials to make the
16 2020 elections even more secure," close quote.

17 Did that accurately reflect your views at the time?

18 A It did. I mean, that was a Department position, and I had no reason to
19 disagree with it. I was very comfortable saying it.

20 Q As you sit here today, do you still think that that statement is accurate?

21 A Well, I don't have any reason to question the 2018 statement, but realize
22 that a DHS statement on election security tends to be related to internet and foreign
23 interference. We don't run the elections; the States do. So that kind of security is not
24 what we are referencing. And, you know, when you learn things like the Russians have
25 been in your system [REDACTED]

1 [REDACTED] you start to wonder how much else don't I know. That was December of 2020, but
2 three months after this statement. But, you know, our focus and we thought we were
3 being pretty effective in dealing with internet security attacks and foreign attacks,
4 thought was pretty good. And we had good cooperation from the States, especially
5 compared to 2016.

6 Q And I will pause here just to make sure everybody understands this is an
7 unclassified setting, so all of our questions will be designed to elicit unclassified
8 information.

9 A Thank you.

10 Q And we ask that your answers do the same. And, if you ever are a question
11 about it and need to talk with Mr. Luce, we can certainly pause. But, with that in mind,
12 can you tell us in general what steps the Department of Homeland Security took to
13 ensure that the November 2020 election would be secure?

14 A Well, honestly what I thought of as the biggest change from 2016 was the
15 cooperation of the States in placing internet sensors around their election systems. If I
16 remember the name of it, it is call Albert sensors, which gave us visibility on traffic around
17 their systems that we had never had before. And, given our mission and our area of
18 concern with internet and foreign attacks, which presumably would come via the
19 internet, that was a pretty big accomplishment, particularly given the controversial
20 nature of the Obama administration's designation of election materials as -- I forget the
21 exact title, but it is like national security materials. And a lot of the election officials
22 didn't like that initially, but the level of accommodating cooperation they got I think from
23 CISA in particular over the course of the following 3 and a half years really alleviated a lot
24 of those concerns. And if -- I don't know -- if I had to guess, and I would be guessing a
25 little bit because my memory isn't terribly reliable, I think all 50 States and D.C.

1 participated in that effort, which is essentially an internet stakeout. That's what it is.
2 Looking for intruders. And I zero in on that because of what our responsibilities were,
3 of -- you know, we don't run the elections. We try to keep outsiders from impacting
4 those elections nefariously. And, obviously, that is a cross-Federal Government and
5 State governments, partnership. But it really grew and evolved in a very healthy fashion
6 while I was there. That it was already going on, but it was a very constructive,
7 cross-government effort.

8 Q Other witnesses have used the terms "foreign influence" and "foreign
9 interference." Is that the terminology you'd use?

10 A Yeah. Those are two categories. One, you know, the Chinese owned a lot
11 of legal corporate media. They use it to try to influence. The Russians famously, you
12 know, bought an infinitesimal number of Facebook ads and tried to influence things in
13 2018. That's influence.

14 Interference is trying to, you know, crack into the Kentucky election system and
15 make changes to it, plant malware, those kinds of things. Two very different types of
16 undertakings. One is a lot easier do, and we saw, particularly China, Iran, and Russia, all
17 engage in their own forms of disinformation campaigns and -- but not with a couple of
18 exceptions, direct contact with election systems. There were some exceptions to that,
19 voter rolls, in particular, were grabbed. I want to say Alaska comes to mind, if I
20 remember correctly. And I, frankly, I don't remember who got it, but in this setting, I am
21 not sure I should be even saying anything about that anyway so.

22 But so there was -- there were attempts to enter systems and use those intrusions
23 to, I will put in very simple terms, to mess with the American election. But, so far as we
24 sit here today, those sorts of efforts I don't believe were effective in affecting votes.
25 That is the bottom line.

1 It is hard to measure misinformation campaigns and effects on votes. But I am
2 not aware of any intrusion in any American election, frankly, not just 2020, in which
3 foreign interlopers were able to get all the way into election systems to the point where
4 they could or did move votes.

5 [REDACTED] How about domestic actors? You said you are not aware of any
6 instances in which a foreign actor was able do that. Are you aware of any instance in
7 which a domestic actor was able to intrude to the point of changing votes?

8 Mr. Cuccinelli. I don't remember any instances of that.

9 [REDACTED] Thank you.

10 BY [REDACTED]

11 Q If there had been --

12 A And, again, when we say "intrude," what we were looking at was the
13 internet level. You know, we are not out there at precincts. In fact, there are laws
14 forbidding Federal law enforcement from being at precincts. And so, you know, we, if
15 you think of it as sort of a planet coming in, we stop at the atmosphere, the atmosphere
16 being the internet. And then the States have down below that level.

17 Q So is it fair to say that you are not aware of any foreign interference that
18 could have affected the outcome of the November 2020 election?

19 A Not anything internetwise that we were -- that was our area of
20 responsibility.

21 Q If you can turn your attention to exhibit 2 in the binder. And it is a news
22 article. At the top, it says "DW." Do you know what DW is?

23 A No.

24 Q Do you recall whether you gave an interview with an organization called
25 Deutsche Welle? Does that sound correct?

1 A It --

2 Q Do you --

3 A -- ring a bell.

4 Q Do you remember giving this interview that is referred to here with DW?

5 A Not specifically, no.

6 Q Okay.

7 A But, I mean, I did an enormous number of interviews.

8 Q At the bottom of the first page of this article, it says at the very end,
9 "Cuccinelli said that at a Federal level, quote, 'This is the most well protected election
10 we've have ever had,'" close quote. Does that sound like an accurate quote to you?

11 A It does.

12 Q And what did you base that statement on?

13 A The level of effort, coordination. I mean, it would -- before I went to the
14 dark side and went to law school, I was an engineer, and I still look at these things that
15 way. And just in terms of what we had deployed to deal with potential threats was
16 better in 2020 than in any prior election. I mean, it is just that simple on an objective
17 basis.

18 Does that mean we succeeded? So far as I know, but, you know, I mentioned the
19 Russian hack clearly, learned about them in our systems [REDACTED]
20 But, as far as I know, it was effective.

21 And I would note that I often complain about journalists, but they have me saying
22 "at the Federal level," and I -- you keep hearing me, maybe it's because I was an AG,
23 but -- State AG. There is a very distinct difference between what we were doing and the
24 responsibility to run the elections by the States. So I just want to drive that point home
25 with a sledgehammer. I know we are sitting in Washington, but States run these things.

1 We don't really have one Presidential election. We have 51.

2 Q And those are run by secretaries of states in the various States?

3 A And however each State law deals with it, but yes.

4 Q If you can look at exhibit 3 in the binder, and this has the CISA logo on it, and
5 it is dated November 12th, 2020. And the title is "Joint Statement from Elections
6 Infrastructure Government Coordinating Council and the Election Infrastructure Sector
7 Coordinating Executive Committees." And then it refers to two different coordinating
8 councils: the Election Infrastructure Government Coordinating Council and the Election
9 Infrastructure Sector Coordinating Council. My first question is, what is a coordinating
10 council?

11 A It is an -- it is kind of an advisory committee of sorts that CISA has set up, you
12 know. CISA is charged, if you look beyond elections for a moment with the Federal
13 responsibility for protection of an awful lot of infrastructure, election infrastructure being
14 one part of that. But we don't actually have authority over most of that infrastructure,
15 including elections. We don't own it. We can't make mandates toward it. We can't
16 pass regulations as to how it will be dealt with. We have to create partnerships and
17 cajole, like I described with the Albert sensors with the States. We have to talk them
18 into moving them in directions we would like them to go. These commissions are sort of
19 part of CISA's effort to achieve that kind of direction within this particular space. I did
20 not interact with any of these entities, but was -- you will also find the CISA equivalent of
21 these sorts of things in pipeline industries and in, you know, chemical plants and other
22 things like that where we have infrastructure security concerns.

23 Q So -- and I am basing this just off the names and titles here for each of these
24 coordinating councils. Is it fair to say the Election Infrastructure Government
25 Coordinating Council is a coordinating council of Federal, State, and local government

1 officials whereas the Election Infrastructure Sector Coordinating Council is private sector
2 individuals?

3 A Honestly, I don't know. I don't know.

4 Q And I don't see your name listed here, but this is a CISA product. Do you
5 remember seeing this?

6 A No.

7 Q Is this the kind of thing that normally would go to you for your approval?

8 A Presumably not.

9 Q Okay.

10 A No. And, you know, there were -- you can see by the language of this, and I
11 know -- excuse me. There is a lot of the sensitivities post-2020 election that are part of
12 why you are here. You know, you have people here who want to state a position and
13 they are using, in my view, they are using a position they have -- I am using the word
14 "position" twice there. They are on a commission, and they are using the commission to
15 try to give an official position to strengthen the rhetorical position out in a public debate
16 that they would like to further. And, whether that is legitimate or illegitimate, that is
17 how I perceived all of this, particularly given the timeframe when these things were
18 issued. And part of the reason probably was that it would go out with a CISA logo, and it
19 has the appearance of being a government position when I wouldn't characterize this as a
20 government -- an official government position.

21 Q So the first paragraph is really describing who the members of these two
22 coordinating councils are, at least the executive committees, I should say, of these two
23 coordinating councils, and then the next paragraph is the beginning of the statement.
24 And it says, quote, "The November 3rd election was the most secure in American
25 history," close quote.

1 Do you agree with that statement?

2 A I don't agree with that. I agree with it in so far as the Federal
3 responsibilities were concerned, back to the bottom line we pointed to in that interview.
4 I think that we had more cooperation and effort that was effectively and intelligently
5 coordinated to protect the elections at the Federal level, given the Federal
6 responsibilities, than we ever had before.

7 But that does not mean -- and we are not in a position at the Federal level to
8 comment on the rest of the election.

9 Q So, at the State and local level, are you saying you would disagree with this
10 statement, or just you don't have a basis for taking up a position one way or the other?

11 A Yeah, the Federal Government in its entirety isn't in a position to take that,
12 to draw that conclusion as any sort of official matter.

13 Q The next paragraph starts out, quote, "When States have close elections,
14 many will recount ballots. All the States with close results in the 2020 Presidential race
15 have paper records of each vote, allowing the ability to go back and count each ballot if
16 necessary," close quote.

17 Do you know if that's a true statement?

18 A Well, the key to it is that all the States with close results. America is not
19 100 percent paper voting, but we are over 90 percent as of 2020. And I only assume
20 that none of States that aren't thoroughly paper, meaning that you or I vote on an
21 individual ballot that is a piece of paper, so there is a record to go back to, which is what
22 this is suggesting, is not universal across the United States. But if their categorization of
23 States that were close, and I don't know what they call close, is right, then that is entirely
24 plausible.

25 Q The last sentence of the paragraph says, quote, "There is no evidence that

1 any voting systems deleted or lost votes, changed votes, or was in any way
2 compromised."

3 To your knowledge, is that statement true?

4 A No, it is not.

5 Q Okay. And could you explain that?

6 A Well, this was what November 24th, I mean --

7 Q November 12th, I believe.

8 A Okay. I am looking at the print. Oh, that was this year.

9 So, you know, you just look at -- and again, this is not Federal responsibility but
10 within the States, just something as simple as the Antrim County in Michigan mess.
11 Mistakes, just like Bush v. Gore, lots of mistakes, but there clearly were mistakes, and
12 votes kept moving. And I am not casting any conclusions on whether there was
13 appropriate or inappropriate. They had to fix things. But that statement isn't correct.

14 Q Did you ever discuss this statement with anybody from CISA?

15 A No.

16 Q Did you have any discussions with anybody at the White House regarding
17 any of DHS' public statements regarding the security of the 2020 election?

18 A I don't remember any specific, but I remember generically concern with
19 Chris Krebs sort of generic statements that are similar to these, "most secure election
20 ever." Well, if you believe that, let's at least talk about our area of responsibility. It
21 was that kind of concern.

22 Q And who expressed that concern?

23 A I don't remember.

24 Q To your knowledge, did anybody at the White House attempt to influence
25 any of the public statements that DHS made regarding the security of the November 2020

1 election?

2 A Not that I know of.

3 Q To your knowledge, did any representative of President Trump's reelection
4 campaign attempt to influence any public statements by DHS regarding the 2020
5 election?

6 A No. I know of no campaign contexts whatsoever with DHS.

7 

8 Q Mr. Cuccinelli, I want to go back to a couple of comments you made about
9 this coordinating council statement. Are you familiar with the efforts that CISA was
10 making before the election with respect to rumor control?

11 A Generically, yes.

12 Q What is your understanding of what CISA's objective was with in setting up a
13 rumor control website?

14 A Sort of a fact/myth type of an approach and to try to cabin some of
15 the -- what they considered to be some of the problematic potential rumors before they
16 could -- and the usual tool, as I recollect, and I may have an imperfect recollection, was
17 just an education: No, it is not this; this is how it works. That kind of an approach.

18 Q What was the concern that prompted the rumor control effort, if you know?

19 A So I think that traces back to the prior Presidential election and dealing with
20 attempts at -- it started out for us with foreign efforts to participate in any way or mislead
21 people, and so I think that is where the genesis was, but that was before I arrived.

22 Q In fact, CISA was formed or became its own agency in part out of concern
23 that there had been efforts by the Russians and others to influence the 2016 election. Is
24 that a fair statement?

25 A If you say so. I am unaware.

1 Q You are not aware of which part of that, that the Russians --

2 A Well, I wasn't in the Department of Homeland Security when it became an
3 agency. I wasn't even in USCIS at that point.

4 Q Fair enough, did you understand, though, leading into the 2020 election,
5 during the time that you were at the Department, that there was a concern that Russia or
6 other malign foreign actors might attempt to, I think you used the term, use foreign
7 influence to impact the election?

8 A Sure.

9 Q And that would include sowing seeds of doubt or distrust regarding the
10 security elections? Isn't that true?

11 A That certainly could be one of approaches that they take, yes.

12 Q And CISA was quite concerned with trying to address those types of
13 influence operations. Is that fair to say?

14 A Yeah, I would think that is fair to say.

15 Q And the rumor control website that was set up included efforts to try to
16 knock down misinformation as it was coming up in real time. Is that accurate?

17 A So I only know that they used that tool. I can't speak to the specifics as you
18 describe it.

19 Q If, in fact, there had been a foreign influence operation to suggest that the
20 election was rigged, for example, is that something that CISA should concern itself with?

21 A Anything of that nature we would be concerned with, yes.

22 Q Do you disagree with the concept --

23 A But, even more basic, if a foreign actor tried to impose any view of any
24 aspect of the election, not just the one you describe, it would be a concern to be analyzed
25 and dealt with.

1 Q Okay. But creating distrust in our elections is a tactic that you were aware
2 of that might be used by foreign actors?

3 A Certainly that is a possibility, yes, that we were contending with.

4 Q And you don't have any -- do you have any concern about the fact that, after
5 the November 2020 election, CISA, those at CISA might have had concerns that
6 distrust -- the seeds of distrust had been sown with respect to the November 2020
7 election?

8 A I am sorry. Can you reask that?

9 Q Yeah, that was a terrible question.

10 Is it fair to say that seeds of distrust were sown with respect to the 2020
11 election -- after the November 2020 election?

12 A I am not prepared to say that.

13 Q You are not aware of any actors, foreign or domestic, who were proposing
14 that the election had been stolen or rigged?

15 A Certainly outcomes on a State-by-State and overall basis were being
16 addressed aggressively from several different perspectives,
17 including -- including -- foreign.

18 Q Are you aware of any elected officials saying that the election was rigged in
19 the immediate aftermath of November 2020 election?

20 A I don't remember the quote.

21 Q Do you remember the President making comments along those lines?

22 A I remember the President expressing in strong terms concerns along those
23 lines, but you used a specific word, and I am not prepared to validate that word.

24 Q You don't recall the President using the word "rigged"?

25 A No. I don't.

1 Q If, in fact, he or others, used the term "rigged," do you think that would be
2 something that CISA would have an obligation to try to address in terms of public
3 perception?

4 A If what you are talking about is rigged in a State, no. If what you are talking
5 about is rigged at the national level, say by the Russians trying to hack a bunch of
6 machines at the same time, yes.

7 Q Why do you draw that distinction?

8 A Because it is -- the Federal Government needs to stay in its area of
9 responsibility.

10 Q And do you think --

11 A And we don't judge. I mean, I talked earlier about what is the area of
12 Federal responsibility, and most of it falls within the States. So, if, for purposes of
13 discussion, there was concern about an election rigged in a particular State, then that is
14 not necessarily -- while we would be concerned about it, it is not a place where the
15 Federal Government has jurisdiction to address it. That is up to the State in question.

16 Q If the Russians were to hack into a particular State's voting system, would
17 that be a concern for CISA?

18 A Yes, yes.

19 Q Why is it different if it is a foreign actor versus a domestic actor?

20 A Because we don't have legal authority. That is kind of important.

21 Q Legal authority to do what?

22 A To do anything. We don't have jurisdiction. We have jurisdiction to
23 address foreign participation and interference framed however you like. But, if there
24 are disputes about Americans rigging -- I will use your word -- rigging an election or parts
25 of it, that -- maybe the FBI would have a concern there because it is a Federal election,

1 but DHS doesn't have jurisdiction over that.

2 [REDACTED] May I just ask a question on that?

3 [REDACTED] Sure.

4 [REDACTED] So I understand if it is an issue of a, just to take a hypothetical, ballot
5 stuffing at the State level, DHS may not have any role in that. But, if it is a hack of a
6 State election system by a domestic actor, would DHS have any role in that?

7 Mr. Cuccinelli. So, normally the way -- the practical answer is yes, not because
8 we have jurisdiction but because typically the States don't have the expertise, and part of
9 the value of CISA creating the relationships they have is that they would go and offer their
10 expertise: We can help you untangle this.

11 And, in analogous situations, that offer to assist is often accepted.

12 [REDACTED] Sorry.

13 [REDACTED]

14 Q Would it surprise you that leadership of CISA, I understand they were under
15 you at the Department, had the view in early 2020 and even after the election that it was
16 a vital role of CISA to try to counter misinformation regarding the election, no matter
17 which State -- in which State it occurred?

18 A That statement doesn't surprise me, but taking on domestic participants in
19 the election -- and by that I mean media, I mean activist groups; I don't just mean
20 candidates and campaigns -- is not our place.

21 Q What do you mean by taking on domestic --

22 A Just because somebody is wrong, you know, in America, they have the right
23 to be wrong. Right? They can have a strongly held position, express it, including about
24 how the election is being run. That doesn't give us the authority to come in and literally
25 participate in that public debate, which is part of the campaign in a sort of secondhand

1 sort of way. That was always a very difficult balancing act. And, frankly, it continues.

2 I think that you are touching on an area of great uncertainty in how CISA conducts
3 itself and DHS conducts itself and what is appropriate and what isn't. And that doesn't
4 mean nobody deals with it, but just because there is a problem and it is related to the
5 election and the problem here in your hypothetical is misinformation that can be arising
6 domestically. You know, does CISA have some role? Yes. But where is that line? I
7 don't know. And it is not clearly drawn, really.

8 Q Okay. If I could just -- and I won't take too much more time with this, but
9 there is bolded language in the document that you have in front you -- I think it is exhibit
10 3 -- that you took issue with. The statement that there is --

11 A I don't see bolded language.

12 [REDACTED] That is my underlining.

13 [REDACTED] Oh, sorry. I am looking at a version of the document that is in bold
14 for some reason.

15 [REDACTED]

16 Q It is the sentence that says, "There is no evidence that any voting system
17 deleted or lost votes, changed votes, or was in any way compromised." Do you see
18 that?

19 A Yeah. I see that.

20 Q Okay. And you don't think that is correct?

21 A I am just not willing to accept it at face value that way coming from CISA on
22 November 12th of 2020.

23 Q And you cite as an example the -- what I think you called the Antrim County
24 mess?

25 A Yeah.

1 Q In what respect, do you believe Antrim County --

2 A Over which we had no jurisdiction. So all my information I read in the
3 paper.

4 Q And do you believe that, in Antrim County, a voting system deleted, lost,
5 changed votes, or was in any way compromised?

6 A Whatever their system, votes moved from one count to another. I don't
7 know whether machines did it or people did it.

8 Q Okay. I think we are going to talk about Antrim County information later.

9 [REDACTED] Yes.

10 [REDACTED] So I will hold off on that.

