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

INTERVIEW OF: MICHAEL SHERWIN

Tuesday, April 19, 2022

Washington, D.C.

The interview in the above matter was held in room 5480, O'Neill House Office
Building, commencing at 10:11 a.m.

Present: Representatives Aguilar and Cheney.

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2 Appearances:

3

4

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

7

8 [REDACTED], STAFF ASSOCIATE

9 [REDACTED], INVESTIGATIVE COUNSEL

10 [REDACTED], SENIOR INVESTIGATIVE COUNSEL

11 [REDACTED], CHIEF INVESTIGATIVE COUNSEL

12 [REDACTED], INDEPENDENT CONTRACTOR

13 [REDACTED], RESEARCHER

14 [REDACTED], CHIEF CLERK

15 [REDACTED], INVESTIGATIVE COUNSEL

16

17

18 For the DEPARTMENT OF JUSTICE:

19

20 KIRA ANTELL

21 JOSHUA GARDNER

22 EMILY LOEB

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[REDACTED] Good morning, everyone.

My name is [REDACTED]. I'm the senior investigative counsel here on the House select committee. Joining me on this side of the table is chief investigative counsel [REDACTED] and [REDACTED], professional staff member.

Joining us by Webex is [REDACTED] and [REDACTED], both investigative counsel, as well as [REDACTED].

Mr. Sherwin, if you could state your name for the record.

Mr. Sherwin. Yes. Michael Sherwin, S-h-e-r-w-i-n.

[REDACTED] We appreciate you appearing here today.

Also present in the room is DOJ counsel Josh Gardner, Emily Loeb, and Kira Antell.

We are conducting this interview in person and on Webex. And I want to make sure that everybody is on the same page as far as exhibits. If members join, they have been provided the exhibits, and we usually share -- show them on the share screen. And you have a binder set in front of you, Mr. Sherwin.

There is a court reporter, who is happily in the room here today, to create a verbatim record. And, with that, I will ask you to give verbal responses. And, although this interview is not under oath, you are required to answer questions before Congress truthfully. And section 18 U.S.C., section 1001, applies during this process.

Obviously, we want you to answer our questions in the most complete and truthful manner possible. And, if you have any questions, ask me to rephrase anything, I'm happy to do so.

You're not represented by counsel, but if you want to consult with DOJ counsel at any point, feel free to do so.

Mr. Sherwin. Okay.

1 [REDACTED]. I also have what I'll mark, I believe, as exhibit 27. Maybe it's
2 28. Twenty-eight is the letter that was provided to you by DOJ concerning the
3 authorization for your -- for this interview today. So I'll mark that and keep that as part
4 of the record.

5 Do you have any questions or comments or anything before we start?

6 Mr. Sherwin. No.

7 [REDACTED] Great.

8 EXAMINATION

9 BY [REDACTED]:

10 Q So, Mr. Sherwin, I just wanted to start with kind of your background. If you
11 could just walk us through your career prior to becoming the acting U.S. attorney in D.C.

12 A Sure. So, briefly, I graduated law school in 1998. I went right into the
13 military, Officer Candidate School. I was designated a line naval officer in the
14 Intelligence Section.

15 In 1999, January, I served overseas in multiple sea service deployments with a
16 fighter squadron as a targeting officer, pre-9/11. When 9/11 happened, I was assigned
17 to the intelligence staff of General Tommy Franks and planned the invasions of
18 Afghanistan and Iraq.

19 After the invasion of Iraq in 2003, I put my papers in to resign. I started a family
20 at that time, and it was difficult being overseas in the Middle East. I was stop-lossed,
21 and I finally got separated in 2004.

22 I clerked for the chief judge in Northern District of Ohio in '04 through '05. Then
23 I went to a small law firm in New York City for about 20 months. And then I went to the
24 U.S. Attorney's Office in Miami. I was hired by Alex Acosta in '07, and I remained at the
25 U.S. Attorney's Office as a lined AUSA in multiple sections -- narcotics, economic crimes,

1 national security -- through 2019.

2 In September -- in September, October 2019, I joined the staff of Deputy Attorney
3 General Rosen as his national security adviser. I also did national security work for the
4 Attorney General Barr. And then Attorney General Barr asked me to move to the
5 U.S. Attorney's Office in early 2020 to assist Tim Shea.

6 I was there as Tim Shea's first assistant, I believe, for about a month or 6 weeks,
7 and then I replaced him as an acting U.S. attorney in early 2020, where I remained as the
8 acting U.S. attorney through March of 2021. And then I went back to Miami in April of
9 2021 and resigned from the U.S. Attorney's Office and Department of Justice.

10 Q That's impressive you did that in one breath basically.

11 I want to welcome Ms. Cheney, who has joined us via Webex.

12 I know you said --

13 Ms. Cheney. Good morning. Thank you for being with us.

14 Mr. Sherwin. Of course. Thank you.

15 BY [REDACTED]:

16 Q I want to go back to 2019, when you joined the staff of Mr. Rosen. At that
17 time, what was Mr. Rosen's position?

18 A He was the Deputy Attorney General.

19 Q Okay. And what was your role there? You said it was national security
20 work?

21 A Yes. I was his national security adviser. So, in sum, what I did was
22 prepare talking points for the Attorney General and the Deputy Attorney General when
23 they would serve on the National Security Council as principals.

24 At that time, we were doing a lot of sanctions work related to Venezuela and the
25 Iranian issue. Also dealt with other issues that I won't get into -- significant national

1 security matters. Also did a lot of FISA applications for the Deputy Attorney General and
2 the Attorney General approval of CI and counterterrorism FISA intercepts and also was
3 the lead investigator for the terrorist shooting in Pensacola in December of 2019 through
4 January 2020.

5 Attorney General Barr sent me there to run the terrorism investigation related to
6 the shooting of al-Shamrani, the Saudi national.

7 Q I see. So you did that work after your bit in D.C.? I thought you did that
8 while you were --

9 A No. I was assigned on a special assignment from the Attorney General --

10 Q I see.

11 A -- to go to Pensacola and run that counterterrorism investigation. So I was
12 still assigned to -- I think technically I was assigned to OAG at that time --

13 Q Uh-huh.

14 A -- loaned out to the northern district to run that investigation.

15 Q I see. And what type of work did you do in Florida?

16 A In Florida, I started, like all Miami Federal prosecutors, in narcotics, did a lot
17 of work in Colombia and Mexico related to the cartels.

18 Then I moved, after a couple of years, to the Economic Crimes Section. I was the
19 chief of the Healthcare Fraud Section and also Securities Fraud Section, did a lot of
20 government contract fraud cases.

21 And, my last few years, I focused on national security cases, mainly
22 counterintelligence related to Venezuela, Cuba, and China.

23 Q Okay. So that national security experience kind of put you on the radar for
24 Mr. Rosen?

25 A Yes. I did a lot of -- by virtue of my background in the military before I

1 became an attorney, I did a lot of counterintelligence work, even as a junior AUSA related
2 to Cuba and Venezuela, which is a hot issue in south Florida.

3 Q Right.

4 A So, yes, my experience with FISA litigation, using FISA intercepts. And I
5 focused a lot on China and counterintelligence. That was a big issues obviously, or still is
6 a big issue. And that's why there was a need for me, or they requested my presence to
7 assist them at Main Justice in 2019.

8 Q Thanks for that background. So you worked for Mr. Rosen, and then for
9 how long before you were appointed as first assistant under Tim Shea?

10 A So relatively short tenure. So probably -- so we're talking September,
11 October through -- I chopped over, I think, unofficially in February. The paperwork is a
12 little murky, but --

13 Q Uh-huh.

14 A -- several months. And then I chopped over to the U.S. Attorney's Office.

15 Q In February, you started as first assistant. I think you were appointed in
16 May as the acting. Is that right?

17 A I -- frankly, I don't remember the details with the paperwork, but that
18 timeline comports. I thought it was February, but --

19 Q That's what Wikipedia says, is May of 20 --

20 A I think it may be a little earlier, but --

21 Q Okay.

22 A -- it's all very similar.

23 Q But, in any event, you'd been at the D.C. U.S. Attorney's Office pretty much
24 the beginning of 2020?

25 A That's correct.

1 Q Okay.

2 A That's correct. About a full -- about a full year. It seemed much longer,
3 but about a full year.

4 Q Great. And we spoke informally before this --

5 A Yes.

6 Q -- and one of the topics I wanted to ask you about was the role of the D.C.
7 U.S. Attorney's Office during the summer and how that extended into January 6th
8 obviously because you were the Acting U.S. Attorney during that whole period of time.

9 So if we just start with kind of the end of May and when -- the murder of George
10 Floyd was May 24th, and kind of the protests built up. When did it first come onto your
11 radar that this is something that the District was going to have to deal with?

12 Mr. Gardner. The Department objects. This is beyond the scope of the
13 authorization.

14 [REDACTED]. Okay. So we have established that there was a number of
15 lessons learned for a number of different agencies, DOJ included, about the events of the
16 summer and how that impacted the decisionmaking for the events of January 6th. So
17 we do believe this is part of our mandate, particularly with the intelligence assessment
18 and the security preparations, which is really the core of our inquiry of Mr. Sherwin.

19 Mr. Gardner. Understood. And if you wanted to ask him, you know, what went
20 into his thinking on January 6th based on previous events, I think we could let that go
21 forward, but I think, if you're asking directly about his involvement prior to the events on
22 January 6th, we believe that's outside the scope.

23 [REDACTED]. Okay. So I'm going to ask it the way I asked it before.

24 BY [REDACTED]:

25 Q Go ahead.

1 A So I think I could meet both demands from both parties here.

2 So, yes, I guess it's fair to say that, from an architecture standpoint, how I was
3 trying to run the office and deal with the situation in January of 06 -- a lot of those lessons
4 were related to how we set up the architecture of the summer of 2020, from a manpower
5 staffing perspective, if that's what you'd like to inquire about.

6 Q Sure. That would be great.

7 A Okay. So, look, I guess, in terms of dealing with -- it was a -- it was
8 a -- there were a lot of things going on in the District obviously starting that last weekend
9 of May, you know, through the full summer -- through spring, summer, autumn, and into
10 the winter. That set the table, I think, for a lot of the issues we saw in January. I don't
11 think it's -- you could divorce the two -- you can't divorce early 2020 from 2021. I think
12 it would be foolish to divorce the two.

13 From an architecture standpoint, I tried to run it from a staffing perspective, that
14 we would, several days out -- the events at that first week, that last weekend in May
15 obviously happened very quickly, but we soon knew that this was going to be an ongoing
16 situation with these fence post or spike events when there would be major rallies every
17 several months or every few weeks, or events. So what we tried to do was set up -- I
18 tried to set up teams that would be on 24-hour staffing starting at least 72 hours
19 beforehand.

20 For example, if an event was going to take place, a rally on January -- July 4th, I
21 would have my first assistant, my criminal chief, and all my section chiefs, especially
22 superior court chief -- we would start, at minimum, twice-daily update calls, usually 8 in
23 the morning and 8 in the evening, where I would ensure that there was a duty roster of
24 AUSAs that were on duty 24-7 to enable us to support MPD and our Federal partners with
25 warrants, subpoenas, and arrest warrants.

1 And I also wanted to make it clear that -- look, one of the criticisms that I heard
2 from the Police Chief Newsham all the way through Chief Contee was there was always
3 this disconnect between, I think, the U.S. Attorney's Office and MPD going back to how
4 cases are charged, you know, what's a sufficient level of evidence? And this is kind of an
5 ongoing saga that went on for probably decades, going all the way back to 2016, the
6 inauguration, when there were significant issues with arrests and how rioters and
7 protesters were treated.