11 [REDACTED]

12 Q But are you aware of any other evidence besides this what you call the
13 Antrim County mess that causes you to question that whether that sentence we just
14 read --

15 A It was not our place to go digging into State-run elections.

16 Q Okay. But you are not aware of evidence as you sit here that would
17 contradict that statement, other than what you said about Antrim County?

18 A And you are talking about the machines specifically?

19 Q I am talking about that sentence, that any voting system --

20 A Yeah. See, I am reading "voting system" pretty broadly. And I believe
21 there are other problems.

22 Q But you don't have those at your fingertips at this point?

23 A Again, they weren't in our jurisdiction. Everything I have learned about
24 that has been well after the fact.

25 Q From whatever source, can you point to something that --

1 A Sure. Legal filings in Georgia that indicate that there are a larger number of
2 people who voted from addresses that wouldn't be legal than the margin of victory in the
3 Presidential race, for instance. And, under Georgia law, as I understand it -- I haven't
4 been a Georgia lawyer for 25 years -- once you are past the margin of victory, their one
5 resolution is to rerun the election.

6 Q But I don't want to quarrel with you on this, Mr. Cuccinelli. But that
7 doesn't implicate the sentence we are talking about, does it?

8 A Depends how you define "system."

9 Q Deleted or lost votes, changed votes, or in any way compromised?

10 A Well, if 18,000 people voted who, you know, lived on vacant lots, for
11 instance, that would compromise the election.

12 Q Understood. Okay.

13 [REDACTED] Thank you.

14 [REDACTED]

15 Q So, Mr. Cuccinelli, you have said is -- before I ask this question, I just want to
16 note that Mr. Kinzinger and Mrs. Luria have joined us.

17 When you were saying earlier that you were not aware -- tell me if I am
18 characterizing your testimony incorrectly, but I think you said that you were not aware of
19 any foreign interference that was successful and --

20 A In changing votes.

21 Q In changing votes. Did you ever see or hear any of President Trump's
22 attorneys -- Rudy Giuliani, Sidney Powell, Jenna Ellis -- anyone else make any statements
23 that you thought were inaccurate?

24 A I wasn't in a position to know because I wasn't dealing with the election
25 itself, by which I mean what went on in the States not our job. And all their allegations

1 seemed to be it be about that, that I recall. So I am just not in a position to really
2 evaluate those other than by, you know, the outcomes that everybody else sees.

3 Q And did you ever have any conversations with anybody about the ownership
4 of Dominion, a company that makes voting machines?

5 A No.

6 [REDACTED] I am going to pause.

7 Does anybody have any questions? Do any of the members have any questions
8 at this point?

9 Mr. Schiff. I do not. Thank you.

10 Mr. Kinzinger. No.

11

12 Q Mr. Cuccinelli, I understand that, on November 16, 2020, Attorney General
13 Barr and FBI Director Wray attended a briefing with computer experts from the FBI and
14 DHS regarding election security. Do you recall whether you attended that briefing?

15 A I don't recall that.

16 Q Do you recall receiving any kind of briefings yourself from experts that either
17 the FBI or DHS regarding election security?

18 A Election security?

19 Q Yes.

20 A An uncountable number.

21 Q Okay. Post-November 3rd, 2020, can you tell us in general what those
22 experts told you about the security of the 2020 election?

23 A I don't remember briefings after November 3, 2020. We met regularly
24 beforehand across I'll say many agencies, you know, to execute our protective roles.
25 But I don't remember -- I don't remember any specific meeting after November 3rd.

1 Q So, as far as you can recall, there was no meeting afterwards to discuss how
2 the 2020 election had gone from a security standpoint?

3 A Yeah, the key there in your question is recall.

4 Q I understand.

5 A I mean, you know. We are going back a ways and trying to break it down.
6 I remember lots of meetings, and I won't describe details, but regular occurring meetings
7 up to the election. I don't really remember whether we continued anything like that
8 after the election.

9 Q In mid-November 2020 a new order of succession was adopted for CISA.
10 Do you recall that?

11 A Not specifically, but it would make sense because I seem to recall one of the
12 top four left right after the election.

13 Q One the top four CISA officials?

14 A Yes.

15 Q Do you recall who that was?

16 A No. I seem to remember the name Brian, but I may not be reliable on that.

17 Q So we understand that the order of succession was changed in
18 mid-November 2020 so that somebody named Brandon Wales would be next in line for
19 Acting Director, rather than Matthew Travis, if Chris Krebs, then the Director, were to
20 leave. Does that sound correct?

21 A That sounds correct.

22 Q Do you know if that was done because there was an expectation that Chris
23 Krebs was going to leave?

24 A I don't recall whether that was at a time when there was an expectation or
25 not. And I also just remember the Brandon Wales part it, not -- you phrased it in the

1 exclusion of someone else, and I don't recall that part. I just remember making -- I
2 remember that the change said it so Brandon would be next in line if Chris left.

3 Q And do you know why the decision was made to make Brandon Wales next
4 in line if Chris Krebs left?

5 A I'd be speculating. I don't know.

6 Q Were you involved in any discussions about changing the order of
7 succession?

8 A In the sense of affecting them beforehand, I don't recall that, per se. I
9 mean, the subject was discussed, but I don't remember whether I was participating
10 before or after.

11 Q Is that the kind of thing that would have required your approval?

12 A No.

13 Q Do you know whose approval it did require?

14 A The Secretary.

15 Q Do you recall any discussions about anyone having concerns about Matthew
16 Travis being next in line for Director of CISA?

17 A Only vaguely.

18 Q Can you tell us about that?

19 A I don't -- I only recall that there were some. I have no recollection of who
20 had them or what they were.

21 Q Did you personally have any concerns with Matthew Travis being next in
22 line?

23 A Not that I recall.

24 Q At the time -- I may have asked you this already; I am sorry. At the time
25 that the order of succession was changed, did you have any reason to think Chris Krebs

1 was going to be fired?

2 A Well, he, I -- I think he was looking at the door himself so that was at least a
3 possibility. And I -- and, you know, he was clearly very unhappy in his role. So -- but if
4 I could go back a moment.

5 With Brandon, the way you are phrasing your question seems to suggest
6 negatively on other people. Brandon had been the chief of staff for the Department for
7 a period of time, and he had a long history, and at least just using myself as one data
8 point, he was a much better known quantity to me than anyone else as CISA, and he had
9 always done quality work. So, rather than cast the question negatively, I would say that
10 Brandon is someone who looked like a good candidate to be a successor under those
11 circumstances.

1

2 [3:02 p.m.]

3

BY 

4

Q To your knowledge, did Matthew Travis leave CISA?

5

A I don't remember.

6

Q Okay.

7

So you were saying that you thought Chris Krebs was unhappy in his position at

8

some point after the election. Can you tell us more about that?

9

A Just that the kind of conflict, with how aggressive CISA can and should be in

10

making declarations about the 51 elections and our responsibility that make up the

11

Presidential election, was a point of friction.

12

Q Conflict with whom?

13

A Well, me, for one, and certainly it reached back to me that, when he would

14

make some public statements, the White House was unhappy with him. But, I mean,

15

that was the basic theme of it. And, just interacting with Chris, he seemed decidedly

16

unhappy and uncomfortable.

17

Q When you were saying, I think, that it got back to you that the White House

18

was unhappy with him, do you recall who told you that somebody at the White House

19

was unhappy with Mr. Krebs?

20

A I don't remember.

21

Q Do you know who at the White House was unhappy with Mr. Krebs?

22

A I don't remember specifics.

23

Q Do you recall in general?

24

A Well, I mean, it was the senior leadership and, I presume, the President as

25

well. You know, otherwise, I don't think it would've made its way back to me.

1 Q Do you know anything about the nature of the President's unhappiness with
2 Mr. Krebs?

3 A I can speak to what came over from the White House. I can't pin it on the
4 President, as your question suggests.

5 Q Okay. Please do.

6 A And that is simply, the conflict, with the aggressive position of CISA using
7 language that seemed to sweep in the States' responsibilities in elections and how -- that
8 they were executed well, versus our responsibility and whether it was executed well.
9 You know, one of those two we have a place of making statements in, and the other we
10 don't. And, you know, Chris was continually pushing or crossing that line into the States'
11 territory.

12 Q And, on that, since we were just talking about exhibit 3, can you turn your
13 attention to that again. You know, I asked you about these coordinating councils.

14 A Yeah.

15 Q So I know this document has the CISA logo on it, but --

16 A Yeah.

17 Q -- it's a statement from these two coordinating councils.

18 So the first of these coordinating councils, the Election Infrastructure Government
19 Coordinating Council, looks like it includes not only the assistant director of CISA but also
20 several people who have State or local responsibilities, such as the National Association of
21 Secretaries of State, National Association of State Election Directors, a supervisor of
22 elections from a Florida county.

23 In light of that participation from State and local representatives, isn't it
24 appropriate for this statement to be much broader than just what DHS's responsibility
25 would be?

1 A Well, maybe for them, but, as you pointed out, it goes out looking like a CISA
2 statement, not a commission statement, like it has the imprimatur of CISA as it relates to
3 the State aspects of this. That's the problem.

4 Q So you were talking earlier about some concerns that people at the White
5 House had with Mr. Krebs, and you made reference to some -- I don't know if it's fair to
6 call it "conflict" that you with Mr. Krebs. Can you tell us about your own conflict, if you
7 had any, with Mr. Krebs?

8 A Yeah, I wouldn't characterize Chris and I as having conflict on a personal
9 level. But I was of the view, as you're hearing me express here, that CISA and DHS have
10 a defined area of responsibility, and it's not appropriate for us to state or imply things
11 that go beyond that area of responsibility. And he was doing that, and I objected to
12 that.

13 Q To your knowledge, was anything that he was saying factually wrong, or was
14 it simply outside his lane?

15 A Well, it wasn't -- I'm going to set aside whether it was factually wrong for the
16 moment because it was outside his lane. That was my concern. And the point is, it's
17 for other people to determine the accuracy or inaccuracy of the underlying substance.
18 It was not for us to comment on or to put our thumb on the scale.

19 Q And do you know whether Mr. Krebs or his staff were in touch with those
20 other people whose job it was to determine the facts at the State level, whether it's
21 secretaries of state or election officials?

22 A I cannot speak to their communications. I mean, part of the networks of
23 cooperation that CISA tried to build over the years involved all those people. But the
24 secretary of state of fill-in-the-blank State isn't solely responsible for elections in that
25 State. The entire body of State law and everybody under it, their law, as unique from all

1 the other States, are the ones who determine that. And that's different from State to
2 State to State.

3 But you're pointing at individuals on a commission, and I would be shocked if any
4 of them have sole responsibility for determining the outcome of elections in their States.

5 Q So, going back to your disagreements with Mr. Krebs, can you tell us, to the
6 best of what you can recall, what you said to him and what he said to you?

7 A Only that I viewed some of his statements as going outside of the Federal
8 lane, at least by implication -- and that implication seemed to be intended -- and that that
9 was inappropriate.

10 Q How did he respond?

11 A He groused about it, groused about the fact that I was complaining about it.
12 And, you know, I -- there wasn't much more to it than that. You know, we didn't sit
13 down and go into depth on it. It was a periodic statement that he would make.

14 And, you know, you mentioned that there are people in CISA who are on these
15 commissions. They're one member or two members. But it's entirely plausible that
16 the idea for a statement like this was their idea that they proposed to the commission. I
17 don't know.

18 So those sorts of interactions, in light of -- the possibility of those sorts of
19 interactions, in light of Chris's desire to really go beyond the Federal jurisdictional
20 authority in his comments, you know, was concerning.

21 Q Was Mr. Krebs fired?

22 A I don't remember whether he was fired or he quit, but he didn't stay till the
23 end.

24 Q Okay.

25 A And Brandon did assume leadership of CISA.

1 Q That's Brandon Wales?

2 A Yes.

3 Q So I don't have the document with you, but my recollection is that President
4 Trump actually tweeted that --

5 A Classic, right?

6 Q -- that Mr. Krebs was being relieved of his duties. Does that sound correct
7 to you?

8 A Well, it doesn't surprise me, but it doesn't refresh my recollection.

9 Q Were you involved in any discussions with anyone about whether Mr. Krebs
10 should be fired?

11 A Yes, but they were before the election.

12 Q Okay. Tell us about those.

13 A Just my suggestion was that he not be fired.

14 Q That he not be fired?

15 A Right.

16 Q Okay. Was somebody else suggesting that he should be fired?

17 A No. It was more a question of, some of his statements opened the
18 question up. It wasn't that somebody rolled in to try to fire him and I jumped in the
19 way. I think -- and this is just as I remember it -- is that the question was considered; I
20 suggested that it was better to let him stay.

21 Q Do you recall who was raising the question of whether he should be fired?

22 A I don't. I mean, it came from the White House.

23 Q Do you remember who?

24 A No.

25 Q Was it the President?

1 A I just told you I don't remember who.

2 Q And what was your reason before the election for thinking that Mr. Krebs
3 should not be fired?

4 A Because I think that the negatives of letting him go outweighed the positives
5 of keeping him. I mean, it's that simple.

6 Q And could you explain what the negatives would be of letting him go before
7 the election?

8 A Well, in our earlier discussion, I mentioned some of the suspicions that many
9 of the States had about the designation of their election systems as critical national
10 security infrastructure. And the comfort level they had with working with the Federal
11 Government largely came from the success of the partnerships that CISA created. And
12 my thinking was simply, "Don't disturb this."

13 Q So, after the election, did you have any conversations about whether Chris
14 Krebs should be fired?

15 A I'm sure the subject came up again, because statements that he made
16 continued falling out.

17 Q Did your position change after the election regarding whether Mr. Krebs
18 should be fired?

19 A Well, I sort of stepped back from trying to slow that train down, simply
20 because the downsides before an election of the cooperation of all 51 -- I'll call them
21 "States." We all understand we're also talking about D.C.

22 Q Of course.

23 A But in the run-up and execution of the election, that the importance of that
24 so close to an election was gone, because we were after election day. And every State
25 was operating on its own to get through the systems of certifying elections and the

1 litigation and whatever else they had going on. But there wasn't a great deal of
2 network-focused cooperation after the election in the same way there is before the
3 election to maintain security of the election itself.

4 Q Even though it was after the election, is it fair to say it was a disputed
5 election and that issues regarding election security were being raised?

6 A Sure.

7 Q So wasn't it important to have Mr. Krebs in place to handle that?

8 A It would've been nice. But, you know, he essentially insisted on using his
9 position on an administration that was ending to, you know, advocate a different
10 narrative than what the White House wanted to see, thereby putting CISA's thumb on the
11 scale in an official capacity. And, of the entire executive branch, you know, the White
12 House is the one that engages in that kind of public back-and-forth, not the agencies and
13 certainly not DHS.

14 Q When you said he had a different narrative than what the White House
15 wanted to see, what narrative did the White House want to see regarding the 2020
16 election?

17 A Well, my impression is that they wanted to -- and now we're talking in the,
18 you know, days after the election period, because I think Chris was gone by, I don't know,
19 mid-November, late November, something like that. I don't remember exactly. But
20 they were still fighting it out in a lot of States, and they wanted the freedom to do that.

21 And, you know, that's part of an election. Elections aren't over until all the
22 litigation is over and the certifications all happen and et cetera, and that was all still going
23 on. But he was still, effectively, insisting on putting his thumb on the scale in that
24 debate.

25 Q After the election, did anybody convey to you that they wanted Mr. Krebs to

1 be fired?

2 A I don't remember what discussion there was before he was gone.

3 [REDACTED] Do you have a question?

4 [REDACTED] Yeah.

5 [REDACTED]

6 Q On this issue of putting his thumb on the scale, Mr. Cuccinelli, is there
7 something other than the November 12th statement that we've been looking at that you
8 felt fell within that category?

9 A I can't point to things, but he would occasionally be quoted and give
10 interviews and so forth, same theme, sort of on the other side of the line of, you know,
11 the appropriate CISA/DHS role.

12 Q With respect to the actions of Mr. Krebs before the election that caused
13 some concern, can you remember any examples of actions that Mr. Krebs took that
14 prompted concern about him getting outside of his lane or putting his finger on the scale?

15 A Same kind of thing: giving interviews and sort of overstating -- sort of
16 applying an official imprimatur to parts of the election that weren't our responsibility.

17 Q But why would that have been controversial before the election? Can you
18 think of any examples of something he said that was out of his lane?

19 A Just in media interviews.

20 Q Any substance of what he said that was outside his --

21 A Yeah, the --

22 Q -- lane before the election?

23 A -- pre-election version of, you know, "This is the most secure election ever."

24 Well, okay, let's just tell people -- and, by the way, across the Federal Government, we
25 had talked about how to communicate all the work we were doing and all the

1 cooperation we built up with States and how the Federal agencies were working together
2 far better in 2020 than they did in 2016 -- all those kinds of things. And he was in on
3 drafting all of that. But that wasn't what he was saying. Then he would go out and go
4 off on his own.

5 Q But I'm trying to get an example of going off on his own, what you mean by
6 that.

7 A Well, if you're looking for my memory to quote you, I can't do that.

8 Q Is it true that, prior to the election, the White House and President Trump in
9 particular was pushing CISA to go out and tout some of the election security efforts that
10 had been undertaken?

11 A Certainly we were -- from an administration standpoint, we were -- just the
12 talking points I just told you. And I don't mean to belittle it by calling them "talking
13 points." They were summaries of work and accomplishment.

14 We were going out and affirmatively trying to share all of that and to tell people,
15 "This is what has changed since '18 and '16, and, if you had concerns back then, at least
16 we're doing these things now, and your concerns should be lower." I mean, that was
17 the idea. That was the public confidence aspect of sharing the actual work we were
18 doing.

19 Q And one of those things was, for example, getting almost all States, almost
20 all jurisdictions, using paper ballots. Is that right?

21 A Yeah, but let's -- we can't take too much credit for that. COVID had a lot to
22 do with, you know, really pushing that number up.

23 Q Well, but the President wanted to take credit for that, didn't he?

24 A I don't recall him ever trying to specifically take credit for that.

25 Q Okay. But there was a really -- I think you called it "incredible," and there

1 was quite a significant accomplishment, whether aided by COVID or otherwise, to have 95
2 percent of the jurisdictions around the country, you know, electoral jurisdictions, whether
3 they're counties, States, whatever --

4 A Yeah.

5 Q -- using paper ballots, right?

6 A I don't know whether it was 95, but it was the highest it had ever been. It
7 was in the 90s somewhere. And that is a very positive development, yes.

8 Q And those are --

9 A And we talked about that publicly.

10 Q That's what I'm getting at.

11 A Yes.

12 Q So those are accomplishments by the States --

13 A Yes.

14 Q -- but certainly aided and assisted by CISA, right?

15 A Encouraged.

16 Q Encouraged --

17 A Yes.

18 Q -- by CISA. Facilitated in some respects?

19 A Not really. I mean, we didn't have the capacity to do that. I don't know
20 whether EAC could do any facilitating. I'm not specifically familiar. But we certainly
21 encouraged them in that direction. And we gave them reasons why: auditability, for
22 instance, other things like that.

23 Q And would you consider "outside of CISA's lane" to be touting the fact that
24 States had implemented these measures that were going to make the election more
25 secure?

1 A Certainly more auditable so they could have higher confidence in it. Those
2 are pluses.

3 Q But would you consider "outside of CISA's lane" to tout that
4 accomplishment, even though it was actually, on the ground, implemented by States?

5 A As long as we weren't taking credit for it and we were promoting the
6 occurrence of it, again, comparing the whole system in 2020 versus 2018 versus 2016,
7 certainly that's legitimate.

8 Q And so the fact that Mr. Krebs on behalf of CISA might have been touting
9 accomplishments of the States in terms of election responsibility, that's not an area that
10 gave you concern.

11 A No. But you're distinguishing -- or you're conflating, actually, you know,
12 conclusions that appear based on analysis of the system we have control over, versus
13 encouraging positive public reinforcing statements. They're rather radically different
14 categories of --

15 Q I'm just trying to -- you've talked about concerns about him getting out of his
16 lane, and you can't remember any examples of that. So I'm just trying to understand --

17 A No, I can't remember specific interviews. I told -- I described to you the
18 problem.

19 Q But I'm asking for a specific -- the substance of -- I don't need a quote from
20 an interview, but what was the subject area in which he was or CISA was claiming
21 something outside --

22 A Similar to after the election. A statement along the lines in September of
23 2020, "This is the most secure election in history," is beyond the scope of the Federal
24 role.

25 A Maybe if you said -- if you identified the Federal protection of this election against

1 hackers and international interlopers as the best it's ever been, then you'd be in your
2 lane. But that is not what he was doing.

3 Q Right. And we've talked at length about that. But, just to sort of finish up
4 this line here, you don't remember anything specific before the election that was causing
5 concerns at the White House or for you, in terms of him getting out of his lane?

6 A It was the getting out of his lane.

7 Q Okay.

8 A That was it.

9 Q But you can't tell us in what respect he got out of his lane.

10 A I've already done it.

11 Q Okay.

12 A I don't know why you and I aren't communicating on this, but --

13 Q I must not be hearing well or hearing you well, but I'll let it go.

14 [REDACTED] I just have one question.

15 [REDACTED]

16 Q Mr. Cuccinelli, you mentioned that there were some interagency meetings
17 about the security of elections. I think you said countless meetings. And you attended
18 some of those meetings? Is --

19 A Yes.

20 Q -- that right? Did they occur at the White House?

21 A I don't remember any at the White House.

22 Q Did you --

23 A We typically all worked from our SCIFs remotely and interconnected with
24 one another.

25 Q Who were some of the agencies that would be represented?

1 A The entire intelligence community. You know, that was the biggest. That
2 was really --

3 Q Would it include Robert O'Brien from the NSC? Or someone from the NSC
4 to be on those?

5 A In theory. He wasn't often on them, but he was at least on one or some.
6 But --

7 Q And, during these meetings, would Mr. Krebs provide an update about the
8 state of the security of the election?

9 A Frequently, yes.

10 Q And would he kind of talk about things that you believe were outside of his
11 lane? Or would he stay within kind of the foreign actors/hackers aspect that you've --

12 A So these were secure meetings. So what we're talking about here were
13 secure, classified meetings. And you want me to tell you what we talked about there.

14 Q Without getting into the substance of it, I'm curious whether there was any
15 pushback during any of these meetings about, if he proclaimed this is going to be the
16 most secure election, whether it's -- without getting into any class- --

17 A He didn't make statements like that in those meetings.

18 Q So the updates that he was giving, were they about the domestic State
19 issues, or were they about the secure --

20 A No. They were about our efforts.

21 Now, sometimes he would speak about -- frequently, he would update people
22 about communication with the States, because CISA was, by design, the conduit for those
23 communications, for instance, with secretaries of state.

24 So, don't hold me to this, but I seem to remember in August the secretaries of
25 state got together for a meeting, and Chris was presenting to them. And so he would

1 explain, either before or after, maybe both, messages he was conveying there to those
2 folks, consistent with what we had already talked about as a group and the feedback he
3 got from those sorts of State officials. So we don't have jurisdiction over that, but we
4 maintain partnerships in cooperation with them as best we can.

5 Q All right. But, by and large, was the messaging that the challenges, if any,
6 were under control as we headed into the November 2020 Presidential election?

7 A You mean the internal message, so when we're talking amongst ourselves.

8 Q And what was told during those meetings.

9 A I mean, problems arose.

10 Q Prior to the election.

11 A Yes. But, I mean, part of the reason to have the meetings was to deal with
12 them on a rolling basis.

13 You know, I'll use one that is somewhat public, at least, is the emails in October
14 that involved Iran. These pre-election meetings were the forum in which we would
15 prepare hypothetically for something like that and then assess how we handled it after as
16 well.

17 I mean, it was a consistent set of participants. I'm sure that's no surprise to you.

18 Q And how often were they happening?

19 A They happened more often as the year went on. I would put it in the
20 roughly 6 weeks, for most of the year, cycle, but I think it was more frequent when we got
21 to the fall.

22 Q Was there anyone other than Chris Krebs or yourself attending those
23 meetings, or were there other DHS officials?

24 A Sometimes there were others. And that's all I really remember. I'm
25 pretty sure they were CISA people.

1 Q Okay.

2 A But I'm speculating a little bit. I basically remember the notion that
3 sometimes it wasn't just Chris and I.

4 [REDACTED] Go ahead. Sorry. Thank you.

5 [REDACTED] Do any members have questions at this time?

6 Mr. Cuccinelli. And I would note, those kinds of communications had not taken
7 place in prior elections. So it's one of the things that was going more smoothly, just the
8 communication internally. That doesn't mean the outcome will be great --

9 [REDACTED] Sure.

10 Mr. Cuccinelli. -- but we're better prepared to deal with it. We're acting more
11 like a team.

12 [REDACTED]

13 Q There have been public reports that Rudolph Giuliani contacted you and
14 asked you to have DHS seize control of voting machines in contested States. Did that
15 happen?

16 A He contacted me, but he did not ask me to seize machines. He asked me if
17 DHS -- he basically asked me what's our authority. And I told him: We don't have any
18 authority to grab these machines.

19 Q And what did he say in response to that?

20 A I mean, it wasn't a contested point. I imagine he called to ask hoping for a
21 different outcome. But the outcome was what it was, and he didn't push me on it.

22 Q Do you know whether Johnny McEntee from the White House asked Acting
23 Secretary Chad Wolf why DHS had not gotten control of the voting machines?

24 A I don't know that.

25 Q Okay.

1 [REDACTED] I think Mrs. Luria might have a question.

2 Mrs. Luria?

3 [No response.]

4 [REDACTED] Okay. Go ahead.

5 [REDACTED]

6 Q Mr. Cuccinelli, prior to your conversation with Mr. Giuliani regarding the
7 authority to seize machines, did you and Mr. Wolf -- were you and Mr. Wolf summoned
8 to the White House to discuss the issue of seizing voting machines?

9 A I remember the subject coming up at the White House, but I don't
10 remember being called over there for that purpose.

11 Q Do you remember gathering or convening a call with certain members of
12 CISA leadership to get some input from them in advance of a meeting at the White House
13 on this issue of seizing voting machines?

14 A I don't remember that, but that would be very consistent with how I would
15 have operated in that situation.

16 Q Okay. So, if I told you that -- well, in mid-December, December 12th or
17 13th, do you remember a conversation with Brandon Wales and Matt Masterson in which
18 you said that you and Mr. Wolf were going to the White House to discuss this issue of
19 seizing voting machines?

20 A No, I do not remember that.

21 Q Do you remember any discussion with Mr. Wales or Mr. Masterson about
22 the subject of authority to seize voting machines?

23 A No, I don't.

24 Q Do you recall a discussion with anyone prior to your conversation with
25 Mr. Giuliani about whether DHS had the authority to seize voting machines?

1 A Not specifically, no.

2 Q How about generally?

3 A No.

4 Q Do you remember prior to your conversation with Mr. Giuliani learning that
5 he had this idea that the machines could be grabbed as they came in from China?

6 A I do not remember anything like that.

7 Q Have you ever heard him say that he thinks the machines come from China?

8 A No.

9 Q Do you remember the date of your conversation with Mr. Giuliani?

10 A No.

11 Q Okay. If I told you it was on the evening of December 17th, does that
12 sound about right?

13 A It's plausible.

14 Q Was it in the evening?

15 A Yes.

16 Q And did he call you, or did you call him?

17 A He called me.

18 Q And you told him that the Department does not have the legal authority
19 to -- DHS does not have the legal authority to seize voting machines.

20 A I did.

21 Q Did he push back on that?

22 A I already answered that.

23 Q Did he share with you what he thought the rationale was for seizing voting
24 machines?

25 A No.

1 Q Did you have an understanding as to why he was asking that the voting
2 machines --

3 A I'm sorry. I didn't hear the first part.

4 Q Did you have an understanding as to why he thought it would be helpful to
5 have the voting machines seized?

6 A No.

7 Q Do you know whether he continued to press that issue with anyone in
8 government after your conversation?

9 A I do not know that.

10 Q Have you heard of a meeting the following day, December 18th, in the White
11 House in which Mr. Giuliani, Sidney Powell, and others pressed the President to have
12 voting machines seized?

13 A That's more specific than any recollection I have, certainly. And you've tied
14 it to my conversation with him, which I also don't recall. So, no.

15 Q Okay. I'm wondering whether at any point -- you recall the conversation
16 with Mr. Giuliani, right?

17 A I do.

18 Q And I'm wondering whether at any point after that conversation you recall
19 thinking, "Huh, he might not have gotten the message, because I'm hearing that he's still
20 pushing it." Anything like that? I don't mean to put word in your mouth or your head,
21 but that's the concept I'm getting at.

22 A Well, it wasn't uncommon to have to address issues more than one time.
23 And, you know -- so I answered you earlier that I remember the subject being discussed
24 at the White House, like, it coming up while I was there, and saying the same thing. But
25 whether that was before or after I talked to Rudy Giuliani, I don't remember that kind of

1 detail, in terms of order of events.

2 Q Yeah, actually, I'm saying something slightly different. My understanding
3 of the order of events is: You were at the White House discussing this issue before your
4 conversation with Mr. Giuliani; you then have a conversation with Mr. Giuliani. But
5 what I'm asking you about is: After your conversation with Mr. Giuliani, did you hear
6 that he was still pushing this issue -- in other words, disregarding your advice?

7 A So I wouldn't characterize it as him pushing it, at least from my perspective.
8 What I heard or what found its way back to me is that the subject -- let's just say it didn't
9 die. It was still discussed. Whether that was because Rudy Giuliani was pushing it or
10 someone else was pushing it I just don't know.

11 But, to part of your question, the answer is, yes, I did hear further discussion on
12 the subject after my call with Giuliani.

13 Q Were you involved in further discussions after your call with Mr. Giuliani?

14 A I don't know whether I was or not. I can't place -- you've put some dates
15 on things. My memory isn't good enough to tell you whether I had discussions after
16 that phone call or before. But my position was the same every single time that it ever
17 came up with anybody.

18 Q Okay. Thank you.

19 A And I was never pushed by anybody on the point, only just re-asked.

20 [REDACTED]

21 Q So, on December 31, 2020, there was a meeting at the White House
22 involving Jeff Rosen, Pat Cipollone, Pat Philbin, Mark Meadows, Chad Mizelle, and
23 President Trump where we've been told that at some point you were patched in by
24 phone to the meeting. Does that sound correct to you?

25 A I don't remember that. That doesn't mean it didn't, but -- certainly,

1 identifying everybody else there doesn't really help me if I was on the phone.

2 Q Okay.

3 A I was sometimes patched into meetings into the Oval Office. So, plausible,
4 but -- so that's all I can tell you, is: It's plausible, but I don't remember it.

5 Q Did President Trump ever ask you to have DHS seize voting machines?

6 A No.

7 Q Did he ever ask you whether DHS could seize voting machines?

8 A Yes.

9 Q Okay. Tell us as much as you can recall about that discussion.

10 A So now you're asking about a Presidential discussion. This is the first
11 conversation you've asked me about, and I'm a little uncomfortable here.

12 [REDACTED] Okay. Does Mr. Luce have any guidance on that?

13 [REDACTED] Do you want to take a break, Mr. Luce?

14 Mr. Luce. If we could take a quick break.

15 [REDACTED] Yeah. I mean, this is probably a good time to take a break anyway.
16 So do you want to take 10 minutes?

17 Mr. Cuccinelli. Sure.

18 [Recess.]

19 [REDACTED] Okay. We're back on the record.

20 [REDACTED]

21 Q So, Mr. Cuccinelli, before the break, I was asking you to describe your
22 conversation with President Trump regarding whether DHS could seize voting machines.
23 Do you have an answer for that?

24 A So, first, I want to be clear, in reference back to conversations we had maybe
25 a month ago -- I don't know when we first started talking about getting together here,

1 but -- I am uncomfortable literally giving verbatims of conversations with the President of
2 the United States. I don't mind tell you subjects and being there and what I recollect
3 and anything I did.

4 But I also -- the letter you're getting copied there for yourself is from President
5 Biden's White House Counsel. It's interestingly worded, but they seem to describe three
6 categories of items where they're -- they don't say "waiving privilege," but I'll just say
7 privilege isn't an issue to them --

8 Q They are not asserting privilege.

9 A Not asserting privilege. And they specify those three particular areas, none
10 of which we've discussed, nor does this fall in.

11 But that is second -- that is one element. The other is, I have no indication from
12 former President Trump, nor any lawyer representing him, that he is prepared to waive
13 privilege from the time he was President. And that's what you're asking me about. I'm
14 not in a position to resolve that, and so I'm not comfortable doing more than providing
15 you what I already just described in those instances.

16 If the need arises later and you want to come back to it, meaning on another day,
17 then we can go through all the hoops we would have to go through or that I would have
18 to go through to be comfortable with that. But that's how I'm approaching this.

19 And I think, on the subject that you were asking me about, I've told you that I was
20 asked, that my answer never changed, and that I never did anything, nor, to my
21 knowledge, did anybody at DHS do anything, to attempt to seize voting machines. So I'll
22 leave that where it stands, and you can proceed as you see fit.

23 Q Okay. And you are not here under compulsion. You're not --

24 A I understand.

25 Q -- here pursuant to subpoena. So this is not something where I can compel

1 you to answer. I'll just say on the record that the committee reserves the right to raise
2 this again further.

3 A I understand.

4 Q For now, we'll move on.

5 [REDACTED] Do any of the members have any questions?

6 Ms. Lofgren. Yes. I have one question.

7 Mr. Cuccinelli, you said earlier -- I believe this is accurate -- that Mr. Giuliani had
8 called you and had asked you about seizing the voting machines and you expressed
9 something to the effect that the Department of Homeland Security didn't have any
10 jurisdiction on that. Is that accurate?

11 Mr. Cuccinelli. Yes, ma'am. Didn't have authority to do that.

12 Ms. Lofgren. Correct.

13 So here's my question. Mr. Giuliani was not an employee of the government.
14 How did he get through to you? I mean, Members of Congress and members of the
15 public [audio interruption] officers in the Department. Did he hold himself out as the
16 President's lawyer? Or under whose auspices was he calling? And how was he able to
17 reach such a high-ranking official as yourself?

18 Mr. Cuccinelli. I knew him before from, oh, maybe a decade ago, and he called
19 me on the cell number I already had for him. I mean, it was just that simple.

20 Ms. Lofgren. Did he represent that he was the President's lawyer, or did he not
21 make any comment on that?

22 Mr. Cuccinelli. I don't recall any explanation on his part or introduction of the
23 conversation. We just had a conversation between two people who already knew each
24 other. And he asked me, as you heard earlier, about my view of DHS's authority to seize
25 voting machines, and I very conversationally told him that we didn't have that authority.

1 Ms. Lofgren. Had you seen in the media, either video or print, that he was
2 asserting that he was the President's lawyer?

3 Mr. Cuccinelli. Whatever form I had seen it, I'd seen it enough to associate him
4 with performing legal work for the President's campaign, yes.

5 Ms. Lofgren. All right. Thank you very much.

6 Mr. Cuccinelli. Yes, ma'am.

7 [REDACTED] Do any other members have questions?

8 [REDACTED]

9 Q If I could turn your attention to exhibit 4, the first page you should see there
10 is just a cover email. And then there's a document called "Antrim County Talking
11 Points." Looks like it's about three pages. And then there's a document called "Allied
12 Security Operations Group."

13 A Uh-huh.

14 Q It says, "Revised Preliminary Summary, v2. Report Date 12-13-2020."
15 Do you recall seeing this document?

16 A The part that is most memorable is the chart on page 2.

17 Q Okay.

18 A I do remember seeing that. And, you know, the rest of it looks pretty -- just
19 kind of generic text. But I definitely read either this or something like it.

20 Q Okay.

21 A But it had this chart in it for sure.

22 Q And why was that chart memorable?

23 A Because it's a chart and the votes moved over time.

24 Q And then --

25 Mr. Luce. And, just to be clear for the record, the chart on page 2 -- you're

1 referencing to the chart that's on page 2 of the portion of the document that's "Allied
2 Security Operations Group" -- that's the title at the top.

3 Mr. Cuccinelli. Yes.

4 Mr. Luce. Right?

5 [REDACTED] Yes.

6 [REDACTED]

7 Q And do you know what the Allied Security Operations Group is?

8 A Not really.

9 Q Okay. Do you know --

10 A Other than that it's not government.

11 Q Okay. Do you know what this report in general was about?

12 A I think it was, roughly described, a private expert for litigants publishing their
13 analysis and making it public.

14 Q Okay.

15 A In that dispute.

16 Q And, then, if you go back to the second page of the exhibit, so this is the one
17 entitled "Antrim County Talking Points" --

18 A Yeah.

19 Q -- do you recall whether you saw that document?

20 A I remember the 68-percent-error-rate comment, but I do not remember
21 seeing it in the format it's in front of me.

22 Q Okay.

23 A I don't remember the other things on there necessarily. But I remember
24 that one leaping out and gradually being eaten away, meaning what they called an error
25 was a pretty broad category.

1 Q Okay. But what was your reaction when you heard about the purported 68
2 percent error rate in Antrim County?

3 A Well, my reaction was hesitation.

4 Q Okay.

5 A That under any circumstances that's -- I immediately go to the, what are you
6 defining as an error? And, in fact, they were defining some things that -- all I remember
7 is, they had an extremely broad definition of what an error was.

8 Q Okay.

9 [REDACTED] Can I ask a question?

10 [REDACTED] Yeah. Go ahead.

11 [REDACTED]

12 Q So, Mr. Cuccinelli, on the break, I handed you a couple of documents. I
13 don't have them marked, but do you have the email that the top of the document says,
14 "Re: Allegations"?

15 A Yeah.

16 Q Okay. And this is a document that was produced to us by the Department
17 of Homeland Security just this week.

18 And it starts at the bottom with -- the first email on this chain is a November 13th
19 email from AS1 to Christopher Krebs and others. Do you see that?

20 A I do.

21 Q Is AS1 Mr. Wolf?

22 A Yes.

23 Q Okay. Do you know -- there are some redactions here. Do you know
24 whether you received this email, the November 13th email?

25 A I don't remember receiving this email.

1 Mr. Luce. I can represent to you that the redactions there are the email
2 addresses for those people.

3 [REDACTED] Okay. Thank you, John.

4 [REDACTED]

5 Q The document behind the email chain is a two-page document. And I
6 apologize, it's a little bit blurry, but that's the condition we received it in.

7 A Yeah.

8 Q The Michigan State senators. Have you ever seen that document before?

9 A I don't remember seeing this before.

10 Q I'll represent to you that the letter -- you can take a minute to look at it as
11 well. But it describes purported election irregularities or problems with the Michigan
12 election. And it was sent to the Michigan secretary of state by these State senators.
13 And I'll represent to you that this document was then forwarded to Mr. Wolf by the
14 White House on the morning of November 13th.

15 A Okay.

16 Q Okay. Is this something that Mr. Wolf would have shared with you when
17 he received it, given your position within the Department?

18 A Not necessarily.

19 Q Okay. Is it possible that Mr. Wolf would've -- I think you mentioned earlier
20 in your testimony that sometimes he dealt with things directly, not necessarily through
21 you.

22 A Yes.

23 Q Would the area of election security or election fraud allegations have been
24 one of those areas that you saw him sort of directly involve -- or take part in without
25 involving you?

1 A Not regularly. But, you know, communication directed to him he would
2 frequently just deal with himself. And if he wanted to find something of an agency
3 head, he wouldn't go through me; he would just go straight to the agency head.

4 Q And that looks like it's what happened here, right?

5 A Well, at least in this bottom email, it's from the secretary to the agency
6 head. So, you know, that's all I can say.

7 Q Okay. And then you can see there's a response from Mr. Krebs to AS1 and
8 others, right?

9 A Yeah, I see there is, yes.

10 Q And Mr. Travis and Mr. Wales, they're both within CISA under Mr. Krebs.

11 A They are.

12 Q Or they were at the time. Excuse me.

13 A They were at that time, yes.

14 Q And, calling your attention to the top email, the November 16th email that
15 Mr. Krebs sent to Mr. Wolf, Mr. Travis, and Mr. Wales, do you see that?

16 A I do.

17 Q And it describes -- it says that the allegations raised in the State senators'
18 letter are not new and have been pretty thoroughly addressed by Michigan for the four
19 main buckets of allegations, and it lists the four: Antrim County, ballot handling, TCF
20 Center, and observers. He then, Mr. Krebs, provides links to information that addresses
21 each of those allegations.

22 Do you see that?

23 A Yep.

24 Q Have you ever seen this before, this information from Mr. Krebs?

25 A I don't ever remember seeing this before, no.

1 Q When the issues of Antrim County came up in December -- [REDACTED] was
2 asking you about this ASOG, or Allied Security, report -- was that the first you had heard
3 of Antrim County?