8 So I listened to Chief Newsham and Chief Contee, and what we did was we had
9 AUSAs stationed at the JOC, the J-O-C, the Joint Operations Center at MPD. And then
10 we would have AUSAs on patrol, sometimes with MPD, to include myself, throughout the
11 summer and spring and then on January 6th, because one of the criticisms was: Look,
12 you guys could criticize how we do arrest warrants, but if you don't see what we're
13 seeing, it's easy to criticize.

14 So I said: Okay. Fine. We'll do the patrols with you.

15 So that was part of that staffing, those calls. Who was going to be on duty?
16 Who was going to go on patrol? Do we have enough staffing to do a surge in arrests or
17 arrest warrants?

18 And I guess the one caveat here was it was a little difficult because this is the
19 surge in COVID. This was the ground zero time. 2020 was the -- obviously the crux of
20 COVID, when there was a spike in significant, you know, COVID cases throughout the
21 District. So, you know, there was a very fine balance between what people to put on
22 duty, where they should be located, you know, can they be virtual? Do they have to be
23 in person? So these were all personnel issues.

24 So the main lessons learned was, several days out, having these coordination calls,
25 staffing AUSAs in person at the JOC at MPD, at our offices ready to go, 24-7 duty roster, in

1 addition to, if the event was significant enough, I would personally be at WFO staffing for
2 the U.S. Attorney's Office with -- my first assistant would go back and forth, but I was
3 usually there probably 18 hours a day if it was a significant event. I would be there right
4 there with the ADIC, which changed hands between 2020 and 2021.

5 Q Got it. So let me just go through that a little bit.

6 A Sure.

7 Q And you spoke primarily about internal coordination --

8 A Yes.

9 Q -- you had within your own office and WFO.

10 Your first assistant at the time was [REDACTED]. Is that right?

11 A That's correct.

12 Q And he was present on January 6th as well?

13 A Yes, and throughout the full of 2020.

14 Q And the ADIC at the time at WFO was Steve D'Antuono?

15 A That's correct, but there was a prior ADIC, and his name is escaping me here,
16 another gentleman that I worked with over the summer of 2020. The name will come to
17 me. But Steve D'Antuono, I worked with on January 6th primarily. The other ADIC,
18 who left, I can't recall his name. He is the one I worked with over the summer of 2020.

19 Q When did this coordination internally begin, and how involved were you
20 with kind of the interagency coordination, your Federal part?

21 A So it started immediately. I mean, this was kind of unprecedented for the
22 District, probably something not seen since maybe the 1960s, since the Vietnam protests,
23 a prolonged cadence of protests. Obviously, there have always been spikes of protest
24 activity through inaugurations or through significant, you know, social type events.

25 But there was never a long cadence of protests, probably unmatched since the

1 Vietnam War. So this was kind of new territory. So, starting that first weekend, when
2 there were significant protests outside the White House in May -- excuse me -- yeah.
3 May. May 30th, 31st --

4 Q Uh-huh.

5 A -- Friday, that first evening -- I'm sorry. I don't remember the
6 calendar -- where there was significant activity outside the White House.

7 Q You're right. That's the timeframe.

8 A Yes.

9 Ms. Loeb. So I think we'd like to object at this point. Having the specific details
10 of what happened in the summer protests does not seem in any way related to
11 January 6th.

12 [REDACTED]. I can explain to you how it is related.

13 Obviously, he's talking about coordination calls before a big event. That's exactly
14 the kind of architecture that Mr. Sherwin talked about that applies to January 6th.
15 What happened before January 6th and did not happen, that's kind of -- this is a -- a
16 roadmap that occurred during the summer that could or could not have been applied for
17 January 6th preparation.

18 So we're just trying to draw that direct line as to what happened for the
19 preparation, which obviously Mr. Sherwin said it best himself. You can't divorce the
20 two.

21 Ms. Loeb. So, if you'd like to ask about the specific cadence of calls related to
22 January 6th and if that differed, then I think that that would be more within the scope of
23 the authorization that the Department has provided. But details about this day or that
24 day, 5 months before, is beyond the scope of the authorization, which obviously is time
25 bound, as you can see.

1 [REDACTED]. Okay. Well, I don't know how bound we are by the
2 authorization letter to ask these questions, so I will ask them, and Mr. Sherwin can make
3 that choice whether he wants to answer them. But it's critical as to what the events
4 were for the -- for January -- for the summer and in terms of DOJ preparations, and how
5 that impacted the 6th. So I'm going to continue on this line of questioning.

6 Ms. Antell. I'll just note, Mr. Sherwin, if you would find it helpful to speak with
7 us briefly so that you can better understand the scope of what we considered was in the
8 authorization. We're happy to step outside for a moment and do that.

9 Mr. Sherwin. Look, I think I understand where both parties are coming from. I
10 don't want to sound selfish, but I want to expedite this, and I want to give the committee
11 what it needs. And I also want to -- I mean, look, I'm an alum of the Department of
12 Justice. I don't want to intrude upon the equities of the Department, so maybe let me
13 recalibrate my questioning, and hopefully I could meet the middle road here and maybe
14 go more to the 30,000-foot level without specific details. Let's see if that answers the
15 committee's questions. And, if not, we could relook.

16 So all right. Let's talk about intelligence sharing, information sharing in general
17 over that time and how that shaped January 6th. So that's a good question, and I think
18 that's critical for what you're looking at.

19 Look, as the U.S. attorney, I would be in daily -- I don't have my phone records, but
20 if you pulled my work phone, there is probably a litany of daily calls between myself and
21 the ADIC. And, again, I -- Kevin -- I can't remember the gentleman's name -- over the
22 summer, and then January 6th with Mr. D'Antuono.

23 He was -- that is your main -- as the U.S. attorney, your main partner is usually in
24 the Bureau. They're the eyes and ears of the Federal agencies. They have the
25 resources. They have the manpower. They have the intelligence directorate. That

1 really, you know, is the -- is the bedrock of law enforcement, at least Federal law
2 enforcement, especially in the National Capital Region. So, Mr. D'Antuono and I, on
3 January 6th and then before, were, you know, peas in a pod, speaking all the time.

4 Now, in terms of communication with MPD, January 6th was similar to the
5 summer of 2020. [REDACTED], he's a longstanding AUSA in the District. That's why I
6 assigned [REDACTED] as my first assistant because I think a 20-plus- year alum of the office,
7 very close ties to MPD, which is critical -- the U.S. Attorney's Office in D.C. cannot function
8 without a good relationship with MPD.

9 So it's critical to have a good liaison with Chief Contee, and then Chief Newsham.
10 And [REDACTED] served as that conduit. I would also -- I would often be the primary
11 conduit to the Bureau, and [REDACTED] would serve as the primary conduit with MPD.

12 Now, with ancillary agencies, I would often leverage the Bureau to take care of
13 that. Look, I was in daily -- sometimes weekly, if not daily, contact with ATF and DEA
14 leadership. But my primary function -- my primary partner was the Bureau. And then,
15 in terms of passing intelligence information, it would be the Bureau architecture.

16 There is a joint terrorism task force, which I'm sure the committee has heard a lot
17 about over the past year, how that serves as a primary conduit of pushing out intelligence
18 to MPD, Capitol Police, you know, local, municipal law enforcement agencies. I would
19 not personally sit on those bodies. We had designee reps. But, again, most of my
20 primary detailed information directly was with the ADIC.

21 BY [REDACTED]:

22 Q Okay. So, internally, it's Steve D'Antuono briefing you.

23 A Yes.

24 Q And then above you with Mr. -- with Attorney General Barr at the time.

25 Would it be David Bowdich briefing him with the same information?

1 A That's a good question. It's hard to peel. It's not that -- it's not that -- the
2 piping is not that simple. So Mr. Barr was a massive consumer of information. He
3 would look -- go to multiple sources. I was obviously a primary source. He would call
4 me directly, or his staff or his secretary would call me directly with assessments. But he
5 would also speak directly with Mr. Bowdich, the Deputy Director.

6 Q Uh-huh.

7 A He would also speak directly with Christopher Wray.

8 So he is someone that, if he wanted information, he would call them directly. He
9 did not use layers of -- for example, if Mr. Barr wanted information quickly, he would not
10 go through maybe the traditional architecture of going through the ODAG and tasking
11 someone to do a position paper or get -- he would want to know directly what that
12 information is.

13 Mr. Rosen was more -- a different style of leadership that was more -- I don't want
14 to say traditional, but more -- would leverage more the ODAG office to serve as that
15 pipeline, if that makes sense.

16 Q And the ODAG at the time for January 6th was Rich Donoghue?

17 A That is correct.

18 Q All right.

19 A So Mr. Donoghue, January 6th, if -- he would reach out to me, but Mr. Rosen
20 also directly reached out to me. But Mr. Donoghue would reach out to me for
21 information where, with Mr. Barr, it was more directly. He wanted actionable
22 intelligence or information very quickly, so he would just call me, where Mr. Rosen would
23 use, again, more the architecture of ODAG to get information.

24 Ms. Antell. Can I just reiterate, again, you know, I certainly understand your
25 interests in the events of the summer. I think what we've now heard is different styles

1 of leadership between then Attorney General Barr and Acting Attorney General Rosen,
2 and I'm not sure, again, the extent to which that sheds any light on January 6th. So
3 what might be helpful --

4 [REDACTED] Well, I can explain how.

5 Ms. Antell. Please.

6 [REDACTED] Sure. So there is a -- two different versions of who was the
7 lead Federal agency on January 6th. So part of this is understanding the leadership
8 styles and the semantics of what that phrase means.

9

BY [REDACTED]

10 Q Mr. Sherwin, I think, from that experience in the summer, is it fair to say that
11 it was seen that Mr. Barr was the lead coordinator for the events?

12 A Look, I don't want to put a label on it, but I will say, look, his leadership style
13 was more -- he would reach out directly for information. He would not leverage
14 sometimes ODAG. He wanted information very quickly so he could make a decision,
15 where Mr. Rosen's leadership style was different.

16 But I don't know -- I don't want to make a supposition, putting that label, the lead,
17 you know, coordinator. It gets a little complicated, even on January 6th, because I think
18 there is competing equities with DOD and --

19 Q Uh-huh.

20 A -- Esper vis-à-vis the AG, you know, like these are big-picture questions that I
21 think we have a lot to learn from, how those monsters can -- can cooperate and work
22 together -- not in a derogatory fashion, monsters, but just institutionally, these huge
23 monoliths, how they could coordinate properly.

24 So I think it's hard to put that label on it, because, frankly, you know, looking back,
25 I don't even know who the lead was in terms of all full resources, because

1 you -- there -- this monolith with DOD assets and DOJ assets, and local assets. So that's
2 hopefully --

3 Q Are you talking about for January 6th?

4 A Yeah. January 6th.

5 Q Okay.

6 A Correct. Correct.

7 Q Did you attend a meeting on June 1st at WFO where it was -- as has been
8 described to the committee Mr. Barr was essentially coordinating the other Federal
9 agencies, meaning Park Service, DHS? It appeared that he was kind of more hands-on to
10 making that --

11 Mr. Gardner. Yeah. I'm going to lodge another objection. That is, again,
12 beyond the scope of the authorization. You can ask him questions about --

13 [REDACTED] Not beyond the scope of the mandate of the House inquiry, so
14 I'm going to ask Mr. Sherwin.

15 Ms. Antell. It might be -- can we go off the record for just a moment?

16 [REDACTED] I mean, my questions about this are wrapping up. So I'm
17 going to segue into January 6th. So I think we can -- if Mr. Sherwin could answer that.