4 A I think the first I heard of Antrim County was just in a news article from the
5 Washington Examiner.

6 Q And do you remember what the nature of that article was?

7 A Just that there was a dispute and, you know, one side says "A" and the other
8 side says "nuh-uh."

9 Q Was that of concern to you in your role as Assistant Secretary of DHS?

10 A Not in my role as Assistant Secretary -- or Deputy Secretary of DHS.

11 Q Sorry. I apologize.

12 When did the Antrim County claims come onto your screen in your official
13 capacity?

14 A I don't remember when on the calendar, you know, they came onto the
15 screen. But we never dealt with Antrim County directly. It was just going on. And,
16 you know, we paid attention to it and other things, because it's part of the whole election
17 environment, but --

18 Q At any point did you become concerned about what had happened in Antrim
19 County?

20 A Well, when I see a chart where the votes move by the government's count
21 on different days to those degrees, that's a concern.

22 Q And do you remember when you first learned that that was being alleged?

23 A I don't remember, no.

24 Q Did you have any discussions with Mr. Wolf about your concerns about
25 Antrim County?

1 A I don't remember ever discussing Antrim County with Chad.

2 Q Do you ever remember a discussion in which -- and I know you just said you
3 don't remember, but I'm going to try and sort of see if I can prompt a recollection -- a
4 conversation with Mr. Wolf in which you raised concerns about Antrim County and he
5 said, "Well, we've already got the information debunking that; Chris Krebs sent it to me
6 back in November"? Anything along those lines?

7 A I just don't remember anything like that.

8 Q Do you recall -- and I think [REDACTED] going to ask you some questions
9 about, sort of, efforts in December on this, but -- whether you ever heard, in the context
10 of discussions regarding Antrim County, that Mr. Wolf had previously been advised of the
11 underlying facts?

12 A I just have no memory of anything like that.

13 Q Okay.

14 [REDACTED]

15 Q Okay. So, if you look at exhibit 5, it's an email from you to Rich Donoghue.
16 And Mr. Donoghue was in the Deputy Attorney General's Office at DOJ. Is that correct?

17 A Well, it says "ODAG," so yes.

18 Q Do you have any reason to think that's not accurate?

19 A No. I'm just trying to remember who was around when, when Barr left.
20 But that was a week later.

21 Q Yeah, I think Bill Barr left on December 23rd.

22 A Yeah.

23 Q So this email is dated December 18, 2020, copying Emily Early.

24 Who is Emily Early?

25 A I don't remember.

1 Q Okay. Do you know if she worked at CISA?

2 A I just don't remember that.

3 Q Okay.

4 A The name just doesn't ring a bell.

5 Q Okay.

6 Subject says, "Follow up." One attachment, "MI" -- presumably for
7 Michigan -- "Report Summary.pdf."

8 You write, "Rich, Brandon is doing three briefings today."

9 Is that the Brandon Wales that we've talked about?

10 A I assume so. Yeah, I can't think of any other Brandon that comes to mind in
11 the Department of Homeland Security.

12 Q Do you know what he was doing briefings about?

13 A No.

14 Q And then the last sentence of this email says --

15 A Though I will say --

16 Q Oh.

17 A -- and I'm speculating a little bit based on the date, but my recollection is this
18 is right around the time we became aware of the Russian hack, which CISA was deeply
19 involved in. I know it was in December. I don't know whether it would have happened
20 yet. So --

21 Q Can you tell us about the Russian hack in an unclassified environment?

22 A No.

23 Q I'll move on.

24 So the last sentence of your email says, "I hope it," which I think is referring to the
25 attachment, "is useful, though as it relates to the particular county, the hand recount

1 would seem to have addressed matters in that jurisdiction."

2 Can you explain what you meant by "the hand recount would seem to have
3 addressed matters in that jurisdiction"?

4 A Well, I don't remember specifically, but that is the point of recounts, is to
5 finalize whatever the count is. So I assume that's what I was referencing.

6 Q Okay.

7 And, if you look at the next page, this appears to be the attachment. Do you
8 recognize this document?

9 A Not specifically, no.

10 Q Do you know, based on looking at it, where this originated?

11 A No.

12 Q Do you know whether CISA did any kind of review of the allegations from the
13 Allied Security Operations Group report?

14 A I don't know whether they did or not, or whether they just relied on other
15 folks to provide information in that regard.

16 But, I mean, the information presented here I remember vaguely. You know,
17 there's a lot of detail here I have no recollection of, but just the general presentation of
18 this information looks familiar. I wouldn't -- well, I wouldn't have remembered the
19 underlying email, but it makes sense to be attached to that as something that may have
20 come into my possession and then I just passed along to Rich.

21 Q Okay.

22 So the first sentence says, "Voters in Antrim County, Michigan, voted on paper
23 ballots." Do you know whether that's accurate?

24 A My understanding is Michigan was a paper ballot State.

25 Q Okay.

1 The next sentence says, "Those records were reviewed yesterday and recounted
2 by hand." Does that sound familiar to you?

3 A Not specifically, but, I mean, I'm referencing the recount in my email, so it
4 makes sense.

5 Q Okay.

6 The next sentence says, "This verification, independent of the software and
7 hardware systems in question, returned results that indicates the consistency of the
8 systems, with a 12 vote difference from the previous final tally."

9 So is it your understanding that whoever wrote this one-page paper is saying that
10 the hand recount found only a 12-vote difference from the original count?

11 A That's how I would interpret it, yes.

12 Q And was it your view that the review of the paper ballots is the most reliable
13 way to determine whether or not the original count was accurate?

14 A Yeah, with all of the usual caveats: there aren't additional ballots put in
15 and you don't have machines printing ballots, which -- you know, my experience is the
16 Virginia experience. That's how I know elections, is Virginia, and in my jurisdictions that
17 hasn't been an issue. But in other parts of the country I know that, I think it is typically
18 called "ballot curing" can happen. But I didn't reference -- that isn't referenced here,
19 and whoever wrote this didn't reference it, so I assume they don't do it.

20 But, when you can clear those sorts of things out, paper-ballot recounts, I think,
21 are at least the highest-confidence way to achieve finality.

22 Q Okay.

23 The second paragraph on this page, second sentence, says, "The report," referring
24 to the ASOG report, "draws conclusions based upon descriptions of software that it is our
25 understanding Antrim County does not own, and for versions of the software we

1 understand to be incompatible with the version of the voting system Antrim County
2 owns."

3 Do you recall these conclusions?

4 A Only vaguely. They weren't my conclusions. I was passing along this item
5 that I got. I don't know where I got it. But, as you noted, I zeroed in on the recount of
6 paper ballots, which --

7 Q Okay.

8 A -- is just the sort of thing I would have zeroed in on.

9 Q And so what was your overall conclusion regarding the situation in Antrim
10 County?

11 A Well, I assume that my conclusion, as stated in that email, was that the hand
12 recount ended the discussion.

13 Q And did it end the discussion?

14 A I don't know.

15 Q Okay. Do you recall anybody asking you further about Antrim County?

16 A No.

17 Q If you look at exhibit 8, it's an email dated Friday, 12/18/2020, at 10:58 a.m.
18 from Rich Donoghue, we mentioned earlier. The top may be cut off on your version, but
19 it looks like it's to AS2, and then it starts off, "Ken."

20 "AG Barr is waiting on a CISA white paper that I'm told is currently in the
21 Secretary's office."

22 Do you know whether the white paper referred to there is the same one we just
23 looked at?

24 A I don't know that. Whatever it was I don't think went through me,
25 necessarily, meaning in development. But it is not surprising that Rich would ask me to

- 1 pop down the hall and try to shake it loose.

1

2 [4:15 p.m.]

3

4 Q Do you remember whether you did do that?

5 A Oh, I'm sure I did if I said -- if I responded to him I'll give it a shot, that I
6 would. How much weight at the other end of the hall would put on my efforts is
7 another question, but, you know, that was out of my control.

8 Q Do you know why Attorney General Barr was waiting on a CISA white paper?

9 A I have no idea.

10 Q So I'm actually going to go back in time 3 days, so what you were just looking
11 at was December 18th. We've been informed -- and this is -- I should tell you, this is
12 public testimony from Jeff Rosen before the Senate Judiciary Committee, where he says
13 there was a December 15, 2020, meeting at the White House with President Trump that
14 involved Rich Donoghue, Jeff Rosen, Pat Cipillone, Mark Meadows, Pat Philbin, and Chad
15 Mizelle. Was Chad Mizelle at that time the acting general counsel at DHS?

16 A He was.

17 Q Okay. Were you at that meeting?

18 A I don't remember that meeting, so I assume not.

19 Q Do you remember whether Chad Mizelle or anybody else who participated in
20 that meeting discussed the meeting with you?

21 A I do not remember any such discussion.

22 [REDACTED] Mr. Cuccinelli, if it helps in terms of recall, I think there's testimony
23 that you might have arrived late for the meeting. Does that sound familiar, that you
24 came to a meeting at the White House that was already in progress with those individuals
25 that [REDACTED] mentioned?

1 Mr. Cuccinelli. I appreciate that, but it doesn't jog my recollection, I'm afraid.

2 [REDACTED]

3 Q Do you recall whether you ever referred to a hand recount in Antrim County
4 as being the gold standard?

5 A I don't recall that. I think I've said words to you all to that effect here, you
6 know, about as good as you can do with all my caveats.

7 Q Do you have anything else on that?

8 [REDACTED] I'm sorry. I'll just wait. Go ahead.

9 [REDACTED] Okay. Do any of the members have questions?

10 Mrs. Luria. Not right now. Thank you.

11 [REDACTED]

12 Q Mr. Cuccinelli, did you ever have any conversations about the possibility that
13 you would be appointed as special counsel to investigate issues related to the 2020
14 election?

15 A Yes.

16 Q Okay. Who did you have those conversations with?

17 A Well, there was at least some folks from DOJ present and the President as
18 well. And I don't remember who else.

19 Q Okay. Will you tell us about those conversations?

20 A Only that they happened. And, as you all know, I was not appointed as
21 special counsel.

22 Q Okay. And, just so we have it on the record, your reason for not telling us
23 anything further is because of concerns of executive privilege?

24 A Yes. If you all resolve all that, I have no problem talking about it.

25 Q Okay. Can you tell us whether you remember those conversations? I'm

1 asking that just so I know whether it's worthwhile --

2 A Yeah, no.

3 Q -- going through the process to try to resolve it.

4 A No, I understand. I've been in your position. I do remember those
5 conversations.

6 Q Okay.

7 [REDACTED] I have a --

8 [REDACTED]

9 Q Can you tell us who else was present?

10 A Well, I was in the Oval Office, so I assume the President. And, as I said, I
11 think there were some folks from DOJ that -- and I'm speculating a little bit, but I think
12 Jeff Rosen or Rich Donoghue or both. But I don't -- I don't have -- I can't picture
13 everybody in the room.

14 Q Do you recall the date of that conversation?

15 A I don't.

16 Q Do you remember having any other conversations about the possibility of
17 being appointed special counsel?

18 A On your date question --

19 Q Yes.

20 A -- I think it was after Barr stepped down as AG.

21 Q Do you recall any other conversations about the possibility of being
22 appointed as special counsel?

23 A I mean, I did a little bit of my own research, so I had conversations with
24 others. But I don't even remember who I had those with. It was basically to do the
25 kind of background info on what that role entailed.

1 Q Did you reach a conclusion as to whether it would be appropriate to appoint
2 a special counsel?

3 A I did reach conclusion about that, yes.

4 Q What was your conclusion?

5 A Well, it was in the form of a recommendation, so I think we're back into the
6 same territory.

7 Q Was it a recommendation of the President?

8 A It was.

9 Q Okay. Did you have any conversations about whether Sidney Powell should
10 be appointed as a special counsel?

11 A No.

12 Q Did you have any conversations about whether anybody, other than you,
13 should be appointed special counsel?

14 A There was generic and me.

15 Q Okay.

16 A That was, you know, special counsel generically discussion, and my name
17 was included in a discussion I was in, so -- but that was it.

18 [REDACTED] Did you have a question?

19 [REDACTED]

20 Q Again, I'm going to -- in terms of trying to jog the date, only because it's a
21 date people tend to remember, there was a meeting on December 31st, on New Year's
22 Eve, with Mr. Rosen, Mr. Donoghue, and the President in which this issue came up. Do
23 you know that might have been the date that you were there?

24 A No.

25 Q Are you able to speculate on that or --

1 A No.

2 Q Okay.

3

4 Q But you recall you were there in person rather than by phone?

5 A Yes.

6

7 Q I just want to make sure we're on the same page about resolving whatever
8 privilege issues that may exist, which you said you would attempt to do. We have the
9 letter now -- thank you, Mr. Luce.

10 And, in the letter to -- from Jonathan Su at the White House to Ms. Doss (ph) at
11 the GC's Office of DHS, it says, "Despite efforts made to do so, we have been unable to
12 discuss with Mr. Cuccinelli the nature of his communications with former
13 President Trump and his advisors about the events that are subject of the planned
14 interview."

15 Will you be able to have those discussions with White House counsel?

16 A Yeah, what he's referring to is a missed phone call.

17 Q Okay.

18 A So, yes -- I have no objection to having the conversations. That was just a
19 schedule failure on my part.

20 Q Okay. I just wanted to be clear because part of our attempt to resolve this
21 would require you to have those conversations with White House counsel.

22 A Yeah, I have no objection to that.

23 Do any members have any --

24 Mr. Cuccinelli. And, frankly, I mean, I just don't want to be getting ahead of the
25 resolution. Whatever the parties involved conclude is fine with me. But, you know, I

1 make that a moot point if I start wandering into that territory myself before those issues
2 are resolved, and I'm not comfortable doing that.

3

4 Q Mr. Cuccinelli, you said earlier that you've had no indication from former
5 President Trump that he's prepared to waive the privilege. Have you had any
6 communications from Mr. Trump or his representatives that he intends to assert the
7 privilege?

8 A No, I've had no communication with him or anyone who might represent
9 him about any of this.

10 Q So your concern is that he might at some point invoke executive privilege,
11 and you don't want to be on the wrong side of that -- I mean, having --

12 A I want to hear from him or his legal team -- I want to hear the okay to go
13 ahead and talk about these things you all are asking me about before I do it.

14

15 Q So, just on that line, the letter itself also states that the subjects that
16 President Biden --

17 A Biden.

18 Q -- has already determined an assertion of executive privilege is not in the
19 public interest, and then it lists those three topics as you referenced earlier.

20 A Yes.

21 Q One of them is other efforts to alter election results or obstruct transfer of
22 power. So it's my understanding, correct me if I'm wrong, that the current President has
23 weighed in on the topic that we're inquiring right now, but you would also like to hear
24 from the former President about this privilege. Is that fair to say?

25 A I don't agree -- I assume you're talking about the third subject area

1 encompasses what we're talking about, one; and, two, yes, I do want to hear from the
2 prior President on these subjects you all are asking about.

3 Q Okay. Thank you.

4 [REDACTED] Do any members have any questions?

5 Mrs. Luria. I do. Thank you, Mr. Cuccinelli. I might have missed it in the
6 earlier description, but can you describe what the purpose of this special counsel that
7 you've been discussing for the last few minutes would have been?

8 Mr. Cuccinelli. Well, generically a special counsel related to whether there
9 was -- whether there were criminal undertakings in the election. I mean, that's what a
10 special counsel is for, so --

11 Mrs. Luria. Okay. Well, thank you for clarifying. I just was trying to
12 understand better what the purpose of this particular appointment of a special counsel
13 would have been meant to address. Thank you.

14 [REDACTED]

15 Q And who would be the appointing authority? Would that be the Attorney
16 General?

17 A That's what the regulation says, yes.

18 Q And that's the Department of Justice regulations?

19 A Correct.

20 Q Outside the context of conversations with the President, did you have any
21 conversations with anybody at the Justice Department about whether a special counsel
22 should be appointed?

23 A I remember no such discussions outside of, you know, the White House
24 where they were present when I was present.

25 Q If you could look at exhibit 6 in your binder, and I apologize that the print is

1 extremely small. This is an email from Richard Donoghue at the Department of Justice,
2 who we mentioned earlier, to you, dated Sunday, January 3, 2021, at 11:22 p.m., subject
3 "Call Please."

4 The text says, "Ken, sorry about the time, but can you give me a call ASAP?
5 Thanks." And then it has what's probably his phone number redacted. Do you
6 remember whether you called Rich Donoghue in response to this?

7 A Well, I don't remember. I imagine I would have. Whether I saw this and
8 called that night or the next day, I don't know. It would have been my practice to call if
9 asked like this, unlike the practice in the Department of Justice in reverse.

10 Q Okay. Is there anything about that that would be relevant to what we're
11 looking into?

12 A No, it's just a pet peeve --

13 Q Okay.

14 A -- held by all agencies other than the Department of Justice, but --

15 Q Okay. Do you remember what Rich Donoghue wanted to talk to you
16 about?

17 A I don't.

18 Q Do you remember whether it was -- and I'm just saying this to see if it
19 refreshes your recollection -- whether he was calling to say that the President was asking
20 about an ICE agent near Atlanta that allegedly had in custody a truck with shredded
21 ballots?

22 A I remember the subject of the potential for such ballots, but I don't relate it
23 to this email or a call with Rich.

24 Q Okay. What do you remember about that issue?

25 A Just its existence, the allegation of it, and that it was like put in the hands of

1 an ICE agent or something. I don't remember how that all developed.

2 Q Okay. Do you remember whether DHS looked into the allegation?

3 A Not the allegation. I think my recollection, and it's a weak one, admittedly,
4 is that we just determined what should be done with this. We didn't, you know, start
5 our own investigation.

6 Q Okay. But, as I understand it, the question was whether an ICE agent near
7 Atlanta already had in custody a truck with shredded ballots. Does that sound correct to
8 you as far as what the allegation was?

9 A Only vaguely. I mean, it took some poking around, as I recall, to even
10 figure out what the starting circumstance was, you know, and then go from there. But
11 there was no go from there because that's DOJ territory, so --

12 Q But wouldn't the reason Rich Donoghue would be calling you was because
13 the question was whether it was an ICE agent --

14 A Yes.

15 Q So did you look into whether there was, in fact, an ICE agent who --

16 A I don't remember whether I did or not, but I do remember the circumstance
17 you're describing of the allegation of, you know, a truck of shredded ballots falling into
18 the hands of an ICE agent. So it would make sense that I would do that, and it also
19 makes sense for Rich to call me about it, as opposed to somebody else.

20 Q Do you remember what the outcome was? Was there, in fact, an ICE agent
21 near Atlanta who had in his custody a truck with shredded ballots?

22 A I don't remember what the outcome was. I don't even remember whether
23 we had the, you know -- whether we had an agent who fit that description. I just don't
24 remember that.

25 Q Okay. But if, in fact, that it had turned out that there was an ICE agent who

1 had in his custody a truck with shredded ballots, you would probably remember that,
2 wouldn't you?

3 A Well, I would've -- the call would've gone the other way here. I would've,
4 you know, turned it over to DOJ.

5 Q Okay. And did you?

6 A I don't recall that, so -- I mean, I assume we'd all remember it if it had, you
7 know, been a real and inappropriate circumstance.

8 Q Okay. If you could look at exhibit 9. This is an email, dated November 3,
9 2020, from Scott McConnell to several people, and then it looks like somebody named
10 McKinnis forwarded it to you. Oh, Melika Willoughby McKinnis appears to have
11 forwarded it to you, and it looks like it's just got a document there, "Election Day
12 Incidents and Anecdotes."

13 If you look at the next exhibit, exhibit 10, we believe this is a document that was
14 associated with that email. Do you recall this document, which is called "Election Day
15 Tracking as of 10:50 p.m."?

16 A I remember it. Whether this is comprehensive or not, I can't speak to.
17 But I do remember that we tracked occurrences that came to our attention in this sort of
18 format.

19 Q Okay. Do you know who created this document?

20 A I think CISA did, but I'm not 100 percent sure.

21 Q Okay. Do you know whether this is one in a series of tracking documents?

22 A On that day, I think it was cumulative.

23 Q Meaning the latest one would include everything from previous --

24 A That's how I recall us doing it.

25 Q Do you recall whether this document continued to be created after Election

1 Day?

2 A That I don't remember.

3 Q Okay. And what was the purpose of this document?

4 A Just informing us of what was going on, as best we could determine it,
5 around the country.

6 Q Going on in terms of what?

7 A Election progress and issues that might arise.

8 Q And what was the purpose of CISA or DHS tracking that information given
9 what you said earlier about DHS' limited mandate?