18 Mr. Sherwin. Look, throughout the summer, Mr. Barr was extremely hands on
19 with Federal resources. Park Police is a Federal resource, DEA, ATF, yes. I mean, those
20 are his assets, and he wanted to know where they were and how they were deployed.

21 BY [REDACTED]

22 Q Do you remember if you attended that June 1st meeting at WFO?

23 A Look, I attended a lot of --

24 Q Okay.

25 A I was at WFO -- I was parked there for weeks on end, and, yes, Mr. Barr was

1 at WFO with other -- with Mr. Wray and other individuals, so --

2 Q Frequently?

3 A Yeah. Yes. I mean, he was -- yes. I saw him more than once with
4 Mr. Wray at WFO.

5 Q Before we get into more kind of the --

6 [REDACTED] Did you have anything?

7 [REDACTED] On the summer?

8 [REDACTED] Yeah.

9 BY [REDACTED]

10 Q Just the general question, Mr. Sherwin. If you had to kind of distill down
11 what you -- collectively you, the Department, learned from the summer of 2020 protests
12 that informed preparation for or response to January 6th, what would those lessons be?

13 A Personally, I can't speak on behalf of the Department, but I can personally
14 tell you --

15 Q Yeah.

16 A -- that the biggest takeaway -- even before January 6th, the biggest
17 takeaway I would take from a leadership perspective was there was a lot of confusion. I
18 think I opined on this earlier about the interplay between DOD assets and DOJ assets.

19 Q Uh-huh.

20 A I think that's critical to understand going forward. And the District makes
21 more complicated, because you have the Mayor. You have who -- who controls what
22 asset and what is the -- you know, how do those lines of communication exist?

23 I think there were a lot of uncertainties in 2020 that carried over into January 6th
24 about the give and take and how they work and cooperate and work together, and who is
25 the operational commander when those assets are being used in a law enforcement type

1 of a scenario. I think those are important questions, and I think they're complicated.
2 And that was a significant impression I personally had over the summer.

3 Q You're -- absolutely. Very significant.

4 Was there any lessons that you learned or understanding of how those assets
5 ideally interacted, lines of authority potentially were divided, that, from the summer
6 events, were -- mattered with respect to getting ready for and then responding to the
7 events at the Capitol?

8 A Look, I know -- I know that -- I had never participated in any planning or drills
9 or tabletop exercises with the National Guard and the Federal law enforcement, you
10 know, authorities. But I think those tabletop exercises need to be assessed: Were
11 they really on the mark, and how could they be improved, and what are the red lines for
12 employing military or National Guard assets, and who has the authority to move the
13 troops when those red lines are met?

14 And I think that was a lot of unknowns, you know, in 2020 through January 6th,
15 that speed is of the essence in some circumstances, and I think blurred lines of
16 communication and authority really hindered maybe some responses.

17 Q Okay.

18 A Again, that's my personal observation.

19 Q Right. How about relationships? Were they forged, or somehow the
20 relationships from the summer or the -- having gone through that experience together, as
21 leaders of these respective components, that help potentially --

22 A Yeah.

23 Q -- as you were getting ready for January 6th?

24 A Look, I -- I could speak upon the two main relationships. I think we had a
25 wonderful relationship with the FBI and a very good relationship with MPD, very tight.

1 And that exists, I think, through today.

2 Relationship with Capitol Police was more diffuse. We would rely upon the joint
3 terrorism task -- JTTF and our Bureau partners to liaise with them. So, again, the two
4 pillar partnerships, the Bureau and MPD, I think, were extremely strong.

5 And the relationship, I think, with the National Guard was -- I don't want to say a
6 back seat, but not a primary type of a driver because I think of the unknowns with DOD
7 and the Mayor. And we would always ping MPD if we wanted intel about the National
8 Guard, or sometimes we would go direct, but most of the time we were relying upon our
9 partners to give us an update because it's kind of -- I think it's kind of like a hot stove.

10 With DOJ, you don't want to -- you want to be careful, I think, trying to
11 operationally move DOD or National Guard assets because it's obviously outside of that,
12 you know, direct chain of command, so --

13 Q And then, finally, how about public criticism or praise of the response in the
14 summer? Was that discussed, or did that influence the planning for January 6th?

15 A No, not at all. Not from a prosecution standpoint. I can talk from 30,000
16 feet. So we definitely -- how we prosecuted cases -- and I'll just speak at a high level the
17 January --

18 Q Just to make clear, we're not interested in granular details of --

19 A Okay.

20 Q -- investigations, prosecutions, anything. I'm talking really more about intel
21 assessment, preparation, that sort of thing.

22 A Putting aside -- look, we -- we don't -- we don't produce intel. Even though
23 we do have officers, we don't produce organic intelligence, you know, reports and push
24 to -- we consume intelligence in terms of -- so we can prosecute cases.

25 So, look --

1

BY [REDACTED]

2

Q The "we" meaning the U.S. Attorney's Office?

3

A Yes. I'm sorry.

4

Q No, go ahead.

5

A So, look, 2020 through January 6th, I think, in general, what you're seeing is

6

it's a new wave of law enforcement, how you have to operate.

7

And, look, the Bureau, I think, traditionally, you're only as good as your

8

undercover sources and your covert sources, but nowadays, or the past several years,

9

with the proliferation of social media, it's critical to have a very robust intelligence

10

directorate that mines open-source, social media because this is a new phenomenon.

11

And I think the Bureau is learning that. And this is something we saw over the

12

summer with a lot of violent groups, and leveraging that intelligence through open

13

source -- you know, open and notorious types things that bled into January 6th, and I'm

14

sure this is something the Bureau is trying to address because I think, traditionally -- and,

15

again, I'm just speaking personally. I'm not speaking on behalf of the Bureau. But I

16

think maybe the Bureau or Federal law enforcement looks down on a lot of social media

17

type drivers or open-source drivers of information that maybe they're clownish, or, you

18

know, it's all just unverified -- and a lot of it is, okay?

19

But I think there has to be a more robust attention given to data mining in the

20

social media realm and really leveraging -- maybe even building partnerships with some

21

groups, you know, to better assess open-source intelligence.

22

BY [REDACTED]:

23

Q Appreciate that last thing. And we'll, at the end, want to hear more, sort of

24

prospectively, about things like that that you think might inform recommendations, right?

25

Part of the select committee's mandate is to look back at what happened, but we're also

1 trying to look ahead at what should happen or what could be done better. So your
2 thoughts on that, we'll get to.

3 But, just on the specific question of mining of open source or assessing danger, did
4 anything that happened in the summer, maybe or not happen in the summer, somehow
5 inform readiness for focus on those kinds of sources and operationalizing intelligence
6 before January 6th?

7 A Look, without going into details, were there some individuals who we were
8 able to focus on or the Bureau that passed to us that we prepared for arrests? Yes.

9 Q Uh-huh.

10 A That happened over the summer of 2020.

11 In terms of preparing for January 6th, was the Bureau data mining air travel, hotel
12 occupancy, Greyhound travel? Yes, to see what the inflow is going to be. So they
13 do -- I don't want to denigrate their abilities to do that. I just think it needs to be more
14 robust, and I think we could learn from that. The Bureau and the Department could
15 learn from it.

16 So, yes, we did score some victories in terms of individuals that were tracked, and
17 also individuals that we then ended up arresting, without going to detail. But obviously
18 there are a lot of circumstances that, you know, hindsight is 2020. You're playing
19 Monday morning quarterback where people did put things online --

20 Ms. Loeb. And I think that's the extent of it from our perspective. We want to
21 be very mindful of local court rules about ongoing criminal cases, not just the
22 Department's authorization when we get close to the cases.

23 Mr. Sherwin. Yeah. This is extremely general terms.

24 [REDACTED] Yes.

25 Mr. Sherwin. You can't delineate -- you have a thousand years any specific case,

1 but, yeah, you could learn several lessons in terms of individuals that, yeah, did post
2 things online that, you know, we used that as a sword against them in charging
3 documents.

4 BY [REDACTED]:

5 Q I appreciate that. And I'll just say, as a general matter, we are, as I said, not
6 interested in diving into specific cases, or --

7 A Sure.

8 Q -- investigations --

9 A Sure.

10 Q -- pending or otherwise.

11 A Sure.

12 Q Right? That's really not what we're interested in.

13 We are interested, though, in process, in assessing degree of readiness, intel
14 gathered, operationalized, all those kinds of --

15 A Right.

16 Q -- sort of process issues.

17 A Sure.

18 Q So keep that in mind as you go forward that we're really not looking for,
19 "Hey, we looked at Mr. Smith because of travel," right? That's not really --

20 A Yes.

21 Q That's almost too granular, if that makes sense.

22 A Yes. No. I don't think I've mentioned one case name or --

23 Q Okay. Good.

24 A -- am about to do so.

25 [REDACTED]. I'm sorry, [REDACTED].

1 BY [REDACTED]:

2 Q I just want to pick up on that open source aspect that you just talked about.

3 Did you feel that, in your relationship with the Bureau from the summer on, that
4 the -- kind of the pace of information you were provided was kept up from the summer?

5 A I think it increased. I'll say that. I think it was -- yes. They definitely got
6 their sea legs and plussed up resources; yes, they did.

7 Q And you felt that as you entered -- going into the 6th?

8 A Yes. Yes.

9 Q And we'll talk specifically about some information that you received --

10 A Sure.

11 Q -- through the Bureau, but just before we leave the summer, I just want to
12 close the loop on one thing about the National Guard. It sounds like, during the
13 summertime, you guys didn't have a direct communication with the National Guard and
14 went through JTTF. Is that --

15 A There were -- well, look, there were some -- I'm not going to name names
16 unless I'm authorized to. There were some individuals at ODAG and in NSD that had
17 direct contacts with --

18 Q Uh-huh.

19 A -- some National Guard people that I know had phone calls and emails.

20 Q Great.

21 A I did not have a direct contact with the Guard.

22 Q And we talked, I think, informally about the complexity of these
23 different -- of the NCR and --

24 A Yeah.

25 Q -- the Capitol is guarded by the Capitol Police. There is the Park Police.

1 That coordination, which then sprinkled in National Guard for the summer as well as
2 January 6th -- during the summer, who was coordinating the law enforcement nature of
3 the National Guard's activity?

4 A Look, that's a good question. I think it was similar to the 6th, so the -- the
5 nerve center for -- in terms of operational intelligence on the 6th was WFO, our watch
6 floor. And the National Guard had a representative there so they could share
7 information and then share operational intel, like we have 40 people posted at this
8 intersection, you know, MPD is getting overrun at this intersection.

9 Q Uh-huh.

10 A We need a Humvee to block this intersection.

11 So that served as the -- there was always at least -- there were several National
12 Guard reps there, but there was always one on 24-7 duty. I just -- it would rotate, so --

13 Q Got it. For the summer and the 6th?

14 A Correct. Yes. That's correct.

15 Q Were you aware of any attempt to federalize the MPD during the summer?

16 A Federalize?

17 Mr. Gardner. Same -- same objection. Beyond the scope of the authorization.

18 BY [REDACTED]

19 Q If you're aware or not.

20 A I don't -- there was -- I remember tidbits of federalization of individuals. I
21 don't remember MPD, though.

22 Q Okay.

23 A I don't remember that specifically, no.

24 Q And, as [REDACTED] brought up, kind of the relationships that were built up over the
25 summer, this is one thing that we've learned in the investigation kind of carried over in

1 the summer, so -- carried into the 6th. So were you in contact with Mayor Bowser
2 during the summer?