10 A Oh, awareness. I mean, this is a partnership, and they're the ones -- they,
11 you know -- there's some here you see are national, but there's also State and local ones.
12 And, you know, being aware of what they're contending with makes us better able to do
13 our job, and it helps us steer resources.

14 I used the example earlier in our discussions here about CISA making expertise
15 available that States might not have, so if we spot a circumstance that might call for that.
16 As I recall, there were teams available, particularly on the cyber front, to provide
17 assistance to States if they requested it.

18 Q Do you know whether any States requested assistance?

19 A I don't know.

20 Q Okay. Who would know the answer to that?

21 A Probably the operational folks at CISA.

22 Q Do you know whether this document was shared outside the Department of
23 Homeland Security?

24 A Not that I know of. But, I mean, generally speaking, it was accumulating
25 public information, combined with sort of reporting in our network. So, you know, the

1 partnerships I described earlier, to the extent there was communication there, that
2 wouldn't necessarily be a public communication, but that information could also find its
3 way in here too.

4 Q If you could look now -- do you have any questions on that?

5

6 Q Mr. Cuccinelli, while we're talking about election night, I wanted to ask you
7 about this one email. I don't know that it's necessarily associated with the document
8 you were just talking about, but I just had a question for you on it. Does this -- now, this
9 appears to be an email from AS without a number, but it's signed "Ken." Did that come
10 from you?

11 A Well, I assume so unless there's an Assistant Secretary, but I'm not sure. I
12 don't remember any Kens.

13 Q Do you remember this email?

14 A No.

15 Q It seems to refer to -- it's on 6 p.m. on election evening.

16 A Yeah.

17 Q Right? It's directed to Chris Krebs. And it says, "one query I picked up
18 from the cong" -- c-o-n-g -- "call." Is that -- does that term seem familiar to you, a cong
19 call, congressional call?

20 A I'm assuming it was a congressional call that we had scheduled for that point
21 in the day, just like we had media calls scheduled at certain points in the day, and I
22 assume that's what that means.

23 Q Was that a standard practice to have calls with either Members of Congress
24 or staff, or is this an election-specific or focused type of event?

25 A Well, on election day, it would've been election focused. I mean,

1 everything was focused on that that day.

2 Q Do you remember having a call with, is this Members of Congress or staff?

3 A I remember a staff call. I don't remember whether there were members on
4 it or not.

5 Q Okay. Do you remember the call, the staff call on the evening of the
6 election?

7 A Only its existence.

8 Q Okay. Does that -- the rest of that sentence ring any bells for you in terms
9 of a query regarding CISA.gov and rumor control page?

10 A No.

11 Q Well, actually, the way I read that is two separate things. Rumor control is
12 a page within the CISA.gov website, correct?

13 A Right. Yeah, that's how I'm interpreting it.

14 Q And we talked about that a little bit earlier.

15 A Yeah.

16 Q That was an initiative that began in 2020 to attempt to put out information
17 so the public was informed going into the election. Is that fair to say?

18 A Yeah, in a general basis, yeah.

19 Q Do you remember anyone in Congress or in congressional staff raising
20 concerns about the rumor control page?

21 A I have no recollection of any question fitting this description. Honestly, I
22 don't even remember the existence of the call. I don't even remember what was said,
23 so, you know, I really can't give you any detail.

24 Q Fair enough. Do you remember in any other context anyone from Congress
25 or congressional staff raising concerns about the rumor control page?

1 A I don't -- whether it's concerns or not, I don't remember anybody associated
2 with Congress raising anything with respect to this page.

3 Q How about -- I might have asked you this earlier. I apologize if I did.
4 Anyone from the White House ever raise concerns about the rumor control page?

5 A I remember no one ever anywhere on the planet raising direct concerns with
6 me about the rumor control page.

7 Q Did you believe it was controversial in any respect, having a rumor control
8 page?

9 A Not the existence of it, no.

10 Q How about the substance of it, the things that went on to that page?

11 A Yeah, I don't remember what went on it. I mean, the title tells you a bit of
12 the goal. But I don't have any recollection of specific items that were -- that I saw or
13 that I found controversial.

14 Q Does -- do you recall having any disputes with Mr. Krebs about anything on
15 the rumor control page taking him outside of his lane, as we discussed earlier in our --

16 A I don't remember anything like that.

17 Q Okay. Thank you.

18

19 Q Okay. If I can turn your attention to exhibit 48.

20 A Is that in the book? Yeah.

21 Q And this is the one that was just emailed to you a day or two ago.

22 A Right, okay.

23 Q At the bottom, there's an email from you to Mark Meadows, dated
24 Wednesday, November 18, 2020, subject "List." The email says, "Mark, some bullets on
25 our phone call." So, first of all, the "our phone call," was that a just call you and

1 Mr. Meadows?

2 A Yes.

3 Q Okay. And then the first bullet is redacted. The second one says: Align
4 any end of the campaign with the States finalizing vote counts, paren, (including all of the
5 litigation in each of the States. That is part of the process), closed paren. What did
6 you mean by that?

7 A Which part?

8 Q Well, the whole thing, but we can break it down into parts if that would help.

9 A Well, I'll start at the end.

10 Q Sure.

11 A It is my understanding, and my understanding is based on not knowing any
12 exceptions to what I'm about to say, is that all States deal with concerns about how an
13 election was run or the count is executed in litigation. That is why I said litigation is part
14 of the process.

15 I myself have been through a recount. That starts when the sheriff delivers you a
16 complaint to your door, in my case, to my wife. And it gets litigated, and the court sort
17 of takes over the count. Same -- similar things happen. That is why I describe it as part
18 of the process.

19 And this is a suggestion to Mark that, if they were going to do -- and I obviously
20 am making a suggestion without knowledge of what they're doing here -- if they were
21 going to do any wrap-up point, that that would make a good point in time processwise for
22 the President or the White House to make whatever wrap-up remarks on the election
23 they might make.

24 Q And by "wrap-up remarks," do you mean concede?

25 A You can phrase it that way or however. I mean, it's -- you know, I worked

1 for President Trump. It's not a word you'd immediately associate with him doing. But,
2 you know, whatever finalizing comments he was going to make, if he was going to make
3 any -- and this, again, is a suggestion to Meadows, I didn't discuss this with the
4 President -- that that would be a good point at which to do it.

5 Q So, by that, do you mean that, when the litigation was over, it's time to end
6 the campaign?

7 A No, I'm not suggesting how they should act. I'm simply suggesting that if
8 they're looking for a point at which they might undertake sort of a culmination set of
9 remarks, that that is a good place in the process to do it.

10 Q Meaning when the litigation ends?

11 A Yes.

12 Q Is that what you mean by align any end of the campaign --

13 A Yes.

14 Q -- meaning make concluding remarks --

15 A Yes.

16 Q -- when the litigation ends?

17 A Yes.

18 Q And what prompted you to give that recommendation?

19 A I don't remember that -- you know, I don't remember our conversation
20 specifically, but it's not -- you know, it's not unusual for me to quickly hammer down on
21 my phone a summary. Sometimes I even email it to myself just so that I can remember
22 or to account for my failure to remember. And, you know, I've run five campaigns, so
23 I've been through this process. So I was just making a suggestion not knowing what they
24 were going to do, but that that would be a good point to aim at.

25 Q And was that bullet memorializing your view or an agreed-upon view with

1 Mr. Meadows?

2 A That was just me.

3 Q Okay.

4 A This -- yeah, this is just me.

5 Q Does that summarize what you said to Mr. Meadows on your phone call?

6 A I want to be clear that I wasn't telling him or suggesting to him that they do
7 this, but that if they were looking for a point, sort of a conclusory point, here now, you
8 know, 2 weeks after the election, that I was identifying a point in the process that I think
9 would be suitable.

10 Q And you had said something along those lines during the phone call?

11 A Yes.

12 Q And what was Mr. Meadows' response?

13 A I don't remember. I don't remember. I don't remember having the call,
14 so, I mean, I'm drawing my memory from the notes.

15 Q And, just so I know, these redactions, were those redactions done by the
16 Department of Homeland Security?

17 Mr. Luce. Yes.

18 [REDACTED] Okay. Thank you. Do you have any questions?

19 [REDACTED]

20 Q Yeah, I just have a question about the email. So when it says "align any end
21 of the campaign with the States' finalizing vote counts," would that be the
22 December 14th across the Nation certification with the States that you were referring to?

23 A Honestly I didn't think of it in that prospect. I was just thinking that they all
24 run through a litigation process. Wherever it ends, I was not thinking December 14th at
25 that point. That I know of, that I can recall.

1 Q So, in your mind, it could've been that date or the conclusion of the multiple
2 lawsuits that had already --

3 A Yes.

4 Q -- been filed at that point?

5 A Well, my comment is the end of the lawsuits.

6 Q Got it. Did you anticipate that President Trump at some point would
7 concede?

8 A No, not necessarily.

9 Q At any point?

10 A Correct.

1

2

3 Q Did you have any discussion with Mr. Meadows about the role of Congress at
4 the Joint Session on January 6th in terms of counting the electoral votes?

5 A No.

6 Q Did you have conversations with anybody else in the government about the
7 role of Congress in counting electoral votes?

8 A Yes.

9 Q And who were those conversations with?

10 A It was one conversation, one comment with the President.

11 Q Okay. Can you tell us when that was?

12 A January 5th.

13 Q Was that in person?

14 A Yes.

15 Q In the Oval Office?

16 A Yes.

17 Q Who else was there?

18 A No one else.

19 Q Okay. What was the circumstance in which -- what was the purpose of you
20 being there in the Oval Office with the President?

21 A I don't remember what the underlying -- and what I was there to meet
22 about. It was very common for me to come on a scheduled topic, and then we would
23 cover multiple topics that were not scheduled just because we would just trail from one
24 thing into another. It wasn't a planned thing. And my comment was very much in
25 passing, but as I said, he and I were the only ones in there at the time.

1 Q Can you tell us what the comment was?

2 A This falls under our earlier discussion, I think.

3 Q And the Acting Secretary of Homeland Security was not there?

4 A No one else was there.

5 Q Is this unusual for you to meet with the President of the United States
6 without your boss, the Acting Secretary, with you?

7 A Oh, no, not at all.

8 Q It was not unusual?

9 A Not at all.

10 Q Okay. Is -- can you tell us a little bit about that? Why would the Acting
11 Secretary not be included?

12 A Well, in areas that I was addressing, you know, I wouldn't be acting outside
13 of what I would think is the knowledge or understanding of the Secretary, but examples
14 include a lot of those regulations -- regulation responsibilities, dealing with immigration,
15 illegal immigration, legal immigration. We would -- those are discussions that would
16 often happen without the Secretary present. There were a lot of things that happened
17 without the Secretary present. And I would just note -- ah, I'll leave it alone.

18

19 Q Mr. Cuccinelli, can I just ask one question about this, sort of fleshing out the
20 privilege issue. Did you consider this discussion on January 5th with the President to be
21 connected to official government business?

22 A I don't know how to interpret that question. I mean, as far as I was
23 concerned, I was always on duty, so was he.

24 Q Was the President seeking guidance from you in connection with some sort
25 of official decisionmaking that he needed to do as -- decision he needed to make as

1 President of the United States?

2 A I don't -- I don't recall whether that would be a proper or improper
3 characterization.

4 Q Meaning it's hard to answer my question -- you mean you're having difficulty
5 answering the question, or is there something about the question that's unclear?

6 A No, I'm having difficulty answering the question.

7 Q Okay.

8 

9 Q So I think my question was whether you discussed the role of Congress in the
10 Joint Session with the President, and you said, yes. Did you discuss the role of the Vice
11 President in the Joint Session with the President?

12 A I'm not quite sure how to answer that one, so I'm going to just demure.

13 Q Okay. But do you remember the answer to the question?

14 A Yes.

15 Q Okay. But, for the record, you're not going to say what it is because of
16 privilege concerns?

17 A Correct.

18 Q Did you discuss with anybody other than the President your view of the role
19 of Congress or the role of the Vice President in the Joint Session of Congress?

20 A I don't remember doing so.

21 Q Okay. What was your view of the role of Congress in the Joint Session to
22 count the electoral votes?

23 A To do math.

24 Q Okay. And what do you mean by that?

25 A The ballots are what they are, and they just add them up, and if it's a

1 majority or more, they're done.

2 Q Okay. And then, based on that, I can guess what your answer will be, but
3 what was your view of the role of the Vice President at the Joint Session of Congress?

4 A I wouldn't say I had a specifically fleshed out view of his role.

5 Q Did you discuss your conversation that you had with the President on
6 January 5th with anybody else?

7 A No.

8 [REDACTED] Do you all have any other questions?

9 [REDACTED] I don't think so.

10 [REDACTED] Okay. Do any members have any questions?

11 Do you need a break, or do you want to keep going?

12 Mr. Cuccinelli. No, I'm fine. I mean, we're getting down the line on the clock,
13 so --

14 [REDACTED]

15 Q Yeah, we're going to start with the January 6th and the days preceding, so if
16 you want to take a break now --

17 A No, I'm fine.

18 Q Okay. Great. So I just want to start with generally the preparations for
19 January 6th from DHS, what you were aware of, what the threat landscape was going into
20 it, and march through your day of January 6th as best we can, starting with how was DHS
21 set up in terms of who the point person was to kind of run it operationally?

22 A So Chris Tomney, head of ops, was our point person for the
23 intergovernmental liaising that takes place in these situations. And we went about it the
24 way we normally would anywhere in the country; it's just Washington is different because
25 of so many responsibilities and jurisdictions. So, with that major caveat, we prepared

1 the way we would normally prepare.

2 Q Which is what?

3 A I mean, you know, we gather -- we listen to intel provided by other members
4 of the intel community. We can only -- we can't go develop intel other than publicly
5 available sources. We'd go develop those, including social media, and compare it to
6 past patterns for other similar analogous events and get a sense of scoping.

7 And we listen to what our partners say; for instance, Interior is sort of an expert
8 on how many are going to show up, how much room is it going to take, you know, that
9 kind of thing. So talking with all those entities and the liaisons for them, and then
10 preparing our own force laydown for DHS. With the exception of the Capitol and the
11 Supreme Court and the inside of courthouses, which is the marshals, we were responsible
12 for all the other buildings via FPS, Federal Protective Service, and there's a lot of buildings
13 in Washington.

14 And, you know, so we figure out what's likely to happen that day. For instance,
15 the rally at the Ellipse and that Congress is a focus. Okay, what's between point A and
16 point B, all those kinds of things. And we try to prepare any deputizations we may need,
17 for instance, to deputize CBP or ICE officers for FPS. All that's done beforehand, all with
18 our best estimates of what's likely to happen, and then we plan for reasonable worst-case
19 scenario, you know. I mean, you know, you can't plan for an asteroid hit.

20 But that process was not new on January 6th or the run-up; it was the same
21 process we had used. And, of course, you always are finding that it is sort of a working
22 document, and in the COVID environment, there was a lot more remote contact than in
23 person than maybe would've happened, say, 2 years before.

24 Q So, when you say you relied on the intelligence community, does that
25 include DHS I&A in terms of developing -- understanding what your -- the threat is?

1 A Yes, but I -- but DHS I&A can only -- can't gather -- can't affirmatively go
2 gather intelligence in the way that, say, let's just hypothesize that there were foreign
3 elements that were toying with interloping, that would happen offshore. Those are
4 assets that other intelligence agencies have that we don't have. There's no privacy
5 issues offshore with foreign entities.

6 In the United States, we're domestic, and despite the name, Department of
7 Homeland Security, we have very little affirmative authority to go root things out.
8 We're very reliant ourselves on publicly available information, accumulating it, trying to
9 process it, learn from it what we can.

10 Q Isn't that the role of DHS I&A to kind of --

11 A Yes.

12 Q -- stitch together that --

13 A That piece, yes. My point is, there are other intelligence community
14 members that might end up with other information just as a matter of -- you were asking
15 before, as a matter of standard practice, we would keep an ear out to them: Is there
16 anything you're hearing from those types of perspectives that we don't have?

17 Q Understood. But it's curious, as the number two at DHS, you start with the
18 intelligence community without mentioning DHS I&A as far as who you relied on. Can
19 you tell -- who would be your --

20 A No, you're misinterpreting.

21 Q Okay.

22 A I was just distinguishing it from the perspective of the ability of other parts
23 of the community to gather non-public information.

24 Q Understood.

25 A Let me put it that way.

1 Q In a covert manner?

2 A Correct.

3 Q Got it. So what was the threat landscape as you were heading towards
4 January 6th as it was presented to you by I&A or from the other law enforcement
5 partners?

6 A I mean, we had a protest that was part of an ongoing public debate, so it
7 wasn't, you know, a one-time occurrence in the -- it was -- and, you know, it looked like it
8 could be tens of thousands of people and cover a fairly wide area, from the White House
9 down to the Capitol.

10 And it never stays contained, so you have to worry about outside that area. And
11 that doesn't mean we have to worry about it, per se. We're not responsible, for
12 instance, for, you know, a private shopping district. But we would communicate with
13 the Metro Police about interacting, say, between the Ronald Reagan Building and places
14 north of it where the Washington police may have primary responsibility, that kind of a
15 thing.

16 And so we had extra FPS, CBP, and ICE personnel on duty, and we had further
17 fallback plans to call more up out of Maryland and Virginia and further fallback plans to
18 fly others in. And that's pretty standard for us. That is not particularly unusual. And
19 I should also -- whenever we talk about DHS in Washington, you sort of separate out
20 Secret Service --

21 Q Okay.

22 A -- which they like being separated out. But, I mean, they have very specific
23 responsibilities --

24 Q Right.

25 A -- the White House and protection. And, you know, so they don't protect

1 facilities, other than the White House complex.

2 Q We're going to kind of talk through some of these interagency calls in the
3 leadup to January 6th, but just generally speaking, were you aware of a potential
4 likelihood of violence that could occur on January 6th?

5 A A potential. There was nothing overt that said this is likely to be violent,
6 but the potential existed.

7 Q And when you say there was nothing overt, who -- what -- are you relying on
8 all those agencies you mentioned --

9 A Yes.

10 Q -- to make that statement?

11 A Yes.

12 Q So --

13 A And what they shared us with.

14 Q Fair enough. So based upon what you knew from I&A, the Bureau, and
15 part of these interagency calls --

16 A Yeah.

17 Q -- that it would be, it was fair to say, consistent with the march that was held
18 in November and the march that was held in December?

19 A I'm not compared to make -- prepared to make that comparison. I mean,
20 no one was under any illusion that a bunch of happy people were going to be showing up,
21 you know, so that has the potential for problems. But there wasn't -- we didn't go in
22 assuming or with information pointing to the likelihood of violence; we just knew it was a
23 possibility.

24 Q When -- as has been made public, we've interviewed a number of people
25 about this topic about the threat landscape going in, and DOJ officials said everyone knew

1 there was a potential likelihood of violence. Is that consistent with your thought?

2 A I would agree with that statement.

3 Q And where did you believe that violence would come from?

4 A I don't think that -- it's more from the environment and the circumstances
5 and how it compares to other things that had gone on in the last 6 and 8 months,
6 including in Washington, than from any particular specific threat.

7 Q So, when you talk about the 6 to 8 months prior, does that include the
8 summer --

9 A Yes.

10 Q -- going into -- what was your role during the summer of civil unrest at DHS?

11 A I worked closely with Chris Tomney to, you know, to try to protect those
12 areas where we were responsible. We now is DHS, which usually meant FPS, though
13 frequently CBP and ICE were involved and occasionally TSA.

14 [REDACTED] Sorry, who is Chris Tomney?

15 Mr. Cuccinelli. Chris Tomney is the director of ops at the Department of
16 Homeland Security.

17 [REDACTED]

18 Q He was the director for the summer as well as for January 6th. Is that
19 right?

20 A Yes.

21 Q And did he report directly to you, or what's the chain up there?

22 A I'm not sure of how that fits in the org chart. It's not in an agency or
23 anything else. Ops is an evolving element of homeland security, and it was a way we
24 tried to coordinate and optimize what all the different entities in DHS brought to the
25 table with, as I mentioned earlier, a rather complicated mission set, so it's much harder to

1 do. But in these law enforcement laydowns, there was a little bit of a pattern, and it just
2 depended -- often the hardest part was coordinating with those outside DHS.

3 Q So, for those summer protests and the DHS response, were you also involved
4 in that decisionmaking with Chris Tomney?

5 A Yes.

6 Q And that -- there was tremendous coordination with Federal partners for
7 that?

8 A There was.

9 Q Was the White House involved in that coordination as well?

10 A They were.

11 Q Do you know who specifically from the White House?

12 A When we say "involved from the White House," I would say that it's more a
13 making sure it's getting done type of involvement not an operational type of involvement.
14 And I say that because I think of times, you know, the chief of staff wanted to know, all
15 right, is this being taken care of, is Governor Brown talking to us yet, you know, asking
16 those kinds of questions, not so much being involved in planning or execution. That
17 didn't happen.

18 Q But there was certainly communication back and forth, particularly because
19 it's our --

20 A I would characterize it as reporting.

21 Q To the White House?

22 A Yeah.

23 Q About DHS's activities?

24 A Yes.

25 Q And it's fair to say there was an order that went out that DHS was somewhat

1 of the lead in terms of, let's just say in Portland, in dealing with the civil unrest? You can
2 explain it.

3 A Yeah, I don't remember such an order. And, I mean, the reality is, as I
4 mentioned, you know, despite the name, when you've got -- we're responsible for
5 protecting facilities and personnel in some instances, but the decisions on investigation
6 and prosecution belong to the Department of Justice.

7 Q Understood.

8 A So there's only so much lead we can take. We can take the lead in physical
9 protection, but nothing beyond that really.

10 Q So the physical protection of some of the buildings, as you mentioned, was
11 taken by FPS. Is that right?

12 A Yes.

13 Q For the summer?

14 A Yes.

15 Q And was there a reliance on I&A during the summer terms of --

16 A Some, yeah. Yeah, they were a partner in that.

17 Q Are you familiar with some of the criticism DHS received as a result of some
18 of the steps that I&A took in terms of OSIR reports?

19 A Well, can you be more specific? I got nothing but criticism, so, you know.

20 Q The open source intelligence reports on journalists, for example?

21 A Oh, yeah, very familiar.

22 Q And some of the lack of uniforms of the officers. It was all in the IG report
23 that I provided you. Those were familiar to you?

24 A Those two are familiar, yes.

25 Q I just want to kind of understand what your reliance was on -- take on

1 DHS' -- some of the decisions that were made during the summer, if the intelligence
2 landscape was based upon I&A, and was that similar to how you went into January 6th?

3 A The two aren't really comparative because, take Portland, which was sort of
4 the longest term engagement, there were a couple small number of I&A officials out
5 there. So, yes, there was public-source information gathering, but they were also
6 talking to our officers coming off the street and adding the two pieces, blocks of
7 information together to try to learn more and to develop better analysis that we could
8 use right there on the spot and learn from, of course. So it went -- you know, this is an
9 example of nonpublic information they can access. They can talk to our officers, and
10 they did do that.

11 Q When you say "they," who are you speaking of?

12 A I&A --

13 Q Got it.

14 A -- participants, personnel, so --

15 Q In terms of the basis for what was in the IG report? Is that what you're
16 referring to?

17 A No, I'm not referring to the IG report at all. I'm just saying that, when you
18 refer to the summer and I&A, there were I&A personnel out in Portland. That is
19 not -- other than that we all live in, you know, in or near D.C., it's not normal in dealing
20 with -- we didn't -- that didn't happen in Seattle. It didn't happen in Philadelphia. It
21 didn't happen in New York. You know, it didn't happen anywhere else.

22 Q Right. And that was part of the criticism of what some of the steps I&A
23 took?

24 A I don't know what "it" refers to there. Everything was criticized, so --

25 Q Do you agree with any of the criticism?

1 A You're just being too unspecific for me to be willing to agree.

2 Q Well, how about the OSIR reports on journalists?

3 A That was definitely over the line.

4 Q Okay. Did that, in your mind, impact I&A in any manner in its collection
5 of -- or monitoring of threats for January 6th?

6 A Not in any inappropriate manner. I mean, you know, they still were looking
7 out at public sources. You know, there was -- there's a chastening feeling to the whole
8 division when something like that happens that, in my view, is clearly over the line. It's
9 not acceptable behavior.

10 And had we known about it, had the Secretary known about it, he's been very
11 emphatic, we would've cut it off ourselves before it happened. But, I mean, we only
12 have a very limited number of tools from an intel-gathering standpoint. And, frankly,
13 other agencies, like FBI, have been doing stuff like that a lot longer and with a lot more
14 tools at their disposal, so --

15 Q "Doing stuff like" that meaning what?

16 A Like putting intelligence estimates together for, you know, public events that
17 could be -- that could cross the line from protest and First Amendment expression to
18 criminal behavior.

19 Q So, putting aside the Bureau's role here, would it surprise you to know that,
20 as part of the, you know, our discussions with folks who were at DHS I&A, that they said
21 there was a chilling effect as a result --

22 A No, it wouldn't surprise me.

23 Q And can you explain that, based upon your knowledge of how I&A works,
24 what that impact would be and how it would play out --

25 A I would be speculating. The chilling effect doesn't surprise me, but, I mean,

1 you and Joe Maher, who if what you want is the truth, he was right there in the middle of
2 it and he analyzed it all. And, from an operational standpoint, you know, he just had a
3 much more granular view than I have.

4 Q One of the -- and I think this is in the exhibits, it's exhibit 15, was a report
5 within DHS I&A that said that the protests were largely peaceful. Do you see that there,
6 exhibit 15?

7 A Yeah, I see it.

8 Q Is that consistent with what you were seeing in the -- in real time as part of
9 your response during Portland?

10 A Yeah. I remember -- I don't remember this specific report, but I remember
11 that -- and I'm going to sort of speak generically. I remember generically that, you
12 know, 1 in 20 or 1 in 10 of the protests in this time had violence or criminal activity
13 associated with it, obviously, a minority, a distinct minority, but still a concerning level.

14 You know, you'd like expression to just be expression instead of violence, right. I
15 would like to think we all would, but we saw very clearly in 2020 that's not the case.
16 And -- but I am familiar with that conclusion, and it's very consistent with my own
17 experience in my time at DHS. So I -- you know, it's not one I took issue with.

18 Mr. Luce. Can I -- just one question to clarify. Exhibit 15, are you referring to
19 the Major Chiefs Association report? I just want to make sure we're both looking at the
20 same piece of paper.

21 [REDACTED] Right. There's the Major Chiefs report that that I think is
22 referenced in exhibit 19.

23 Mr. Luce. Okay.

24 [REDACTED] So 19 is the I&A Secretary's intelligence highlights. Do you
25 have that, John?

1 Mr. Luce. Yes, I do. I just wanted to make sure we're looking at the same piece
2 of paper. Thank you.

3

4 Q Are you familiar with any changes that occurred after the summer protest in
5 terms of I&A and how it would approach the election cycle going forward?

6 A Well, certainly part of why Joe Maher was moved over there was to not just
7 figure out, you know, how did this line get crossed, but also what's the best way to go
8 forward. And, you know, this is one of those things that probably would have been a
9 second-term management project would be to really turn and focus on improving I&A.
10 But, given where we were at election and end of term, that wasn't something we could
11 sustain. And there was still the information gathering about particularly that journalist
12 failure, and it was three. You know, when I say journalist, I'm lumping them all together.

13 But, you know, it's an inherently difficult position to be in as an alleged
14 intelligence agency to have to rely on the newspaper, you know, and talk to your -- you
15 can talk to officers, like I described in Portland. We can get what we can get from our
16 sister agencies that have other authorities that we don't have.

17 But we really are in the position and we're -- in preparing for January 6th, of
18 looking at the kinds of public chatter, articles, et cetera, trying to analogize this to other
19 circumstances. We didn't try to say January 6th will be like November. It's just
20 learning from the prior experiences. It's probably a lot more art than science.

21 Q And just to kind of unpack that public chatter that was out there, was I&A
22 aware of some of these chat rooms of the Donald.Win and some of the open sources and
23 social media posts about the potential for violence? Did it reach your level?

24 A They didn't bring to me anything beyond the elements of this have elements
25 that have in other circumstances included violence.

1 Q When you say "elements," what do you mean?

2 A I just mean indicators, public chatter. I can't speak to the specific cites
3 you're referencing.

4 Q And how was that brought to your attention?

5 A Well, when we would do prep work, for instance, with Chris Tomney, it
6 would be incorporated in some of the initial discussions and then there's just a rolling
7 effort to watch the public chatter. It will not surprise you to know that it rises as you get
8 closer just in volume.

9 Q So, if you could explain to me, understanding DHS I&A did not issue one
10 single OSIR report about January 6th, if Chris Tomney is briefing you about this potential
11 likelihood of violence, what is his source of information on that if it's -- since it's not
12 coming from --

13 A Again, the way you're phrasing it is just overstating it.

14 Q Please explain.

15 A Chris is an operator. He's not an analyst. So Chris' role is to connect all
16 the pieces, and the pieces here are everyone with an interest, not just DHS. He works
17 with the DHS components but also with all our other law enforcement liaisons,
18 Department of Interior, the Washington Metro Police, the U.S. Capitol Police, the list goes
19 on and on and on and on. And he is just our sort of cat herder for our Department.

20 The analysis of expectations is not something that he -- that's -- that does come up
21 out of I&A. It's supposed to have input from the FPSes CBPs, ICEs of the world, who
22 have participated in this stuff in the past. I don't know that it was consistently
23 processed in the same way. And I'm not just referring to January 6th here; I'm referring
24 to iterations when we would prepare for any sorts of events.

1

2 [5:16 p.m.]

3

4 Q But my question is, if the I&A did not issue any OSR reports, any threat
5 assessments about January 6th, which they did not, who was providing DHS the
6 information about the potential likelihood for violence? Because it is not coming from
7 within I&A.

8 A Well, measured by OSR reports -- I mean, I talked to I&A 3 days a weeks in
9 my briefings.

10 Q Okay.

11 A So I don't remember when I stopped doing daily briefings, but I was doing 3
12 days a week, if I remember correctly. And, in those morning briefings, they would
13 update me on what they're seeing on those things.

14 Q So, just so I'm clear -- because, you know, we're trying to figure out what
15 was known within each Federal agency.

16 A Uh-huh.

17 Q So, by my metric, if there's no OSR report, then there's no threat information
18 from I&A being reported up. So, if there was information being reported to you from
19 within I&A, how was that conveyed to you?

20 A And it would have been -- and this is not my specific recollection; this is our
21 pattern of operating. It would have been in those morning meetings when I was
22 briefed.

23 You know, I get the PDB -- actually, it started with I&A. I&A would do a, you
24 know, force laydown if we had some law enforcement activity going on, or, when we're
25 approaching something like January 6th, they would explain to me, this is what we're

1 seeing, then presumably how it compares to past occurrences, and we'll update you if we
2 see changes in that path.

3 Q And I understand you just described is how it typically happened, but my
4 specific question is, did you have a briefing with I&A about any threats about January 6th,
5 to your specific recollection?

6 A Not that I recall specifically, no.

7 Q Okay.

8 A It was -- their information was delivered as part of my regular briefings.

9 Q Got it.

10 You mentioned a little bit about a second-term, kind of, priority that could have
11 happened. In September of 2020, did you -- and this has been reported in the press,
12 that there was an order to I&A to downplay the threat posed by White supremacy groups
13 and more so focus on left-wing groups such as the antifa movement.

14 A Yeah, that is not an accurate characterization.

15 Q Was there any such reprioritization of I&A directed by you or Mr. Wolf?

16 A No.

17 Q Was there any discussions with the White House about prioritizing DHS I&A's
18 mission?

19 A No.

20 Q And that's obviously from a whistleblower complaint, and I know that there
21 has been press on that as well. Is there anything you want to clear up about some of
22 the other allegations as part of that complaint?

23 A Well, the ones involving me are not true or accurate. So that's -- I hope
24 that clears it up.

25 Q Okay. Fair enough.

1 One more thing that I'd ask you is, was there a policy that you approved that
2 allowed intelligence products to be disseminated without the sign-off from Civil Rights
3 and Civil Liberties?

4 A I don't remember ever doing that.

5 Q Does that mean you didn't do it or you don't remember doing it?

6 A That sounds like a horrible spin of -- and I'm not --

7 Q No. Please explain.

8 A The way it's worded, of a March -- March -- basically giving the Under
9 Secretary for I&A the ability to decide some of those disputes -- that's -- yeah, that's a
10 different subject.

11 Q No, this is moreso that there was an ability -- this was during the Portland
12 events -- that CRCL was supposed to evaluate those OSRs but they were taken out of that
13 process, which gave more of a latitude to write those OSRs.

14 A I don't remember that.

15 Q Does that mean that you did not approve a policy that would allow --

16 A No, I don't --

17 Q "No" you don't remember or "no" you didn't?

18 A What you're describing is quite surprising, so I would say, no, I didn't. But
19 it's not based on memory. You're asking me, do you remember not doing this?

20 I do not think that was done --

21 Q Okay.

22 A -- and the way as a human being I have to say it is, I don't remember ever
23 doing that. So -- but I don't think anything like that was done.

24 Q Okay.

25 Mr. Luce. One administrative thing. I just got a note from Jackson. He was

1 having trouble on the audio, so he tried to dial in.

2 [REDACTED] Is he okay?

3 Mr. Luce. Yeah, I think.

4 [REDACTED] You're good, Jackson?

5 Mr. Eaton. Yes. Thank you.

6 [REDACTED] Okay. Great.

7 [REDACTED]

8 Q I want to move on to exhibit 17. There's a couple exhibits about the
9 interagency call on January 3rd.

10 Were you on these calls, or was Chris Tomney on these calls?

11 A I would think Chris was on all of them. I was on a couple of them, at most.

12 Q There's one -- this is exhibit 17 -- about the Acting SecDef -- that would be
13 Chris Miller -- was interested in baselining the understanding of the interagencies.

14 Can you just give us your memory about any involvement, recollection you had
15 about calls set up with DOD, if you were on them?

16 A The ones I remember were after January 6th.

17 Q Okay.

18 A In the 2 weeks between that and the inauguration.

19 Q So who from DHS would have been on the interagency calls?

20 A Oh, it depended dramatically on the call. I mean, the Secretary was on
21 some of those.

22 You know, there wasn't much operational for them. The inauguration, realize,
23 when we get past January 6th, that's an NSSE. That planning had been going on 8
24 months. But you had a new Secretary over there, and the Guard was supposed to be
25 involved in the inauguration. Setting January 6th aside --

1 Q Sure.

2 A -- you know, that was all part of the plan.

3 Q Right.

4 A So it wasn't terribly surprising in those 2 weeks to be having some
5 conversations about that.

6 Q Well, if you could take a look at exhibit 20, this is one that you're on. It
7 says, from Chris Tomney, updated talking points for today's call with the Acting SecDef.
8 And it looks like it goes through what the DHS components are, in terms of their --

9 A Yeah.

10 Q -- providing their preparation. So I want to talk a little bit about this, to the
11 extent you're aware of it.

12 It looks like -- "I&A judges" -- it's discussing Georgia.

13 I&A did not issue any --

14 A Where are you looking?

15 Q The second page there. It's kind of just going through all the DHS
16 components.

17 I&A did not issue any January-6th-specific threat assessment, correct?

18 A If you say so. That is just too specific for me to remember. They put a lot
19 of paper out, so asking me about a particular subject area is pretty tough with I&A.

20 Q The last one I&A put out was December 30th. I have a copy here if you
21 want it --

22 A Okay.

23 Q -- but there's no mention of January 6th.

24 A Yeah, I'm not arguing with you. I'm just --

25 Q Yeah. No.

1 A -- saying it's way too detailed to actually remember for a normal human
2 being.

3 Q So "FPS," it says here, "has completed coordination with CBP and ICE for
4 cover to the Ronald Reagan Building."

5 So this date is --

6 A I'm sorry. Where are you looking?

7 Q This is the second page of exhibit 20.

8 A I see "FPS," but I don't see --

9 Q It's in the blue. "FPS has completed coordination with CBP and ICE."

10 So --

11 A I'm sorry. We must be looking at different documents.

12 Q Do we have a different exhibit? Sorry.

13 A There's nothing I have that says what you just said.

14 Oh, I see. It's the second sentence. Okay.

15 Q Sorry.

16 So, when we go -- I just want to understand, when you said earlier that FPS, you
17 had extra people assigned, do you -- and, again, if you don't have a sense of the numbers,
18 that's fine. But, as part of the preparations, is that your recollection, that additional FPS
19 officers or agents --

20 A Yes.

21 Q -- I'm sorry, I don't know the term -- were assigned for January 6th?

22 A So, for the Federal Protective Service, most buildings -- they protect 9,000
23 properties, give or take.

24 Q Uh-huh.

25 A Overwhelmingly that's done with contract employees, who actually do a very

1 good job. But, for situations like crowd control, it's the FPS officers themselves.

2 So the vast majority of people doing security for FPS are contract employees, if
3 you will. That may not be the right term. But, for situations like this, like Portland, like
4 Washington, like we're talking about, January 6th, it would be their own officers. So the
5 right term is "Federal Protective Service officers."

6 Q So the question is, how many officers from FPS were assigned for January
7 6th, not during but prior to?

8 A Oh, I don't know.

9 [REDACTED] Is that something, John, we can look into, in terms of the actual
10 numbers, or have those been provided?

11 Mr. Luce. We can look into that. I think -- yeah, we can look into that.

12 [REDACTED]

13 Q I have the numbers from Portland. It looks like 755 officers.

14 A Yeah, we track -- yeah. Well, that's over the whole time.

15 Q Right. From June until August.

16 A Yeah. Yeah.

17 Q So that would be helpful.

18 Is there any -- it doesn't look like, and correct me if I'm wrong, any component of
19 DHS, other than FPS, was kind of prepositioned for January 6th. Not ICE, not CBP.

20 A Well, no, both CBP and ICE had personnel, as did TSA.

21 Q On standby, correct?

22 A Yes. Well, I mean, CBPs were in the Ronald Reagan Building, so they were
23 sitting on top of this. Now, they are located in the Ronald Reagan Building, so there's
24 logic to them, you know --

25 Q Uh-huh.

1 A There's a reason they're there. It's their building. It also happened to be
2 one the biggest buildings and most likely to be entered -- and I don't say that with any
3 negativity -- by people going from the Ellipse to the Capitol, you know, even if they just
4 wanted to go to the bathroom or go inside or whatever.

5 So they could deal with their own building, and they could move to other places.

6 Q Was there any sense there was extra personnel in any other component
7 other than FPS going into January 6th?

8 A Yes. CBP, ICE, and TSA.

9 Q Are you saying there -- but additional security.

10 A Yeah.

11 Q Not just the regular security.

12 A Correct.

13 Q Okay. So if we could get those numbers, that would be helpful.

14 A And Secret Service, of course.

15 Q Yeah. And the Secret Service posture going into it states that an enhanced
16 civil disturbance unit is postured at the White House.

17 A Yes.

18 Mr. Luce. Yeah, we can work with you on some of the numbers. I just wanted
19 to highlight that that's generally pretty law-enforcement-sensitive when you look at
20 specific numbers of officers. So we can figure out how to kind of bring you up to speed
21 on those issues while making sure that we keep private the --

22 [REDACTED] Sure.

23 Mr. Luce. -- numbers of people.

24 [REDACTED] That would be great.

25 [REDACTED]

1 Q I just want to turn quickly to exhibits 21, 22, and 23. It looks like on January
2 5th you're getting updates from Kenosha.

3 A Yeah.

4 Q And there is a back-and-forth with you and Mr. Tomney about the potential
5 for violence there, including, I think, a social media posting in exhibit 23 about "Protest
6 the Militia" with #BlackLivesMatter and #BlueLivesMurder --

7 A Right.

8 Q -- a protest on January 5th at Kenosha County Courthouse.

9 Were you receiving any specific details such as this particular exhibit, 23, about
10 January 6th?

11 A Well, I mean, the document with the force laydown, which I also would've
12 been briefed on beforehand as we geared up for it. And I vaguely recall sort of a D.C.
13 map in one of my morning briefings, you know, looking at some of the buildings that we
14 have in between the Ellipse and the Capitol that we had to pay attention to and --

15 Q Right. But I --

16 A -- be cautious of.

17 Q I just -- I'm highlighting this particular exhibit that states "Protests the
18 Militia" on a January 5th Kenosha --

19 A Yeah.

20 Q -- event, as well as there were the additional exhibits, I believe --

21 A Well, keep in mind --

22 Q If I could just finish my question.

23 A Sure. Go ahead.

24 Q Exhibit 12, 13, and 14 I think also highlight some of the updates you were
25 receiving about the civil unrest outside of the D.C. area. You're receiving updates about

1 what's still happening in Portland, exhibit 12. Exhibit 13 has some talking points for your
2 press appearance concerning violent anarchists and angry mobs in Louisville, I believe.
3 And exhibit 14, again, has to do with a December 30th briefing about Portland, Oregon.