3 A Yeah. We had a few calls, but most of the time -- look, we had
4 disagreements with individuals to be charged, so we didn't personally speak. We had
5 several disagreements -- public disagreements over the summer. But my
6 representatives were in direct contact with her representatives, yeah.

7 Q It sounds like you were in direct contact with the police chief at the time?

8 A Yeah. Mr. Newsham and I -- Chief Newsham, and then Chief Contee, we
9 had -- again, [REDACTED] was my primary conduit with MPD.

10 Q Uh-huh.

11 A But I also had significant direct communication with Mr. Contee on
12 January 6th, and Mr. Newsham throughout 2020.

13 Q And I think Mr. Contee's, like, first day as the chief was the 6th, actually.

14 A Yeah. It may have been, but he was -- I was working always working with
15 him. I knew him through --

16 Q Right.

17 A He wasn't new. He was, you know --

18 Q He was the first assistant --

19 A Correct.

20 Q -- on the plan? Okay.

21 A So we had a good working relationship.

22 Q Right. Did you have any contact with the White House during the summer?

23 A None. It was -- none, fortunately.

24 Mr. Gardner. It's --

25

BY [REDACTED]

1 Q I want to segue into kind of the intelligence that we just talked about before.
2 If -- there were kind of -- as we head into after the summer, there are the two rallies in
3 November and in December with the million MAGA march, November 12th and
4 December 14th.

5 Were you involved as far as -- there were a couple of arrests during those
6 incidents and -- in preparation and coordination for those two events?

7 Ms. Loeb. So I think we would object to those questions about arrests made in
8 general. I'm not sure the relevance --

9 [REDACTED] It's not about the arrest. It's about the coordination and
10 preparation for those two rallies.

11 Mr. Sherwin. I think it was similar to what I articulated early. I don't --

12 [REDACTED] Okay.

13 Mr. Sherwin. -- think there were any different outliers.

14 BY [REDACTED]:

15 Q Do you remember if there were incidents of violence during those two
16 rallies?

17 And, again, the big picture here is how those two rallies impacted your
18 preparations for the 6th.

19 A I'm sure there -- if there were arrests, I'm sure there was assaults. I don't
20 want to guess. I don't have their records, but I think those -- yes. I'm sure there were
21 arrests, and some of them involved assaults.

22 Q Okay. Why don't we take a look at exhibit 1 --

23 A Sure.

24 Q -- in your binder.

25 Ms. Loeb. So, before we get into exhibit 1 -- and thank you for sharing these

1 documents prior to the interview -- I think we just want to articulate where the
2 Department of Justice believes -- we've obviously produced these documents to the
3 committee, and these documents speak for themselves.

4 Getting into discussion about specific groups or individuals is far beyond the scope
5 of the authorization and may implicate ongoing cases and prosecutions, including issues
6 that could impact local court rules as well. So I would like just to be very careful about
7 what Mr. Sherwin is asked and answers about documents like this.

8 Mr. Sherwin. Okay. Okay.

9 [REDACTED]. I -- as we go into the exhibits -- and I understand you guys are
10 going to make your record -- I think we are all aware of what the parameters are about
11 open cases, and I'm sure Mr. Sherwin is incredibly disciplined when he will speak with us
12 and will not get into any specifics. But we are going to talk about the intelligence that
13 was received in exhibit 1.

14 BY [REDACTED]:

15 Q So, if you take a look at that, Mr. Sherwin, this is December 1st, and it looks
16 like it's preparations for the December 12th rally. There are, you know, a number of
17 Parler posts, as well as kind of a summary from the SITE Intelligence Group.

18 Are you familiar with that group?

19 A Yeah. Yeah. That's, I think, a public -- I believe public interest group with
20 open-source fusion of intelligence.

21 Q Looks like there is a couple kind of summary emails that are sent
22 through -- it's likely [REDACTED], the acting --

23 A Yes.

24 Q -- chief of the Counterterrorism Section --

25 A Sure.

1 Q -- but it's kind of pushed up to you.

2 I have a couple of questions kind of about these outside nonprofits that are
3 providing information to you, and I can show you the exhibits. But, just, generally
4 speaking, is that one source of information that you were receiving, and would it come, as
5 we see here, directly to you, or would it come through the Bureau?

6 A Look, that's a good question. And, just focusing on January 6th without
7 earlier than that, look -- look, as a former intelligence officer, I'm always going to -- any
8 information is good information as far as I'm concerned. And sometimes former
9 colleagues of the office or just public interest groups will try to push us information, and I
10 would always accept it, or my first assistant would get information and push it up to me
11 or push it to NSD or the Bureau.

12 So we didn't make an assessment. If we got it, we just tried to push it and not
13 really sit on it, if that makes sense. So, look, any information is valuable as far as I'm
14 concerned.

15 Q So what do you do with it? You as, like, someone who is -- also, this is sent
16 to Mr. Donoghue, the ODAG's office, and I can give a number of different examples. But
17 I'm just wondering -- some of it is then -- you forward on to the Bureau, correct, and we
18 have an example of that?

19 A I mean, yeah, I don't -- this happened probably often.

20 Q Uh-huh.

21 A I mean, if I didn't formally forward it, you know, I would, you know, speak to
22 either the ADIC about it, so --

23 Q And, during -- it sounds like you had received SITE reports prior to
24 December 1st. This is obviously not the first one?

25 A Look, again, I hadn't seen my email since I left the U.S. Attorney's Office, but,

1 yeah, I'm sure, if you pulled my email, there is other examples of getting open- source
2 intelligence that are sent to my staff; they pushed to me, sure.

3 Q Right. And this one, like I said, is about the December 12th rally --

4 A Yeah. Right.

5 Q -- and it has some somewhat --

6 A No, I'm very familiar with that rally.

7 Q And can you explain why and how, what happened there, and how it
8 impacted --

9 A I don't want to get into details of individuals, but --

10 Q Okay.

11 A -- there were individuals arrested that day that were -- that had ripple
12 effects on January 6th.

13 Q And were those groups -- members of Proud Boys or --

14 Ms. Loeb. I'm sorry. We would object. This is far beyond the scope of the
15 authorization and very --

16 Mr. Sherwin. I'll honor DOJ's objection.

17 ██████████ So --

18 Mr. Sherwin. If you can rephrase it.

19 BY ██████████:

20 Q The folks that were arrested during those rallies, or attended those rallies,
21 putting aside the arrests itself --

22 A Okay.

23 Q -- did that impact kind of the threat landscape going into January 6th?

24 A I mean -- I mean, you're a product of your past, so yes. I mean, our frame
25 of reference on January 6th was shaped by everything that happened before then, yes.

1 Q Yes. Yes. That's precisely the question.

2 So, when you say "everything that happened," what are the standout events of
3 the November 12th rally and the December 14th rally, crowd size, or location?

4 Obviously, that -- exhibit 1, we see: We march on D.C. with guns. We go all in.

5 There is certain rhetoric that's increased from these rallies.

6 How would you describe what that kind of -- those data points are going into the
7 6th?

8 A Yeah. I mean, just in general, you know, if -- if people are talking about
9 weapons and rallies, that's -- it's never a good mix to have protests with weapons, so that
10 would be of a concern that we would make sure the FBI and the Bureau -- if the Bureau
11 and MPD knew -- and the MPD was, you know, very -- very aware of these rallies as well.
12 So it's never a good combination having protests and weapons.

13 Q Another thing that was brought to your attention, exhibit 24, is a thread -- I
14 think you're on this.

15 A Exhibit 24?

16 Q Oh, actually, 24 is an internal actual email you're not on, but I'm wondering
17 if you were aware of the thread thedonald.win? It's the next page.

18 A Okay. I'm sorry. Twenty-four?

19 Q It's just the -- it's just the --

20 A Yeah. I mean, personally, I'm familiar with that moniker, but I don't
21 remember seeing this intelligence --

22 Q Okay.

23 A -- product, per se.

24 Q Okay. And then, along the same lines, exhibit 9, 10, and 11, I want to talk
25 about briefly. This is information that was provided to you. We'll look at exhibit 11.

1 Ms. Loeb. So I think we would object to discussions about what Mr. Sherwin was
2 specifically aware of with specific intelligence. If you want to ask questions generally
3 about intelligence flow and lessons learned, but specific intelligence and how it
4 would -- traveled through the U.S. Attorney's Office, we think may well impact ongoing
5 prosecutions, and it's not appropriate for today's questions.

6 [REDACTED]. I'm not sure how --

7 Ms. Loeb. Unless you'd like to go off the record --

8 Ms. [REDACTED]. -- the process of intelligence flow would impact any ongoing
9 case, so I'm going to ask about this.

10 Ms. Loeb. No. Process --

11 [REDACTED]. We've made many requests to have a witness describe this.
12 We have not been -- that request has not been honored as of yet, so I'm going to ask
13 Mr. Sherwin, because he has received these emails.

14 Ms. Loeb. So asking about process flow generally is fine. Asking about specific
15 details of a specific piece of intelligence process flow is beyond what the Department is
16 comfortable with.

17 BY [REDACTED]:

18 Q So we're going to look at exhibit 11, Mr. Sherwin.

19 A Okay.

20 Q And this is information that's provided to you by the [REDACTED] as well as
21 [REDACTED].

22 Are you familiar with that group?

23 A Oh, yeah. No. I perused their website, yeah, before I was a U.S. attorney,
24 yes.

25 Q Okay. And it looks like there is daily monitoring notes from the DFRLab for

1 January 4th as part of that exhibit 11. And this is sent to your first assistant, [REDACTED]
2 and then pushed on to a number of different individuals, including yourself.

3 And it's pushed outside of the -- outside of DOJ, including to Chief Contee. Well,
4 Ashan Benedict is ATF. And of course folks at the Bureau.

5 So some of these -- obviously, everything we're doing is Monday morning
6 quarterbacking. So, when you look back at some of these, particularly number 4, Trump
7 says he will appear at January 6th protests at the White House Ellipse. And you have a
8 picture here of armed militia. Then you have the January 3rd tweet of Donald Trump
9 saying: I will be there.

10 Just on that point alone, were you tracking kind of the tweets that the President
11 himself was putting out and how that impacted the rhetoric that was increasing?

12 A I wasn't. So I didn't have any bandwidth to -- especially the President
13 tweets.

14 Q Understood.

15 A No.

16 Q And then the last kind of piece here is Trump number 9.

17 A Okay. I'm sorry. Exhibit 9?

18 Q This is exhibit 11.

19 A Okay.

20 Q And it's probably easier to go by the Bates stamp. It's 638.

21 A Okay. Okey-doke.

22 Q And the number 9 here on this DFR summary says: Trump supporters
23 discuss storming U.S. Capitol, protesting armed. On thedonald.win, a forum board
24 popular with the Trump supporters, several discussions regarding weapons and shows of
25 force have taken place regarding Washington protests on January 5th and 6th. It has a

1 screenshot of Three Percenters. And then the [REDACTED] gives some examples of some of
2 the increased rhetoric.

3 So you said that you were familiar with this website, and it's passed on. I'm just
4 wondering if you can explain, again, like, what -- when you -- obviously, if someone reads
5 this now, it seems prescient. But, at the moment when you read something like this,
6 what followup steps are taken after forwarding it onto the Bureau?

7 Ms. Loeb. Objection. And if we'd like to go off the record so we can have a
8 broader conversation --

9 Mr. Sherwin. Sure.

10 Ms. Loeb. -- about this, I think we would be more comfortable.

11 [REDACTED] I don't need to go off the record.