4 I see no specific briefings about violence on January 6th. So I'm curious if you
5 could explain how you're getting updates about other rallies and not about the 6th itself,
6 particularly --

7 A I was getting updated about the 6th.

8 Q But we're not seeing -- but I haven't seen any of that in the briefing packets
9 that you've asked for.

10 A This was a -- you know, Tomney was, as I said, our point person -- I mean,
11 are you suggesting we just kind of all showed up at work on January 6th? I mean, that's
12 ludicrous.

13 Q I'm not -- I'm trying to understand the threat landscape and what I have as
14 far as --

15 A The threat landscape, to put it in narrative terms, was: We were going to
16 have a protest with angry people, perhaps on the order of a couple of tens of thousands.
17 And that is not from somebody who said, "I'm bringing 25,000." That was our guess,
18 that was a collective guess, of all the, sort of, government folks who were talking to each
19 other, just generically. And what I'm describing is sort of the high-end expectation.

20 And it had elements -- like, some of these others you've used, the examples, like
21 Kenosha, you know, the potential for an indictment or non-indictment, if I had to point to
22 one circumstance that had the highest probability for violence, those would be it. And --

23 Q Why do you say that?

24 A History. Louisville. That's what was going on in Louisville. That's what
25 was going on in Kenosha. I mean, those were --

1 Q When you say "that's what was going on," what do you mean?

2 A Well, read the emails. I mean, the Kenosha email says, you know, the
3 Jacob Blake indictment decision is going to be made today.

4 Q Understood. So can you --

5 A Yeah.

6 Q -- just draw it out for me in --

7 A Yeah.

8 Q -- terms of why --

9 A So --

10 Q -- that means --

11 A So let's go back to our discussion earlier about -- I'll just use a number; I
12 don't know if it's accurate -- 1 in 20 protests nationally has violence associated with it.
13 Okay. Well, if I had to guess, I'd say the protests related to anticipating an indictment in
14 a police shooting are a whole lot higher than 1 in 20 for violence, so we pay more
15 attention them. Not because we have specific information that there's going to be
16 violence in Kenosha, but because those types of circumstances tend to more frequently
17 result in violence.

18 Q So, along that line, was the type of circumstance that January 6th presented,
19 meaning that this was essentially the last time -- effort that President Trump's supporters
20 could kind of stop the election certification from happening, did that present equally
21 disturbing circumstances in terms of potential for violence?

22 A Than an indictment day somewhere? No, not statistically.

23 But, as I said, we planned for the possibility of violence. Your sort of quote of
24 DOJ earlier I agreed with, is that we all understood that this was a protest day but that it
25 could have violence associated with it, and we needed to be ready for that.

1 Q But the likelihood of violence at the announcement of an indictment, based
2 upon the experience you've had -- you're basing it on your experience -- had more of a --

3 A My own. Yes, this is Ken's conclusion now, not a Department of Homeland
4 Security conclusion.

5 Q -- had more of a likelihood of violence than these circumstances of January
6 6th --

7 A Ex ante, yes, on the front end.

8 Q Did you receive any similar open-source or social media postings about
9 January 6th as we see on exhibit 23?

10 A If I didn't receive them, I had them described. But it was described in the
11 terms of, what's the level of chatter, what's the nature of it? And there wasn't any
12 specific, you know, threat that was brought to our attention of specific acts of violence.

13 And in most of the other cities here there wasn't one either. We just had to be
14 prepared for it. I mean, that's just proper planning. Hope for the best; plan for the
15 worst.

16 Q And, in your perspective, going into January 6th, DHS was properly postured
17 to deal with any potential likelihood of violence?

18 A We were properly postured to deal with the set of circumstances that we
19 could perceive. And I say that with the notion that we prepared for, in terms of having
20 personnel available and so forth, for the worse end of that scale.

21 [REDACTED] Before I move on to January 6th, does anybody have any
22 questions on that?

23 Okay.

24 [REDACTED]

25 Q So January 6th, on the day of, I understand Secretary Wolf was out of the

1 country. Is that right?

2 A Yes.

3 Q And where was he?

4 A In the Middle East somewhere.

5 Q Okay. Do you know when that trip became finalized, if that was --

6 A I don't.

7 Q Was that something that you all had been planning for, in the sense of you
8 would be essentially --

9 A You all would suggest I was involved. I was not.

10 Q Involved in what?

11 A I was not involved in the planning or execution of that trip.

12 Q Oh --

13 A I was told about it at some point.

14 Q I'm sorry if you thought my question --

15 A No --

16 Q -- suggested such.

17 A No. It might be a reasonable thing to assume. But I was unaware of the
18 trip until some point after it was -- late on. I don't remember exactly when.

19 Q Was there any discussion between you and Secretary Wolf prior to his
20 departure about what would occur if there was an eruption of violence on the 6th?

21 A No, there was not.

22 Q Was he aware of the similar kind of threat landscape going into, before he
23 departed?

24 A Well, he certainly had access to all the same information that I did and was
25 talking to Chris Tomney. And at various points I'm sure we discussed, you know, the

1 week.

2 It wasn't just January 6th. If you notice, one of the exhibits noted -- I think it was
3 from Tomney -- sort of an expectation of what's going to happen the week of the 4th.
4 So there were other events going on which we were also paying attention to and
5 preparing for.

6 Q But that left you, essentially, as the point -- as the head of the Department
7 that day. Is --

8 A Yes.

9 Q -- that fair?

10 A That's fair.

11 Q Was there any kind of discussion like maybe Mr. Wolf should stick around for
12 that day?

13 A There was no such discussion.

14 Q Okay.

15 If you could just walk us through your day, then. I have a number of emails,
16 obviously, but in terms of where you were located, what time you got to work, or --

17 A I think I was remote that day. We were using the virtual Situation Room by
18 the afternoon. And, as I usually do, despite that engineering degree I mentioned earlier,
19 I need to be walked by the nose or led by the nose every time I sign in, though we had
20 been using it and I had used it repeatedly from the previous summer.

21 So I believe I was briefed that morning. [REDACTED]

22 [REDACTED] And --

23 Q John Luce just looked nervous there.

24 A [REDACTED]

25 Q Okay.

1 A So I was briefed that morning, just, you know, my daily brief, obviously with
2 some discussion of the day's events, also with some discussion of what had happened
3 Monday and Tuesday. But I don't remember, really, what I did late morning and early
4 afternoon.

5 Q What was your plan? Did you have a plan to monitor the events, or was it
6 just --

7 A Yes.

8 Q -- business as usual? Who was your --

9 A No, it was not business as usual.

10 Well, I mean, I'm -- candidly, Chris Tomney, in my view, had done a great job up to
11 that point, and he did a good job that day. So I would periodically check in with him.

12 And, when things became problematic, I then looked to get in the Situation Room myself.

13 And, just to understand a little bit of my own philosophy, I understand that
14 something like a Situation Room might work better without me in it, because people are
15 too sensitized to high officials being present --

16 Q Uh-huh.

17 A -- and they might be more restrained in their communication, which is the
18 opposite of what I want to achieve. Which is a little frustrating for me, because I both
19 want to be engaged at that level but I don't want to slow down or, you know, limit the
20 communication.

21 So, you know, I would frequently call or email Tomney before getting in the
22 Situation Room, and --

23 Q Right.

24 A But I was remote for that day.

25 Q So, to that point, I think at 2:26 you emailed Chris Tomney to get into the

1 Situation Room.

2 A That sounds about right.

3 Q So exhibit 26 looks like a 6:28 a.m. email kind of with the email from Chris
4 Tomney giving the summary of the civil unrest in D.C. and Portland and Kenosha. And
5 this email is forwarded to David Burns and David Bowdich at the Bureau.

6 A Uh-huh.

7 Q Do you know anything about that arrangement, as to why DHS was pushing
8 out this particular report?

9 A Because, as part of our preparation for that week, we had substantially
10 expanded the regularity of our communication with DOJ, because, you know, we have a
11 lot of law enforcement officers and they have a lot of law enforcement officers. So, you
12 know, when the Federal Government is going to step in and help in one place or another,
13 whether it's Portland or Washington, the two of us, in just raw numbers, are biggest.
14 And, as I said earlier, all we can do is protect. They have the
15 investigatory -- overwhelming portion of the investigatory, and they have all the
16 prosecutorial authority.

17 So this was definitely elevated compared to what we might have done in Seattle
18 or in, you know, another city, not Washington. And I'm setting Portland aside because it
19 was its own sort of category. But that's what you see going on here.

20 Q So, just to kind of go back to these interagency calls, do you remember any
21 discussion as to who was going to be kind of the lead agency in charge on January 6th or
22 if it was reported back to you if any such discussion happened?

23 A There wasn't a lead agency, nor necessarily one designated. We spent our
24 time and effort trying to manage and coordinate each of us working within our own
25 jurisdiction.

1 So, you know, FPS has a pretty defined jurisdiction. It's very different than FBI,
2 you know? And so we didn't -- you know, FPS, in fantasy world, would never be the lead
3 agency, even though they're protecting the most buildings. First of all, DOJ would never
4 accept it.

5 Q Why do you say that?

6 A Well --

7 Q Oh, DOJ would not accept FPS to be the lead.

8 A Right.

9 Q Oh, that goes without saying. Okay. I got it.

10 A Yes. But, you know, this communication is just an indication of the
11 elevated level of inter-contact.

12 And I seem to recall several meetings over at DOJ, maybe two, with both
13 Daves -- Bowdich, Burns -- and a number of others, but I'm just trying to place them on
14 the calendar. I don't know where they were on the --

15 Q In preparation for the 6th, or --

16 A Yes. Yes.

17 Q So I just want to draw a distinction, that you mentioned the NSSE, where the
18 Secret Service is the lead --

19 A Yes.

20 Q -- and here on January 6th there was no -- according to DHS, there was no
21 lead agency and not one designated.

22 A Right. So, on the Ellipse, outside the White House, while they probably
23 wouldn't say it, Secret Service would probably be on the lead, even though they're on
24 Interior property, but they're adjacent to the White House. As a practical matter, it
25 would sort of play out that way. That doesn't mean that Director Murray would be

1 giving orders to DOI agents and officers. That isn't how it would work. They would
2 talk at that level, the orders would go down, and they would coordinate.

3 And then you go from there, sort of, down the street, if you will, and, at the
4 Ronald Reagan Building, CBP is the lead agency. And we can go on down the line. And
5 that's how it would change. If there's violence in the streets, Washington Metro Police
6 is the lead, though FBI might step in on their own determination. I don't know what it
7 would take.

8 So it's more just trying to put the patchwork together to make sure everything we
9 think might be threatened is covered than it is creating a structure for the day to follow
10 orders from one point.

11 Q But is that how it occurs for when there's an NSSE designation?

12 A NSSE -- the answer is no, because in an NSSE you do literally do have a lead
13 Federal agency designated, Secret Service. And that doesn't mean everybody simply
14 does what Secret Service tells them to per se. But, as it relates to that event, Secret
15 Service is in charge.

16 Q Isn't there value in that, to have somebody --

17 A Yes. I'm not criticizing --

18 Q Right.

19 A I'm not criticizing either one of those. But NSSEs are known way in
20 advance. I mean, the inauguration was going to be January 20th, so the planning began
21 in May.

22 Q Uh-huh.

23 A And, frankly, it was done by the time we get to January. You know, we
24 make adjustments at the end, and there was a lot of freaking out because of January 6th.
25 But the NSSE was always -- the inauguration was at all times before and after January 6th

1 more than adequately addressed.

2 Q As part of what we're trying to address, though, it's more the complexity, as
3 you just described, of the different AORs, the different --

4 A Yes.

5 Q -- law enforcement agencies --

6 A Yes.

7 Q -- led to somewhat of a confusion, for example, for the D.C. National Guard
8 in terms of who they were responding to.

9 So DOD -- and let me just say this. DOD's, you know, public statements have said
10 that DOJ was the lead Federal agency in charge for January 6th. That does not seem to
11 be consistent with what your belief is, correct?

12 A No.

13 Q Do you remember any discussion on any interagency calls you were on or
14 were told about where DOD asked DOJ to take on the lead?

15 A DOD's participation -- and it's hard for me to parse out before and after
16 January 6th -- demonstrated an extraordinary lack of understanding of civilian law
17 enforcement. Now, that's not what they do, but -- and particularly after January 6th
18 and particularly the Secretary of the Army, who seemed to be in charge of freaking
19 out -- that was his job, and he did it very thoroughly -- had no ever-loving idea what he
20 was doing.

21 Q And you say that about Ryan McCarthy because of what you observed?

22 A Yes.

23 Q What did you observe?

24 A Well, first of all, he literally would go running off, saying his own thing, as if
25 he's got his own plan, in a plan that had been set for 8 months. Now I'm talking about

1 the inauguration.

2 Q I see.

3 A He was completely off the reservation. And part of the reason, to put it in
4 simple terms, was -- I would be shocked if he had any engagement with the NSSE
5 planning up to January 5th. And then January 6th happens, and he decides -- and it isn't
6 just him; I mean, the Speaker of the House was in this category, and so were a lot of other
7 people -- that it's freak-out time.

8 And I say that derisively because at no point, including looking in the rear-view
9 mirror at January 6th and what happened, was there any possibility that we -- and by
10 "we," I mean the whole Federal Government and the Washington Metro Police and
11 everybody involved in that NSSE -- was underprepared for it. We were thoroughly
12 prepared for it before and after January 6th. The only difference before and after was, a
13 lot of people who paid no attention to that suddenly thought the sky was falling -- or
14 decided the sky was falling.

15 Q So I just want to --

16 A DOD has no idea -- at least the people who were involved in this have very
17 little idea how to engage in civilian law enforcement. And their culture is, quite
18 correctly, that they want to stay away from it, because they're the military, right?

19 And the implication of your question is that there, frankly, is much of an
20 appropriate role for the National Guard in this circumstance of January 6th, and there
21 isn't, and there wasn't. To use the National Guard units, you've really got to be planning
22 ahead. It's not a 911 force. I mean, for the Capitol Police, that's the Washington
23 Metro Police and not the National Guard.

24 Q I think --

25 A And DOD just messes things up when they try to do this work.

1 Q And I think -- putting aside the Ryan McCarthy freak-out comment, I think
2 that is the basis of why DOD, at least, states they did ask for a law enforcement agency to
3 take --

4 A Yeah, that doesn't surprise me.

5 Q Because they know --

6 A Yeah, I'm not doubting it. I just didn't hear it.

7 Q Okay.

8 A And, you know, some of them over there, most of them, understood -- you
9 know, try to understand your own weaknesses? They knew this was not an area of
10 strength. But, more importantly in some respect to some of them, it was an area they
11 didn't want to be in, because it looks terrible for the Department of Defense to be doing
12 civilian law enforcement.

13 Q And just so I'm clear about the Secretary McCarthy characterization, was
14 that -- did you observe Secretary McCarthy at all on January 6th?

15 A No, not on the 6th.

16 Q Okay.

17 A My comments about him were post-January 6th.

18 Q Got it. Okay.

19 So let me just move on then to exhibit 29. I want to be cognizant of time here.

20 A Thank you.

21 Q Exhibit 28, actually, and 29 kind of go together.

22 Twenty-nine is the immediate request from U.S. Capitol Police. And I'm not sure
23 who sent this, but did it -- when did you become aware of the request from Capitol Police
24 for assistance from DHS?

25 A So Director Murray called me sometime after 2 o'clock and informed me that

1 Capitol Police had asked the Secret Service for support and that he was sending it and he
2 was calling me to notify me. Which is all he had to do. He didn't need my permission.
3 And he was already responding to that by mustering officers to fulfill that request, which I
4 validated to him.

5 And that conversation led me to contact Tomney and to -- I don't know how
6 quickly I decided it, but it was only a few minutes -- to make sure all of our law
7 enforcement agencies didn't impose on themselves the step of having to come get my
8 permission.

9 Q Right.

10 A So I went out and affirmatively said, "If you get the request, you can respond
11 affirmatively and send the resources you have available without risking your own
12 mission."

13 Q Great. So I think we see that in exhibit 30, which is you stating, "You have
14 blanket authorization to move appropriate DHS law enforcement to support the Capitol
15 Police." Is that what you're referencing?

16 This is an email from you to Chris Tomney at 2:44 p.m., kind of the --

17 A Yeah. My exhibit 30 doesn't have a 2:44 -- well, maybe it does --

18 Q It's at the bottom.

19 A -- because his is -- it says "1:35" at the bottom.

20 Q It says, "Let me know when/where you need me, but you have a blanket
21 authorization to move appropriate DHS law enforcement to support the Capitol Police
22 without checking with me or AS1. Please keep us up to date." And then --

23 A I'm sorry. I think my exhibit 30 is different than yours.

24 Mr. Luce. They're not on the same page.

25 [REDACTED] Here, let me grab -- oh, which one?

1 [REDACTED] Exhibit 30.

2 [REDACTED] Exhibit 30. Yeah.

3 This will be helpful.

4 Mr. Cuccinelli. Exhibit 29?

5 Mr. Luce. Yeah, it's your 29.

6 Mr. Cuccinelli. So it's my 29. I have it as 29, I think. Yes, that's the same
7 document.

8 Mr. Luce. It says "he's 8 hours ahead" at the top.

9 Mr. Cuccinelli. Yeah.

10 [REDACTED]

11 Q Got it.

12 And then it says -- Chris Tomney responds, "Roger."

13 Then you said, "I assume the Secretary had no problem using any and all available
14 law enforcement, correct? He and I have not talked. It is the middle of the night for
15 him I think."

16 Tomney's response is, "Yes sir...no issue...he's 8 hours ahead." Then it says, "CBP
17 is mustering 47 law enforcement officers at the RRB at this time."

18 What's the RRB?

19 A Ronald Reagan Building.

20 Q Okay.

21 And "FPS region 11 already deployed to Capitol Hill and USSS offering support."

22 So, at that point, I think the time there is 3:15. And we're not certain -- when it
23 says, "CBP is mustering 47 law enforcement officers," they weren't at the Capitol prior to
24 that, correct? They were all at the Ronald --

25 A CBP officers never went to the Capitol.

1 Q Oh, so they didn't even go, the 47? Why is that?

2 A They weren't requested by the Capitol Police.

3 We prepared to move them.

4 Q I see.

5 A We also locked down the Ronald Reagan Building -- but that wasn't until 4
6 o'clock or so -- too, so that we wouldn't have to protect it, frankly -- it's a big
7 building -- and then, thus, free up more officers.

8 Q So CBP never went.

9 A Correct.

10 Q So I'm just trying --

11 A The only -- okay, so let me clarify that. The only two DHS agencies who
12 brought officers to Capitol Hill were the Secret Service Uniformed Division -- well, they
13 may have brought protective people, but even I don't know that. And I didn't need to
14 know that. But they did bring -- because that was purely for the protective mission.
15 They did send a substantial number, as I understand it, of uniformed officers. And I'm
16 dividing the Secret Service there; you've got uniformed and protective.

17 Q Uh-huh.

18 A But they had extra uniformed folks that they mustered. We'll leave from
19 where out. And that was what Director Murray was telling me he was doing.