12 Ms. Loeb. Okay. We object to that line of questioning, and we do not think it
13 appropriate for Mr. Sherwin to answer.

14 [REDACTED] I think he can still choose to answer if he wishes to answer.
15 It's a process question, which is the heart of what you just told me that --

16 Ms. Loeb. Yeah. Mr. Sherwin is here voluntarily, and he can decide.

17 Mr. Sherwin. Yes. So I'm going to answer in general --

18 [REDACTED] Go ahead.

19 Mr. Sherwin. -- and without a specific example.

20 I think I already said this 10 minutes ago. We would -- I -- we would never reject,
21 or me and my staff, I don't think there is an example -- again, this is going off memory. I
22 don't think personally I ever rejected any intelligence or denigrated intelligence. It
23 would always be pushed.

24 And, again, we don't vet intelligence. We don't leverage intelligence. We use it
25 in coordination with our law enforcement partners to bring cases.

1 So we would ensure it's pushed so there is visibility. That's as simple as that, and
2 I think this -- this happened -- with this example here -- and I'm sure there is other
3 examples in which that was -- that was -- that occurred.

4 BY ██████████:

5 Q Was there anything that you saw prior to January 6th that you did something
6 other than push it forward, make a call, or cause more of an alarm within you as to what
7 might occur on January 6th?

8 A Look, again, I -- I -- I think I stated this. I had daily calls with my Bureau
9 colleagues and ATF colleagues. I wouldn't be -- it wouldn't shock me if, in those calls, we
10 specifically spoke about this. So yes. I mean, there was a concern, and we saw that
11 over the summer that there could be individuals with weapons, and we have to be aware
12 of that, and we have to have the resources to, you know, react to those circumstances.

13 Q And, apart from --

14 A So --

15 Q -- weapons, do you remember discussions about actual, as number 9 said,
16 storming the Capitol, if that's a possibility, or even if people dismissed it as it's not
17 credible?

18 A You know, I don't -- I don't specifically remember an individual saying it's not
19 credible, but I think there was -- from a broad perspective, intelligence perspective, these
20 were, like, unverified indicators. And I could only speak on behalf of the U.S. Attorney's
21 Office.

22 Again, we don't assess intelligence. We consume it. So I didn't -- it wasn't my
23 role to denigrate intelligence or give it veracity. I just wanted to ensure that the proper
24 forum -- it was pushed to the proper forum so the experts could, you know, make that
25 assessment.

1 Q Which, in this case, would have been the WFO FBI office?

2 A That's one of the -- that's one -- yeah. That's -- they have intelligence
3 specialists, correct.

4 Q Did you have any interaction with the headquarters office of domestic
5 terrorism or operations section?

6 A Look, I would have calls with individuals linked to that office, but, again, my
7 primary conduit was the -- the ADIC.

8 Q I guess the bigger question here is: Those conversations, did they happen
9 in the sense of we now see emails forwarded, but were there -- were they just forwarded,
10 or, as you just described, there was conversations amongst the key players to discuss
11 some of these things that had been forwarded to you?

12 A Look, I don't know -- I can -- I can't opine upon what the Bureau did
13 specifically with all these. I mean, I think, if you looked at their records, you could see
14 how the JTTF -- how they pushed it out to Capitol Police or local and municipal partners.

15 I mean, there has got to be a record of that, so the record would speak for itself.
16 But, you know, I -- I know that there must have been other, obviously, calls between the
17 Bureau and MPD and the Capitol Police, but I wasn't privy to those -- those individual
18 calls.

19 Q Right. But, just so the record is clear, but did you have conversations with
20 the ADIC about what you were seeing in some of these posts?

21 A Oh, sure. We -- we -- yes. We would have discussions about social media,
22 correct.

23 Q And what was --

24 [REDACTED]: Before you leave 11, I just wanted to --

25 [REDACTED]: Oh, yeah. Go ahead.

1 BY [REDACTED]:

2 Q I appreciate -- this is on the same subject of discussions with the ADIC. So
3 exhibit 11 that is before you looks like an intelligence product from [REDACTED] office
4 that you, as you said, Mr. Sherwin, pass along to the Bureau. And, subsequent to that,
5 there is some internal discussion reflected in the emails about whether or not the Bureau
6 can or can't accept it.

7 A Okay.

8 Q You see that? I'll just refer you to the very first page, or first, actually -- it's
9 actually the latest in the series -- email chain, but the first page in your binder.

10 A Oh, okay. I see it, yes.

11 Q Because [REDACTED] sends it, right -- gets it from [REDACTED] --

12 A Yes.

13 Q -- sends it over --

14 A Yes.

15 Q -- to Steve D'Antuono. And then he forwards it on to Jennifer Moore.

16 And then her question is: I'm positive we've been down this road, and this is not
17 a product that we can solicit, but can we accept it?

18 And the response comes back: Yes, we can accept unsolicited information as
19 long as we note the source and note it was unsolicited. And, if there is no legitimate
20 basis to investigate further, we should also note that no further action was taken.

21 Did you get involved in these discussions with the ADIC or otherwise with sort of
22 assessing whether the Bureau can or can't solicit or what it can do with information?

23 A I'm not trying to be circumspect, but you're right. I mean, I wasn't on these
24 communications, but I did not have ancillary communications about this.

25 Q Okay. And beyond this --

1 A Yes.

2 Q -- generally, would they call you and say, "Hey, is this something -- which
3 side of the line is this on"? Is this something that we can --

4 A No. I was never --

5 Q What should we do with it?

6 A I was never pinged for my professional assessment on veracity of
7 intelligence, no.

8 [REDACTED] Okay.

9

BY [REDACTED]

10 Q Well, I don't know if it's veracity, or just more can they accept it?

11 A Yeah. No. I was never -- that I recall, I was never -- had the discussion
12 whether or not they could accept intelligence or the flow of intelligence, no.

13

BY [REDACTED]:

14 Q Yeah. Not -- that does answer the question. And I guess my other related
15 is: Did you apply any similar standard about what you could solicit versus what you
16 could accept, "you" meaning the U.S. Attorney's Office? I know you weren't in the
17 business of gathering intelligence --

18 A No. I think, like I said before, look, as a former intelligence officer, from my
19 perspective, any intelligence is valuable intelligence, so --

20 Q Okay. So it sounds like your approach, Mr. Sherwin, summary is you get
21 stuff, you're not going to assess it, you're going to pass it along for whatever worth it
22 might have to the folks that are in the business of assessing it?

23 A Yes, sir. Yes, sir.

24 Q Yeah. And that was your standard practice throughout this whole period?

25 A That -- as I recall, yes, sir.

1 Q Okay.

2 A Yes.

3 Q Okay. Thank you.

4

BY [REDACTED]

5 Q Just a couple more pieces on the intelligence aspect of this.

6 Were you aware of the FBI's reliance on Dataminr also as a collection source?

7 A I mean, the Bureau mines data, correct, yes.

8 Q The company, though, the Dataminr specifically?

9 A Oh, the company.

10 Q Yes.

11 A I don't recall the exact -- I think there are several contractors, but I'm -- I
12 don't want to get into those details obviously. I'm not going to -- I can't get into those
13 details.

14 Q Did you -- were you ever aware of the contract with Dataminr lapsing right
15 before -- like, at the end of December, and then ZeroFOX being utilized by the Bureau?

16 A I don't recall. And, even if I did, I don't think it's appropriate to get into
17 those contractors with data mining, no.

18 Q I'm just more -- the bigger question, again, is whether any of that was drawn
19 to your -- brought to your attention --

20 A It wasn't.

21 Q -- and concern?

22 A It wasn't. It wasn't.

23 Q Were you familiar with the Bureau putting out a request on December 27th,
24 kind of to the 56 field offices about kind of seeking information about January 6th and
25 asking folks to upload it to the Guardian system?

1 A I don't recall that, but it wouldn't surprise me if that happened.

2 Q Okay. And were you, as the U.S. attorney, aware that they were -- that the
3 Bureau was tracking what they called travelers who intended to -- there were predicated
4 cases that were traveling to the D.C. area for the January 6th --

5 A Yes. Yes. Correct.

6 Q Okay. So, without getting into details about that, who -- would it have
7 been Steve D'Antuono to have brought that to your attention?

8 A Most -- yeah. Most likely, or -- yes. It most likely would have been
9 D'Antuono, correct.

10 Q And I think Ms. Sanborn --

11 A Yes.

12 Q -- testified publicly about there was 18 travel -- subject travelers, and efforts
13 were made -- overt efforts were made to talk them out of coming?

14 A Yeah. I don't remember those details.

15 Q Uh-huh.

16 A I just know I -- I'm vaguely familiar with those conversations with both Jill
17 and Steve -- Jill Sanborn and Steve D'Antuono about that, but I don't remember any of the
18 details.

19 Q And were they --

20 A You can refresh my memory if you have a document, but I don't remember --

21 Q Sure.

22 A -- any of those details.

23 Q I can show you exhibit 16 --

24 A Okay.

25 Q -- which is Jan 6, day of.

1 A Sure.

2 Q Where it says there are reports about 18 predicated subjects traveling to
3 D.C. --

4 A Okay.

5 Q -- but, of those, six are now not going to be traveling.

6 A Okay.

7 Q It is attached list, but we never -- we never received the updated list.

8 A Okay.

9 BY [REDACTED]:

10 Q And [REDACTED] was acting head of NSD at that time. Is that right?

11 A No. He was -- Mr. John Demers was in charge of NSD as --

12 Q Oh, right.

13 A -- the AG, and [REDACTED] --

14 Q Still there.

15 A -- was the chief of counterterrorism --

16 Q Got it.

17 A -- who I -- I'll end it there.

18 Q Within NSD? I got it.

19 A Yes. Correct. Yes.

20 Q Okay. Thanks.

21 BY [REDACTED]:

22 Q Was that information pushed out to the Federal law enforcement partners
23 or to MPD that these folks were traveling?

24 A I can't answer that. I don't -- I don't know. I don't know, because -- I'm
25 even looking on here. Yeah. I -- and I've -- actually, I'm glad -- I mean, it's interesting

1 seeing this now, and I haven't seen this in a long time, but, yeah, I don't know if there was
2 any other email about this, and then how it was pushed, if -- if [REDACTED] pushed it, or if
3 anyone else pushed it out. I can't answer that. I just don't remember pushing this.

4 Q Got it.

5 Were you aware of the January 5th situational incident report from Norfolk,
6 Virginia --

7 A Okay.

8 Q -- that was later --

9 A Yes.

10 Q -- in the press, but did you -- were you aware of it at the time on January 5th
11 when it was uploaded or released, sort of?

12 A I think I was notified on the 6th. I don't think I was on the 5th. I -- but,
13 yes, I remember Mr. -- I was in WFO when I was made aware of it. And I think it was on
14 the 6th. I'm almost positive it wasn't on the 5th, but that -- those 72 hours, 5, 6, 7, and
15 8, or 96 hours, are still very foggy. But, yes, I do remember even seeing the report in
16 WFO.

17 Q So, just so I'm clear, on the 6th, would it be during the time the Capitol was
18 under assault?

19 A Or that -- or that evening. I just can't pin an actual time, but I remember,
20 because I remember hearing about it, and I wanted to see the actual report, so --

21 Q So is it fair to say that, by the time it reached your eyes, it didn't have any
22 impact on your preparations for the 6th?

23 A You're -- in terms of timing, I don't recall seeing it before the Capitol was
24 breached, correct.

25 Q Okay. There is a couple calls I want to go through --

1 A Sure. Sure.

2 Q -- in terms of what we --

3 A Of course.

4 [REDACTED] You've got Ms. Cheney on. If she wants to --

5 [REDACTED] Oh, I'm sorry. Ms. Cheney, do you have any questions?

6 Ms. Cheney. I don't. Thank you.

7

BY [REDACTED]

8 Q I did -- in the last kind of email set, I provided you some handwritten notes

9 from Mr. Donoghue --

10 A Yes.

11 Q -- just to jog your memory.

12 A They were hard to read.

13 Q I know. I know, but I thought --

14 A I'll try my best.

15 Q I thought it might be helpful if you didn't have the memory for it. And, just

16 so I set the table here, it looks like there is a December 30th call with Mr. Rosen --

17 A There were a lot of calls, yes.

18 Q -- and then there is a couple interagency calls that I want to get into.

19 A Sure.

20 Q But December -- it looks like exhibit 2 and 3 -- we don't have to spend time

21 on it, but Mr. Rosen is -- attempts to reach out to you on December 28th to prepare for

22 January 6th. And it -- and you have the call at 4:30 on December 30th.

23 Just from your own memory, what was kind of the purpose of that call, and what

24 was --

25 A Oh, yeah.

1 Q If any decisions were made or planning?

2 A And I even know before that, in mid-December to the end, Mr. Rosen -- so
3 Mr. Rosen had -- by virtue of I worked directly for Mr. Rosen at ODAG before I became
4 the -- so in some critical matters like that to Pensacola, he had my cell number -- it looks
5 like someone at ODAG didn't, as Mr. Barr had my direct work cell number. So they knew
6 how to reach me, and they did frequently, even if it was 2 or 3 in the morning.

7 That being said, yes, Mr. Rosen wanted to know if I was in communication. Look,
8 this was new to Mr. Rosen, let me say because he wasn't the AG during the summer 2020,
9 so this was -- he was now in the -- in the boss' chair, right? I mean, so he definitely
10 wanted to know, are we in communication with WFO? Are we in
11 communication -- specifically, how is things with MPD? Are they good with resources?
12 Is there -- is the mayor -- are they talking to the mayor's office, though in general
13 questions about, look, are you good to go? Do you need anything, and are you hearing
14 anything? So -- and I think it's even relayed there. What is the crowd size?

15 Q Uh-huh.

16 A For example, if -- if -- I would get from -- probably, I would -- I'm suspecting I
17 would get it from Mr. D'Antuono. How is the crowd size looking?

18 Well, it's looking like, you know, it's trending towards 10,000. You know, it's
19 trending towards 5,000.

20 So those general types of questions, Mr. Rosen wanted to know.

1

2 [11:12 a.m.]

3

BY [REDACTED]

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Q Generally, if the AG's calling, whether it's Mr. Rosen or Mr. Barr, and you anticipate what those questions are, do you reach out to the ADIC to say, okay, these are some things that I suspect? I mean, if you don't have it already in your own mind.

A I mean, the thing is I spoke to ADIC so frequently, and then Chief Contee and Chief Newsham, I would almost frequently know the answer already to what the AG was asking, so -- but it was generally manpower issues, and then what is the flow looking like, flow -- ingress flow into the District.

Q Did you have answers at that time, December 30th?

A I believe so. I believe so.

Q So it looks like from Mr. Donohue's notes -- again, if that's not your memory, please say so. But he states during the call that thus far, solely pro-Trump protesters are planning to come in. There's no intel regarding counterprotesters.

What was the -- the discussion about counterprotesters, I wonder if you could just unpack that a little bit in terms of going in to the 6th?

A I don't want to fence with what Mr. -- I don't know. His notes speak for himself, but personally, and this is directly to January 6th, the counterprotest piece is critical because we were prepared for a protest on counterprotest violence because of the crucible of what we saw prior to January 6th where there was a lot of intel. And, again, I could look through it all, but without even looking through all of it, I remember there's a lot of intel about, you know, we have to F up antifa, we have to F up BLM. And the first place on the morning of the 6th where I went with MPD was BLM Plaza, because that's where we thought the crux of the violence was going to be, protester on

1 counterprotester violence.

2 And I can only speak personally, but I think some of my colleagues at MPD shared
3 it. We were shocked that there was this void of counterprotesters there because that's
4 where we expected the, like, the action to happen. And when it didn't happen there,
5 we were kind of almost surprised, and maybe in some ways that's maybe why the whole
6 flow went towards the Capitol. But we were definitely keyed in on
7 protest-counterprotester violence especially from what we learned in December with
8 some of the groups you already referenced. That was a critical emphasis.

9 Q So when you say we, Mr. Sherwin, are you talking about you and Mr.
10 D'Antuono?

11 A That's correct. I'm talking about Bureau and DOJ and MPD too. That was
12 a major emphasis that we wanted to ensure that we can mitigate protest on
13 counterprotest violence, because a lot of these postings we saw were arming up and f'ing
14 up antifa, f'ing up BLM, you know, all types of violent rhetoric about counterprotesters.

15 Q Sure. Equally, though, there's posts about militia attending and --

16 A No. That's true. You know, there's postings by Three Percenters saying,
17 stop the steal. Postings by Oath Keepers saying, take back our house. Yes. Correct.

18 Q So is it fair to say that because of, again, the flow of events from the summer
19 to the two protests before, the focus on the counterprotesters was informed by the past
20 experiences?

21 A Absolutely.

22 Q Are you aware -- again, I know it's a hectic time to look back on -- but Mayor
23 Bowser on Monday put out a recommendation for folks to stay out of the District?

24 A Yeah. I'm sure probably people were going to work, don't go to work that
25 day. Yeah. I recall that. Yeah. I recall that.

1 Q Right. Do you think that had any impact on the kind of the
2 counterprotesters that may or may not have chosen to attend the 6th?

3 A I don't think so, because it was COVID, the height of COVID anyway, so
4 people you weren't really going to work. Like, all the -- you couldn't even go to
5 Starbucks and get a coffee there. Even if there were no protests, I don't think that really
6 had an impact.

7 [REDACTED]: Do you have anything on that?

8 [REDACTED]: Yeah. Just before you leave this.

9 BY [REDACTED]:

10 Q This is an important topic for the expectations leading in.

11 So, broadly, different kinds of protest events, right? There are protest events
12 like Lafayette Square where it's protesters were pushing against law enforcement or
13 barricades or their enmity is directed more at people wearing uniforms. And then there
14 are other kinds of events where people are fighting with each other, right? Like, the
15 Proud Boys are fighting with antifa, and we had some of those in the
16 November-December timeframe.

17 Which of those or both was it your expectation before January 6th that you were
18 facing?

19 A Both. Both. But I think -- and I can just speak personally. I think if you
20 move from 6/1 to 1/6, you see this organic growth of violence directed towards the
21 White House; summer, fall, winter, more protester on protester violence that morphed.
22 And then to 1/6 you have this protester on Capitol violence. So there was a shift from
23 6/1 to 1/6 that shifted on this spectrum, if that makes sense.

24 Q No, it does. And it's both, I understand. I guess I'm just trying to get a
25 sense of your personal sense of the greater threat. Like, were you really focused on let's

1 keep people apart and make sure there isn't this protester-counterprotester violence, or
2 are, hey, we've got to be careful, like in the summer, that there's not a fence that's
3 pushed over or a threat to sort of the Capitol?

4 A It was both, but there was definitely, I believe -- and, again, I can only speak
5 for myself. I think there was a big emphasis on we have to mitigate protester on
6 protester violence because that's where things could go really bad. You know, people
7 get knifed and shot and --

8 Q And had at those prior events?

9 A And there was violence protester on protester, so we wanted to ensure that
10 didn't happen. So, yes, I think that there was a shift. Yes, sir.

11 Q Okay. Looking back now, do you think you would -- you collectively were
12 too focused on the protester on protester type of violence versus this sort of hardened
13 protect the Capitol kind of potential violence?

14 A Look, that's a tough question to answer. I'm not saying that we only -- we,
15 I'm talking holistically Bureau, law enforcement -- only focused on protester, protester,
16 you know, protester, counterprotester, but was that maybe a primary emphasis? I
17 believe so, but that doesn't mean protests direct -- institutional protests were not a
18 concern. They absolutely were because, you know, there was an emphasis on hard
19 points being protected. You know, chokepoints being protected by National Guard and
20 MPD, chokepoints so you could push the flow of people, you know, away or towards
21 different paths to keep them away from different intersections and property, the Capitol,
22 White House, Hoover building. So there was definitely -- the protest on institutions was
23 not discounted, but maybe it had a secondary role. Maybe that's a fair assessment.

24 [REDACTED] Yeah. Appreciate that. Thank you.

25 BY [REDACTED]:

1 Q The December 30th call, do you remember it being tasked with anything in
2 particular to do with preparations?

3 A I don't. I mean, it was probably similar to the prior calls I had even before
4 the 30th and then maybe after 30th. But I don't remember any details.

5 Q Was there any sense that other DOJ components were going to be called
6 upon to assist for the 6th?

7 A Yeah. I mean, I think it was similar to probably over the summer that the
8 AG wanted to leverage and, you know, make sure that if the Bureau doesn't have enough
9 organic sources at WFO, are we going to call in SRT from other districts, are we going to
10 call in, you know, U.S. prison services personnel, are there DEA, ATF, could we call in
11 agents that are on leave to just plus up the District? So those were very similar calls that
12 happened on the 6th that happened throughout the summer.

13 Q And do you remember any discussion about contacting Capitol Police at that
14 time or at any time?

15 A I mean, that was a constant. That would have been in every conversation.
16 Are you in touch with Capitol Police? Is someone talking to Newsham? Is someone
17 talking to Contee? Do they need any resources? Yes. That wouldn't have been an
18 outlier at all.

19 Q And who -- were you in contact with someone at Capitol Police or was
20 someone from your staff?

21 A Again, the primary would have been [REDACTED], but I definitely spoke to the
22 chief of police. I just don't --

23 Q Chief Sund prior to the 6th?

24 A Oh, I'm sorry. MPD. Not -- not -- that's a good -- I apologize. Let me
25 strike that.

1 I never had direct calls with Capitol Police. Never happened over the summer.
2 Never happened over the winter or the spring. My primary partners were MPD and
3 Bureau, who were then liaison with Capitol Police. So I never had a direct
4 communication. I don't even think I directly emailed anyone at Capitol Police either any
5 time as my tenure as a U.S. attorney, to tell you the truth, that I can recall.

6 Q And to be clear, so [REDACTED] was in touch with MPD, not Capitol Police?

7 A That's correct. That's correct.

8 Q Okay. Were you informed about any preparations Capitol Police was
9 taking? Were they part of kind of the integrated plan?

10 A That's -- they were part of the JTTF, and they're in that pipeline of
11 information. But, no, I never had a direct discussion with them or their leadership about
12 their resources. That would have all been conveyed through our law enforcement
13 partners.

14 Q Sure. And just one final point before we go off the counterprotester
15 question, which is a big part of what we've heard as part of these interviews.

16 Do you think there was -- was there a sense that there was less of a chance for
17 violence because the group was predominantly pro-Trump, pro-law enforcement
18 individuals?

19 A Not -- personally, absolutely not.

20 Q Because why?

21 A Look, divorced of politics, there was plenty of -- I personally viewed plenty of
22 violence over the summer on all sides of the spectrum that continued through
23 January 6th. But, no, I mean, I personally just can speak on my own behalf, no, some of
24 these individuals are pretty dangerous and -- regardless of whether they're red or blue.

25 Q I want to talk a little bit about the interagency calls that you were on.

1 A Sure.

2 [REDACTED] How are you doing in terms of break? Are you good?