20 Q Got it.

21 A FPS also sent officers to the Capitol.

22 Q So here's my question. If you look at exhibit 31 -- and I appreciate that.
23 So you're saying, of the DHS components, Secret Service, FPS --

24 A And FPS.

25 Q -- got sent to the Capitol.

1 A Yes.

2 Q Not CBP, not ICE.

3 A Correct.

4 Q So exhibit 31, at 4:06 --

5 A 4:20.

6 Q Do you have this one? 4:06 p.m. at the end, at the bottom.

7 A 4:20:06? Are you sure?

8 Q Oh, yeah, but it's the bottom one. Yeah, I think we're on the same page.

9 The very last, the end --

10 A Yeah, I have that.

11 Q -- yeah -- it says, "FPS has 16 officers on the Hill."

12 A Yes.

13 Q And that's at 4:06 p.m.

14 So 16 officers. Was that the additional FPS officers? The total amount of
15 officers? Are you aware?

16 A I think it's the total.

17 Q Okay.

18 A So they had and offered more, you know, as the day went on, and Capitol
19 Police didn't want them.

20 Q Did you think that was unusual?

21 A I was not tracking down to the "16 officer" level.

22 Q Okay.

23 A I was dealing at the level of telling the head of FPS: Whatever they asked
24 for that you have you can send.

25 And then I don't want to burden my guys in the middle of operations with, you

1 know, coming to me. I track it backwards through Tomney, you know, in ways that
2 hopefully burden the execution of the effort as little as possible.

3 Q Understood. So --

4 A Like, by nature, that means I don't have immediate information, because to
5 get me immediate information burdens the execution --

6 Q Uh-huh.

7 A -- to the point it slows it down.

8 Q Right.

9 A And I didn't want to do that.

10 Q So, just by my account here, then, we don't know how many uniformed
11 Secret Service arrived, but 16 FPS officers arrived. And we're not certain if there was an
12 additional amount or if Capitol Police had said, "No, we're good, that's enough"? Do
13 you know?

14 A Yeah, I don't know if there was additional.

15 Q Okay.

16 A I'm not aware.

17 Q We'll follow up with that then.

18 Now, at this point, I think we're -- this is a 4 o'clock timeline, but, prior to that, do
19 you remember sending a tweet on January 6th?

20 A Yes.

21 Q And the tweet, so the record is clear, at 2:38 p.m.: "For months over the
22 summer we rightly condemned Antifa for storming federal buildings in Portland. If you
23 are entering the Capitol Building against police orders, you must leave. There is a
24 proper venue to resolve grievances. This is not it."

25 A few questions. First is, did your tweet indicate -- or I'm inferring from your

1 tweet, did you mean that you thought that the folks entering the Capitol Building on
2 January 6th were antifa?

3 A No.

4 Q Can you explain the tweet? Why mention the antifa --

5 A Yeah, I can explain it to you. Breaking the law, under all circumstances,
6 regardless of your political views, is wrong; stop doing it. That's it.

7 Q And what prompted you to tweet this?

8 A The hope that anybody would be -- you know, any of the participants
9 would -- that I would be one of others doing this, too, and gradually talk down the
10 situation from many voices.

11 Q When sending this tweet, did you feel that a tweet similar from the
12 President might be more effective than a tweet from yourself?

13 A I was focused on what I was doing and able to do.

14 Q Did you speak to anyone at the White House in this 2:38 timeframe prior to
15 that?

16 A I don't think I talked to anybody at the White House that whole day.

17 Q You don't think, or you don't know? Was there any attempt from anyone
18 at the White House to speak to you?

19 A I remember no contacts or attempts to contact.

20 Q Obviously, you know, you thought it was important for you to send this.

21 "There is a proper venue to resolve grievances. This is not it." Did you believe that the
22 President should've sent something similar to this tweet or say something in terms of an
23 attempt to quell the violence?

24 At that point, it's 2:38. It's right before Ashli Babbitt is shot at the 2:40
25 timeframe.

1 A That was not in any thinking that I recall on that day.

2 Q Well, in your words, you sent the tweet to see if it would make a difference
3 to get people to leave the Capitol. Did you anticipate that the President would do
4 something similar?

5 A No.

6 Q Why not?

7 A Why would I? It's not my place --

8 Q Well --

9 A -- to anticipate that.

10 Look, you're getting -- you want me to trash a situation in a way that you like for
11 witch hunt purposes, and I'm not going to do that. You're asking me what I feel. Give
12 me a break. Come on. Let's just stick to facts, and I'll tell you what I know.

13 Q I take it you would say this is a witch hunt question. My question is, if you
14 took the effort to tweet in an effort to quell the violence, was there an expectation that
15 anyone at the White House would take the similar effort that you did?

16 A No.

17 [REDACTED] May I ask a question?

18 [REDACTED] Sure.

19 [REDACTED]

20 Q Mr. Cuccinelli, earlier, you said that -- I think your first response in
21 connection with this tweet was that you felt that -- or you were hoping that it would be
22 one of many voices, multiple voices, I think you said.

23 A Yeah.

24 Q Did you have conversations with any other folks who would constitute those
25 multiple voices?

1 A No.

2 Q Who did you have in mind when you were thinking there would be multiple
3 voices on this?

4 A Just general public pushback on these folks in the middle of their actions and
5 activity, you know, that would discourage them from continuing down that course.

6 Q But you didn't make any effort to solicit any of those voices?

7 A No.

8 Q Thank you.

9

10 Q Did you have any contact with any Members of Congress that day, on
11 January 6th?

12 A I don't remember talking to anybody from Congress that day.

13 Q Okay.

14 I just wanted to follow up. On exhibit 31, it looks like there was a running roster
15 of who from CBP was there.

16 So perhaps that's the answer, John, that -- and I'll take Mr. Cuccinelli's word
17 that -- CBP has 46 law enforcement officers, ICE has 15 -- that none of those folks went to
18 the Capitol.

19 A They did not go --

20 Q Okay.

21 A -- to the Capitol. Not -- again, not ICE and not CBP.

22 Q 31A I think is additional numbers staged but that did not go.

23 A Yeah. And that's true not just of ICE and CBP but also TSA and even Coast
24 Guard.

25 Q And would Chris Tomney be the person who was talking with Capitol Police

1 about sending the -- I'm just curious as --

2 A The Capitol Police contacts were to agency heads, so Director Murray, head
3 of Secret Service; FPS, similar. And, I mean, this is just my observation. In our
4 Situation Room, I believe our longest-serving liaison was the Capitol Police liaison. He'd
5 been there over 10 years. So he was not a new face or voice or name. The people in
6 DHS knew him; he knew us.

7 You know, so that was part of the purpose of the Situation Room, is so they could
8 see what we were doing and they could make requests right there through him. He
9 could put it in immediately. And they never did that.

10 Q Even though it seemed that it was offered and --

11 A Oh, yeah, yeah. No, that was part of the reason to have a liaison.

12 Q Got it.

13 A And part of the reason to have Situation Room.

14 [REDACTED] So, if we could followup on the name of that liaison, John. I
15 don't know if I should go through you or through [REDACTED], of who the liaison --

16 Mr. Luce. Yeah. Follow up through [REDACTED] and then we'll --

17 [REDACTED] Okay.

18 Mr. Cuccinelli. I mean, your own Capitol Police should be able tell you, too.

19 Yeah, "should."

20 [REDACTED]

21 Q Exhibit 36 is an email -- now we're at the 5:13 timeframe -- where you
22 asked -- in the Situation Room, you wanted information about the role of MPD in clearing
23 the Capitol and investigating the shooting.

24 A Yeah.

25 Q Why?

1 A I'm sorry, which exhibit are you at?

2 Q 36. In the middle of that, it says, "Ken Cuccinelli: No rush, however, if we
3 could get confirmation on the role of MPD in clearing the capitol and investigating the
4 shooting, it would be appreciated. It is odd for MPD to claim jurisdiction over a crime
5 within the capitol."

6 What led to that inquiry?

7 A The shooting and the crimes that were happening there. But -- and it's a
8 jurisdictional question. Is the Capitol Police going to carry forward the investigations?
9 And --

10 Q Uh-huh.

11 A -- obviously, there was at least some information that was not going to
12 happen. And for serious crimes, it's my understanding, as a result of this, that MPD
13 handles serious offenses in the Capitol, not the Capitol Police, for purposes of
14 investigation, not necessarily media response.

15 Q Okay.

16 [REDACTED] The good news is, we're wrapping up here. I just -- I want to --
17 Mr. Cuccinelli. Where are we on the clock? Yeah, I've only got, like, 10 more
18 minutes here.

19 [REDACTED] Okay.

20 [REDACTED]

21 Q You get an additional email from Chris Tomney about, kind of, the update at
22 the end.

23 Were you on any of the phone calls at the end of the day, at 6:00 p.m. or
24 7:00 p.m.?

25 A No, I don't think so. I went over to the Capitol that night. I don't

1 remember what time it was. It was dark, but it was January, so that doesn't tell me
2 much. It was, like, 8 o'clock --

3 Q Uh-huh.

4 A -- I think, that timeframe.

5 Q What led you to do that?

6 A To be able to try to -- it's always valuable to be able to see things in person.
7 I mean, it was that simple. And that's what I was trying to do, to have better context.
8 Obviously -- well, maybe not so obviously -- but, from my perspective, it had been a law
9 enforcement failure that day, which I lay at the feet of the Capitol Police. I haven't been
10 subtle about that. And it's -- but there had to be a lot of lessons there. And it's easier
11 to learn some of the tactical things by going there and being on the scene.

12 And, in fact, that was very helpful. And I appreciate -- I forget the officer, Capitol
13 Police officer --

14 Q I think it was Officer Lloyd.

15 A Lloyd? He was very kind and accommodating and answered my questions
16 in ways that were helpful.

17 And, you know, it was just helpful to eyeball it and understand the role that our
18 folks were playing there. And, also, you know, there's a sub-element of all this, the
19 protective piece of the Secret Service that had its own significance and importance.

20 Q Right. I want to talk briefly about that. It looks like on January 7th you
21 provided a list of topics that you wanted a briefing on, including the role of the Secret
22 Service.

23 A Yeah.

24 Q And what was your concern there?

25 A Oh, it wasn't a concern. It was just having a full understanding.

1 Thirty-three?

2 Yeah. Just the fact that I want a briefing you shouldn't interpret to say that I
3 think something went wrong. In fact, on the protective side, I think Secret Service might
4 be said to have done a very good job. And I wanted to understand it. That's all.

5 Q It says -- and this is exhibit 43 -- "AS2's question is: is also looking for a
6 briefing by U.S. Secret Service on how the U.S. Secret Service protected the VP."

7 Did you get that briefing the next day? This would be January 7th.

8 A I don't remember the briefing, if I got it.

9 Q And what was your concern about --

10 A Well, it wasn't so much a concern. I mean, it was, you know, you could call
11 it management curiosity. All right, how did this go? How do you think it went? By
12 which I mean, what did you do? And now here we are the next day; what would you do
13 differently? Just a quick, snap review.

14 Q Uh-huh.

15 A But not because I had a concern about their response, so much as I was
16 trying to understand it. And, realize, even within the Department of Homeland Security,
17 U.S. Secret Service keeps itself very, very secret. And --

18 Q I'm familiar.

19 A So --

20 Q I just want to be certain. I know you said you did not speak to anyone at
21 the White House on January 6th. Were there any attempts, as far as you know, to
22 contact you?

23 A No, I said that I'm not aware of any attempts in any either direction. I
24 didn't make any that I recall for any contact.

25 Q How about the Vice President?

1 A No. I count him as White House.

2 Q Okay. Even though he was at the Capitol that day?

3 A Yes. Yeah, I'm referring to the personnel. I don't recall at all talking to
4 the Vice President.

5 Q Did you make any attempt to contact the Vice President or anyone from the
6 Vice President's detail --

7 A No.

8 Q -- during the --

9 A No. Oh my gosh, no.

10 Q Why is that?

11 A They had other things to do.

12 Q That's fair.

13 A You know, when you're executing, you've got to -- you know, as much as I
14 was honored to be the Acting Deputy Secretary, I try to be very cognizant of when to stay
15 the hell out of the way.

16 Q Wrapping up here, a question on exhibit 47. This was one that was sent to
17 you. It's an email from January 18th about -- and we spoke briefly about this --

18 A Oh, yeah.

19 Q -- about Secretary McCarthy.

20 A Sheesh.

21 Q And this an email directly to Kash Patel. How do you know Kash Patel?

22 A Well, he was the chief of staff over there at the time, and, obviously, I was
23 the number-two in Homeland Security. And also via his traveling national security
24 position with the President which he had previously held.

25 Q And did you have interaction with him when he was --

1 A Yes.

2 Q Was that at the NSC that he had that position?

3 A I think his formal posting was the NSC. And when I was at his office a
4 couple of times, that's where he was.

5 Q And it says -- this is January 18th -- "Is there anything specific driving this
6 concern" about "FBI fears 'insider attack'."

7 And Mr. Patel states, "Nope, zero intel to support it. Just Ryan doing too much
8 media."

9 A Yeah.

10 Q And then your response is, "It's amazing how such tough soldiers (green
11 beret, right?)" -- that's your reference to Secretary McCarthy?

12 A Yes.

13 Q -- "are so freaking afraid of every shadow regarding public scrutiny."
14 Is this part of your characterization of Secretary McCarthy?

15 A Yes, it is.

16 Q And, again, did you have any direct observation of --

17 A Yes, I did.

18 Q And is that the lead-up to the inauguration?

19 A Yes.

20 [REDACTED] Does anybody have any questions? I don't know if any
21 members are on.

22 [REDACTED]

23 Q I'm cognizant of your time. I just want to give you an opportunity -- you
24 spoke earlier about the non-homogenous mission set --

25 A Yeah.

1 Q Did I say that wrong?

2 A No, you're right.

3 Q -- of DHS. And before I ask you, kind of, my wrap-up question in terms of,
4 prospectively, what you think the committee should consider, whether it's DHS or how
5 January 6th was handled -- I know you said you squarely put the blame on Capitol Police.
6 If you want to expand on that, I want to give you the opportunity to do so.

7 But, before that, I wanted to ask one question, and I'm sorry to go backtrack to
8 the CISA thing. But I just -- I struggled with understanding that white paper concerning
9 the voters in Antrim County.

10 If CISA was only concerned about -- should be only concerned about Federal
11 aspects of election security, why would they do a white paper about a Michigan county?

12 A Presumably because they were asked to.

13 Q By whom?

14 A I don't know. But, I mean, from the emails we looked at before, Bill Barr
15 was looking for it. So maybe he asked for it and they were just accommodating him.

16 Q So --

17 A But you heard me say "maybe," so I'm speculating.

18 Q Okay.

19 A I don't have direct knowledge of that.

20 Q But the exhibit 8 email is an email from you providing it to --

21 A Yes. Yeah. That's right. That's true.

22 Q So what does that mean, that --

23 A Actually, that's not my exhibit 8, but I know which one you're referring to.

24 Q Right. So you're saying, "Brandon's doing briefings today, among other
25 things. So, rather than wait for him to resurface, I thought we should get this back to

1 you."

2 A Even the reference to Brandon probably suggests it came from CISA.

3 Q Correct. So can you just reconcile that for me? Why would they -- why
4 would you be providing --

5 A Well, CISA has expertise on all these areas, including election area. For
6 instance, at the time, Cameron Quinn was there -- if I remember on Matt Travis, he has
7 extensive election experience. And I don't mean Federal; I mean actually conducting
8 elections. Cameron Quinn is another one who was at CISA at the time. In Virginia,
9 she's done literally everything from the ground all the way up to the State Board of
10 Elections. So, you know, they have expertise in-house.

11 So, when I mentioned earlier on the internet front, if problems arise and
12 they -- one of the things they can do is voluntarily offer to assist States. They just don't
13 have jurisdiction to step in and do it. It's not our jurisdiction. We can do it as a
14 friendly, helpful matter, but that's what it is.

1

2 [6:15 p.m.]

3

4 Q Okay. So, if I understand you, the expertise they have about these State
5 matters shouldn't reach a conclusion as Chris Krebs had drawn about the security of the
6 election.

7 A Yeah, we can't draw an agency-based conclusion. So, yes, I would say that
8 you characterized that correctly.

9 Q Okay.

10 As a private citizen, Mr. Cuccinelli, do you have any prospective recommendations
11 for how something like January 6th does not happen again?

12 A Yes. Go 7 or 8 months before and prosecute every violent pro- -- and I'm
13 saying the words "violent protestor." That is an oxymoron. But in that 5 percent of
14 protests we talked about earlier that turned violent, put the kind of prosecutorial and
15 investigatory effort into those situations as soon as they arrive.

16 It was different, and it was different people on January 6th. But, in America,
17 including led by the Speaker of the House and others in Congress, Americans were
18 encouraged to believe that violence is okay sometimes if you have the right political
19 beliefs. And that is what had happened the 7 and 8 months before. That was the
20 environment in which all this took place.

21 Now, I also said to you that this was an incredible Capitol Police law enforcement
22 failure. That is my view of it. They are the first-line defense, and they are more than
23 capable, on a good day, to manage -- doesn't mean by themselves -- but to manage a
24 situation like this. They were woefully unprepared, to an astonishing degree for
25 someone who had previously been closely associated with law enforcement. I was

1 astonished, truly astonished.

2 And, you know, the questions you all asked about our assessments beforehand,
3 we didn't have anything specific. Nobody did. But we were better prepared to
4 manage our responsibilities and to flex to help others with theirs than they were. It's
5 not a competition, but, I mean, they got an F. They got an F.

6 And it's common for people who have no law enforcement experience to say,
7 well, why didn't everybody just come rushing in? If you think of just the uniforms of
8 everybody coming in -- and it isn't uncommon for protestors to wear vests and do other
9 kinds of stuff -- you're inviting friendly-fire situations.

10 The entity with jurisdiction, in this case the Capitol Police, even when things are
11 going badly, is still in charge. So, when they bring people in, when they ask Secret
12 Service to come in and so forth, they're still managing the situation. This is the law
13 enforcement agency version of the first responder at an incident, right? They maintain
14 responsibility over responding to the incident because they were there first. This is the
15 jurisdictional element. And it was a terrible, terrible failure in that respect.

16 I do believe that -- I think everybody who broke the law and committed violence
17 should be prosecuted. I have no problem with that.

18 My problem is, looking back before January 6th, the utter reluctance of State and
19 local officials and many in the Justice Department and the FBI to do the same thing
20 beforehand and set the standard for America, violence is not acceptable, and not call the
21 people trying to do that "Stormtroopers" or, if you're Maxine Waters, encourage the
22 violence, "Get in their face." Statements like that from elected leaders of this country,
23 very frustrating.

24 Q So I just want to unpack that a little bit. The protestors from the summer,
25 if they had been prosecuted in a manner that you thought fit, could have impacted -- less

1 likelihood of an attack on the Capitol? Is that what you're saying?

2 A Yes, but not only the Capitol. And this began with the killing of George
3 Floyd, which was utterly wrong and was an example of one of the bad apples among cops
4 that give all the others a harder time at work. And it was horrible, it was awful, and, you
5 know, justice needs to be done there.

6 But that began a series of violence around the country that wasn't for the same
7 purpose of the protestors, in their own mind, as January 6th, but it was violence,
8 nonetheless, under the umbrella of protest. And it was accepted, meaning the violence
9 was accepted, by large swaths of our political leadership on the left.

10 So you could say that about June and July, because a lot of those comments were
11 about Portland. So you mentioned, "You're casting it on January 6th." I would say it
12 affected the possibility of violence in August and the possibility of violence in September
13 and October and November and December, not just January 6th. It's a national
14 environment, and there was an acceptability established for violence as an alleged
15 legitimate form of protest. And that shouldn't be acceptable to anybody who abhors
16 violence.

17 Q And I think in a prior statement to the Post on the 22nd you said, in regards
18 to the ongoing investigation, that, "in the absence of any effort by the F-B-freaking-I for
19 7 months in going after violent looters and rioters all over the country that we were
20 fighting with and that people like Nancy Pelosi and Kamala Harris are encouraging them
21 to be violent."

22 So that's part of --

23 A Uh-huh.

24 Q -- what you're saying has led up to --

25 A Yes. I mean, they could not be made to put much effort in. The FBI

1 resisted all attempts to apply significant investigatory resources to the violence going on
2 in the summer.

3 Q But I just want to be clear. Earlier, we stated that those protests were
4 largely peaceful, correct, by DHS I&A's --

5 A Those aren't the ones I'm talking about. I'm talking about the 5 percent
6 that were violent.

7 Q Got it.

8 A That's what I'm talking about. Thank you for the clarification.

9 Q Got it.

10 [REDACTED] I have nothing further. Thank you, Mr. Cuccinelli.

11 Mr. Luce. Thank you all.

12 [REDACTED] Thank you, Mr. Luce.

13 Mr. Cuccinelli. Thank you.

14 [Whereupon, at 6:23 p.m., the interview was concluded.]

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Certificate of Deponent/Interviewee

I have read the foregoing ____ pages, which contain the correct transcript of the answers made by me to the questions therein recorded.

Witness Name

Date