3 Mr. Sherwin. I'm good.

4 [REDACTED] You guys too? Okay.

5 BY [REDACTED]:

6 Q So exhibit -- and, again, I don't really go through them, but just to jog your
7 memory here, exhibit 6 is an email to you saying that Mr. Rosen wants you to join him for
8 a call at the White House this afternoon. And that looks like it's a call that's set up by
9 acting SecDef Miller, which would be a January 4th call.

10 A Yeah. I never recall ever being on a call with Mr. Miller or the AG before
11 January 6th and even on. I was never on a call that I could recall ever with the SecDef
12 and AG Rosen.

13 Q Okay. Were you on any -- I know there's a couple emails about your
14 internal staffing calls about the 6th.

15 A Yes. All the time, yes.

16 Q Do you remember any like interagency call at all with DOJ and DOD?

17 A Probably with -- probably via NSD or the JSOC, but I don't recall ever being
18 on a direct call with DOD and the AG, no.

19 Q Okay.

20 [REDACTED]. Were you traveling at this time? Looks like --

21 Mr. Sherwin. Yeah. I'll tell you exactly where I was.

22 [REDACTED]. Michigan?

23 Mr. Sherwin. Yeah. My son was pitching that day. So I was there, and I
24 remember that day because of an event that happened in the District. But that evening,
25 I traveled back to the District, yes.

1 [REDACTED]. The 4th or the 5th?

2 Mr. Sherwin. I believe the 4th. I can look at my records, but I was in the
3 District on the morning of the 5th.

4 [REDACTED]. And it sounds like when you were traveling, Mr. Sherwin, you
5 would often designate your first assistant to sort of take your place on some of these
6 prep calls?

7 Mr. Sherwin. Oh, yeah. Or I was on -- again, I don't have my phone records,
8 but I'm sure if you pull my phone records and stuff, there's probably dozens of calls in
9 those days. So I was on the coordination calls even if I was not in DC.

10 [REDACTED]. But fair to say you and [REDACTED] were sort of linked up through this
11 whole time?

12 Mr. Sherwin. Yeah. We were fist and glove. Yes.

13 [REDACTED]. Okay.

14 BY [REDACTED]:

15 Q So in my reading of these emails on the 4th, it looks like you set up an
16 internal call on the 4th at 3 o'clock. When I say internal, I mean looks like your staff, Mr.
17 D'Antuono, Chief Contee, and SAC ATF Benedict? Go ahead.

18 A You're right. I'm sorry. This exhibit, we're looking at 6, right?

19 Q That's 7.

20 A I'm sorry. Which exhibit are we looking at?

21 Q So we started with 6 where you were requested to join Mr. Rosen on a
22 January 4th call.

23 A Yes.

24 Q And my speculation was that you did a pre-call with -- internally at 3 p.m.
25 before that 4:30 call, but maybe I'm wrong if you don't remember.

1 A No. I don't think -- this is divorced of that.

2 Q Okay.

3 A This is because I wanted to make sure -- and I even wasn't in town, and I
4 instituted this interagency call with just -- with our point person at the U.S. Attorney's
5 Office, ATF, Mr. D'An- -- so you see the usual suspects on this call. This would have been
6 a call that -- you know, a prep call that we would have had. So this was not -- again, I
7 don't ever remember the SecDef call, if I was invited. I would love to see phone records
8 if I even dialed into this thing. I don't recall ever doing it, but this other call was
9 divorced from that. This was an update call to make sure we were all on the same page.

10 Q It looks like you did attend, at least from Mr. Donohue's perspective, a 4
11 o'clock call --

12 [REDACTED]: Before you --

13 [REDACTED]: Oh, go ahead.

14 BY [REDACTED]:

15 Q So [REDACTED] first assistant [REDACTED] is the criminal chief?

16 A Yes.

17 Q [REDACTED] what was his role at the time?

18 A [REDACTED] was my superior court chief. He was critical for -- he was the one I
19 was doing patrols with on the morning of the 6th.

20 Q I see. Steve D'Antuono obviously is the criminal chief?

21 A Yes.

22 Q You've got Chief Contee. Ashan Benedict, he's ATF side?

23 A Yes. Yes. And this is a call that I instituted, again, even though I was out
24 of town, to make sure we're all on the same page. Resources, everyone good to go.
25 Anyone need anything, you know, good to go.

1 Q Understood.

2 BY [REDACTED]:

3 Q The 4 o'clock call on the 4th, do you remember that call at 4 p.m. with
4 Mr. Rosen and Mr. Donoghue?

5 A I don't, but if it's in Mr. Donoghue's notes, I'm not going to --

6 Q And we don't have to -- it sounds like there was much conversation, again,
7 about the similar aspects of kind of resources?

8 A Yes.

9 Q Crowd size?

10 A Oh, yeah. Absolutely. Yeah. What's the crowd size looking like? I
11 remember Mr. Rosen was fixated on that, yes.

12 Q Was it fluctuating in the intel you were receiving?

13 A I think it was trending up, but there was never -- I think -- again, if you
14 probably peruse through all the emails and everything, I think it was trending under
15 10,000 until the actual event, and then it plussed up to 20-, 25,000 plus. Again, I'm just
16 guessing.

17 Q I think there's an exhibit here, exhibit 8, where this is an update, on Jan 4th
18 from [REDACTED] where there is an estimate top of the second page to be
19 approximately 20- --

20 A Okay. Okay.

21 Q So he kind of talks through, at the bottom you can see roughly 26
22 demonstrations. Permit applications estimate could be approximately 28,000 people in
23 attendance.

24 So that was -- was there any thought about kind of fluctuating numbers from
25 under 10, 10 to 28 and above?

1 A I don't -- look, I guess it's an art and not a science. I'm sure that number
2 fluctuated, but I just remember going back to mid-December that number was, you know,
3 trending under 10,000.

4 Q Then the next call that I wanted to talk about, but if you have no memory of
5 it, we won't talk about it, is the January 4th 5 p.m. call with DOD. If you weren't on it --

6 A I don't ever remember being on that call, no. That's probably my son was
7 pitching. If you have phone records, I'd love to see it.

8 Q During these kind of numerous calls -- January 5th, I think, is separate
9 because there were a number of arrests that evening. But before, on these number of
10 calls that you had either internally or with senior leadership, was there a conversation of
11 the expectation of violence or potential for violence?

12 A Potential, absolutely. And, look, my call -- my team calls were kind of what
13 I talked about in my first about 15 minutes of my testimony, that I wanted to make sure
14 we had the resources at the JOC, at MPD, do we have the resources at WFO, do we have
15 the resources in my office to -- if we had a surge with arrests and warrants, if we can
16 meet the needs. So duty roster, everyone good to go. Those were my main concerns
17 as the U.S. Attorney with those pre-calls right up to January 6th.

18 Q And I mentioned it briefly before, but there is this kind of -- different views
19 as to who was kind of taking the coordination lead --

20 A Yeah.

21 Q -- on the 6th.

22 Did you have any conversations, whether it's with folks at the Bureau or with
23 senior leadership at DOJ, about what role WFO D.C. U.S. Attorney's Office would take for
24 the 6th?

25 A Look, the role, I mean, we don't move and the Bureau doesn't move assets.

1 So, I mean, that's a tough -- and the U.S. Attorney's Office, we don't move assets. You
2 know, so -- you know, we're a partner, but we can't move boots on the ground, and WFO
3 sure can't do that either other than their own boots. So the main concern was making
4 sure everyone was in communication. Hey, Steve, did you talk to Contee? Did you,
5 you know -- is Bowser good, those types of general discussions.

6 Q But was there ever discussion, like, WFO D.C. U.S. Attorney's Office is gonna
7 handle any prosecutions with street arrests that occurred that day, I mean explicit
8 conversations?

9 A I don't think so because that was, like, given. He knew what our roles
10 were, and he just wanted to make sure we're good to go.

11 Q He, meaning Mr. Rosen --

12 A Steve -- Mr. D'Antuono, yes.

13 Q Got it.

14 A Yes.

15 Q There's a couple other emails from the 8th. Just, the exhibit 8 we just
16 spoke about, again, is an email from [REDACTED] to yourself, John Moran and Mr.
17 Donoghue. It says: For your background and awareness, the attached document is
18 good overview of the U.S. Government posture going into January 6th.

19 And it goes through, you know, all the Federal partners; DHS, I&A.

20 I want to go to the last page here. This is, again, January 4th. It says: DOJ,
21 FBI. There are no current plans to activate the national SIOC.

22 A Okay.

23 Q Did you have any understanding of -- let me start with, did you think there
24 was a need for a SIOC to be set up?

25 A So let me tell you, there's some confusion. So, look, at a tactical level, I'll

1 consider the U.S. Attorney's Office WFO tactical. So as a tactical level, our offices are
2 next to each other. We deal with, obviously, prosecutions of Federal cases in the
3 District.

4 The WFO has their own watch floor. I think there's some confusion that we had
5 over the summer and spring, that we had on January 6th that I personally manned like
6 24/7. We had that up. Then Hoover building would have their own watch floor, okay,
7 the SIOC, manned by NSD, [REDACTED] and their personnel. This is more of a strategic.
8 They're at Hoover. They're with the director. You know, that's an AG director level
9 like watch floor. They're monitoring, not only the District, but the ripple effects outside
10 of the District. That was never staffed by me. That was never staffed by my AUSAs.
11 That was staffed by NSD personnel and ODAG personnel.

12 So my main focus was obviously my partner, WFO, and manning our WFO watch
13 floor. The SIOC, I really didn't have a lot of visibility into. I may have walked onto the
14 SIOC watch floor all of 2020 through January 6th maybe twice; where at WFO watch floor,
15 I was there living there literally. So that's why you see a lot of these emails just for
16 clarification purposes with [REDACTED] you see him tied to those SIOC emails because NSD
17 personnel, CT personnel manned the SIOC flow, we did not. And that was at Hoover,
18 which, look, when you're in the trenches, you see Hoover as like, that's a big brother
19 that's well removed. Like, we've got to deal with our own situation here at WFO and
20 U.S. Attorney's Office. You know, the strategic level views at SIOC and, you know, the
21 director levels.

22 Q I appreciate that. I think Mr. Bowdich referred to it as a the mother ship.

23 A See, that's very well said by Mr. Bowdich. That's why I stayed away from it.

24 Q But just so I'm clear in terms of the SIOC, I understand that you did -- you
25 said your focus would have been at WFO command post?

1 A Yes. Yes.

2 Q For the summer, do you remember a SIOC being set up?

3 A Oh, absolutely. And Mr. -- yes. NSD personnel manned that watch floor,
4 yes.

5 Q For the prior two rallies, was a SIOC set up?

6 A I don't remember. I'm sorry. I don't remember.

7 Q Exhibit --

8 [REDACTED] On the SIOC point.

9 [REDACTED] Yeah.

10 BY [REDACTED]:

11 Q Mr. Sherwin, process question, when -- does the SIOC at the Hoover building
12 getting all their information through the WFO watch floor or do they have separate inputs
13 that are coming into them?

14 A That's a good question. Their personnel would have direct conduits to like
15 DHS, National Guard, DOD.

16 Q I see.

17 A That's why I'm opining they would have had a direct pipeline into DOD
18 because -- I'm just guessing here, but I'm sure if you pulled emails and other things,
19 there's more of a high-level interface at that higher level where -- would [REDACTED] call me
20 or say, Mike, can you give me an update? And I think there's even examples where I'm
21 saying, yeah, in the District, I had eight arrests last night, [REDACTED] and then three of them
22 were weapons, and one dude was arrested for a protester on protester. This is just an
23 example.

24 Q Sure.

25 A So [REDACTED] or NSD would want that to feed into their SIOC report, but that's

1 just a little piece, and then they would do a broad strategic overstroke of everything else.
2 So I would feed information to the SIOC that would be in their -- there would be a nugget
3 in their report what me and -- what my office and WFO was doing, if that answers your
4 question.

5 Q So you're one stream of information that's D.C. specific that goes to the
6 SIOC?

7 A Yes, sir.

8 Q But they have other inputs?

9 A That's correct. And that's what happened in 2020 and I believe happened
10 January 6th, but I don't know because I don't think I ever went on the SIOC floor on
11 January 6th. I don't recall.

12 Q Okay. Then are you in the WFO watch floor getting other stuff from them?
13 In other words, is it a two-way flow of information or are you just reporting up?

14 A I don't know. I'm sure we got intel or assessments. I don't even know
15 if -- frankly, it was like a fire hose, if we even read it, because, look, we're -- I was mainly
16 concerned with what the heck was going on in the District, and so was Mr. D'Antuono.
17 Not being flippant, but I really at the time could care less if there was something going on
18 in Cleveland, Ohio, and there was like -- I mean, we were just so focused on our district at
19 the time, so --

20 Q Totally understood.

21 [REDACTED]. So how does the JOC play into this?

22 Mr. Sherwin. Okay. Another good question. So the JOC --

23 [REDACTED]. We need a glossary for all these.

24 BY [REDACTED]:

25 Q And the NOC too.

1 A But there's a lot of confusion, so those are good questions.

2 The JOC is separate from what the Mayor set up. She set up another watch floor
3 that we didn't participate in. So, again, my main players are WFO. We have their
4 watch floor, and then we have the JOC, which is the MPD, it's their joint operations
5 center, where we get the calls, the tactical. I'm sending the unit to Third Street, there's
6 a shooting. I would always have the AUSAs there. I personally wanted them there and
7 would visit because I wanted them getting real -- showing our MPD partners that we're in
8 it with you. So if you need help with warrants or just advice, I have AUSAs right there.

9 So as part of our coordination calls, like I talked about the 8 a.m. and 8 p.m., I
10 would make sure, okay, who's manning the JOC, do we have coverage there, who's going
11 to man -- I'm at WFO. Okay. It's [REDACTED] Okay, good. Who's going to
12 relieve her? So that's more tactical level MPD to JOC. Where, frankly, the SIOC could
13 care less about what was going on there. Me at the tactical level, I wanted to make sure
14 I knew that we had an AUSA there.

15 Q What about the NOC?

16 A NOC I think is something -- it's D.C., so all these agencies have watch floors.
17 So that's probably a DHS watch floor, I would assume. And NSD or [REDACTED] would have
18 been in communication with them because, again, that's the big head shed, strategic
19 level, you know, interface.

20 Q So as [REDACTED] mentioned, we're -- part of our mandate is to come up with
21 recommendations, and this has been a confusing point for me with some of these
22 interviews in terms of the coordination amongst all these different coordination points.

23 And I just want to draw your attention to exhibit 13, where it looks like [REDACTED]
24 sends you an email where it's referencing exactly what you just said for a situational
25 awareness. The Mayor is saying the city has set up an emergency op center --

1 A This is an example of the confusion.

2 Q -- is that the JOC?

3 So the question to you is: What was the emergency operation center set up by
4 the Mayor, is that different from the JOC, and how did this all play out on the 6th?

5 A Look, it's a classic government bureaucracy, redundant and confusion and
6 inefficiencies.

7 The Mayor set up her own watch floor. Like, they didn't consult us, and, frankly,
8 I needed to make sure we had someone at the MPD watch floor, the JOC. I don't
9 know -- you have some watch floors that are just set up that are worthless, just setting up
10 watch floors because other people are setting up watch floors. Like, what is the
11 purpose of your watch floor and who are you sharing information with? And I think that
12 has to be looked at, because I think agencies set up watch floors just so they can look
13 important and they're not producing anything, and they just make it a lot more confusing.

14 So the most critical watch floors, from my perspective, are the WFO watch floor,
15 which was the nerve center in the summer and on the 6th, where all the local partners
16 where I have MPD officers sitting right next to an ATF officer, sitting next to Secret
17 Service. So MPD could say we're getting overrun at Third Street. I just got a call from
18 the JOC, we're getting overrun, and the ATF dude would say, okay, well, I could give you
19 20 assets. That's where all the chaos was managed at the tactical level, where the other
20 watch floors were kind of -- I'm not trying to be rude, but they're drinking coffee and
21 putting out reports for reporting purposes.

22 And that was more like what SIOC was doing, like putting out reports, feeding the
23 beast with data. Where WFO watch floor and the JOC was not feeding the beast with
24 data but operational action at a minute's notice, if that makes sense.

25 Q Which is why you draw the distinction between the tactical versus the

1 strategic?

2 A Yeah. That's why I spent all my time at WFO and not -- I didn't care about
3 data and reports. I wanted to be with the Bureau guys making sure that they had
4 coverage for exactly what was happening. That's why I spent 98 percent of my time
5 right at the WFO watch floor with the ADIC.

6 Q How do these other kind of redundant watch floors impact a moment of
7 crisis as we saw on the 6th?

8 A Well, I think they could just clog up the pipeline with false intel, with bad
9 reporting, with redundant reporting. I mean, that's something I would look at that you
10 have all these watch floors that are kind of -- some are independent actors that could put
11 out bad intel and spool up or just redundant intel that could spool up rumors or just not
12 help the situation.

13 BY [REDACTED]:

14 Q Help me understand the difference between the WFO watch floor and the
15 MPD JOC.

16 A Sure.

17 Q What's different about them? They both sound quite tactical.

18 A Yeah. That's a good question. So the WFO watch floor would be more
19 interagency, where they have an MPD officer there. They're officers, but also I have ATF
20 there. There's a National Guard rep there. There's -- Bureau intel officers are there.
21 So everyone's fusing information real time.

22 Where the MPD JOC is only MPD. There's not FBI dudes there. It's only their
23 tactical where they're dealing with their street patrol guys, foot patrol. So that's why I
24 always wanted -- they're our most important partner at U.S. Attorney Office. That's why
25 I wanted to always have AUSAs in that office, catering and feeding, giving them what they

1 needed. But that would be under the WFO watch floor. That's even more tactical, just
2 MPD-driven action.

3 Q Right. And same question as I asked you about Hoover versus WFO. Is
4 the MPD JOC one sort of pipeline of information to WFO among others?

5 A So no. The JOC doesn't give me a report and then they report to WFO.
6 They do their own thing.

7 Q Okay.

8 A My people would talk -- I would talk to [REDACTED] at the JOC. She
9 would be telling me what's going on, with [REDACTED]

10 Q Because you have an AUSA there?

11 A Exactly, at least one on duty. That's why those calls, those 72, 96 hours
12 before, I wanted to make sure we had people on duty to always plug the hole. They
13 would feed me information at WFO or [REDACTED] and he'd say, Mike, you know, on Third
14 Street, these dudes just got overrun, can you let D'Antuono know. And I would be right
15 next to D'Antuono, and then he could at the WFO watch floor call Tim Shea at DEA and
16 say, can you get 10 of my dudes at that intersection.

17 So that's where -- that would be the fusion of all the tactical assets at WFO, if that
18 makes sense. Now, did the JOC report up to the SIOC? Absolutely not. We would
19 feed data to the JOC.

20 Q That's helpful.

21 A I could sketch it out for you.

22 Q Well, when you have 17 command centers, you have no command center,
23 right?

24 A Exactly. It's classic, like, fog of war, like, just from my prior career. I hate
25 feeding the beast with data, and I think there's classic examples of watch floors being

1 used throughout the summer, on January 6th, that were redundant, put out false
2 information that slowed down responsiveness. That's my professional opinion.

3 BY [REDACTED]:

4 Q There was also a Capitol Police command post that was set up.

5 A I'm sure, but I -- yes, we had no one manned there. We never did, and I
6 don't even know what intel they fed. I don't know who they fed intel to.

7 Q Just before we move off the SIOC questions --

8 A Oh, by the way -- I'm sorry -- I believe, though, Capitol Police had a
9 representative at WFO though.

10 Q I --

11 A Yes, yes.

12 Q I think so.

13 A Yes.

14 [REDACTED] I'm sorry. But that one seems like, in your view, is the one most
15 relevant or where most of the real decisions are made.

16 Mr. Sherwin. The WFO watch floor, yes. Absolutely.

17 [REDACTED] In your experience, among all these other individual agencies or
18 the strategic level, the real action in importance is at WFO?

19 Mr. Sherwin. Yes, sir. Yes.

20 BY [REDACTED]:

21 Q Is it fair to say that whatever other agency is imbedded into the WFO
22 command post, is it personality driven how impactful that Capitol Police person is?

23 A Oh, absolutely. Look, it's human nature. Some people are parochial,
24 some aren't. Some people don't like to play together. D'Antuon -- I had a very good
25 relationship with Steve D'Antuono. I think if you spoke to other partners, ATF, DEA,

1 even MPD, they would say it was an extremely open and candid relationship.

2 I can't speak to Capitol Police. I, frankly, didn't have a relationship with them. I
3 don't know what Mr. D'Antuono's relationship was with them or Mr. Contee's, but I can
4 only speak on behalf of MPD and Bureau, that I know they have an extremely strong
5 relationship, but I don't -- I can't speak on behalf of Capitol Police. I think it was more
6 parochial. That's my understanding, where, we're good to go, thank you, and we've got
7 this, kind of that approach.

8 Q And the purpose of those imbedded folks is to pass -- is mutual sharing of
9 information?

10 A Yes. I mean, look, a lesson to be learned is a more robust Capitol Police or
11 vis-à-vis they should have been more robust plussed up at WFO and/or their watch floor
12 should have been plussed up with partners. They should've -- I don't -- I don't know. It
13 doesn't matter now; I'm not a government employee anymore. I would love to know
14 who was invited to participate on their watch floor, if any. Were there any outside
15 participants on the Capitol Police watch floor? I don't know. Or was it just watch
16 floor one, was it only them?

17 Q I won't answer that question, but I will ask you, how do you institutionalize it
18 so it's not just personality based upon who's in the position at the time?

19 A Doing like what I did with these conference calls, like, several days out
20 making sure everyone gets together on this, just driving cooperation. I mean, you have
21 to force it. I think it's human nature to block things off and be parochial. You have to
22 just drive it.

23 Q Just one question about exhibit 14.

24 A Sure.

25 Q This is, again, a SIOC question. It looks like this is from probably [REDACTED] -- it's

1 from [REDACTED]

2 A Yes.

3 Q "Good evening. The AG, DAG, and DD have decided to launch SIOC and a
4 WFO CP at 4 p.m. tomorrow."

5 So this is January 4th saying it's going to be launched January 5th at 5 p.m. Was
6 that accurate?

7 A Look, I don't want to criticize [REDACTED] He's an excellent AUS, he's a great
8 government employee. But he could not -- I was in direct communication with Steve for
9 days before this. We were going to -- I was going to be on the watch floor anyway. So
10 there was -- I didn't get direction from above. I already had -- we already had our vision
11 when we were going to plus up the watch floor. So I think he just lumped these
12 together.

13 I had no visibility into the SIOC, but I don't get instruction from [REDACTED] like
14 whether they're going to stand up the WFO watch floor and whether I need to go there.
15 This is -- Mr. D'Antuono and I would make this, you know, decision. So I think it was just
16 lumped together.

17 Q So just to close the loop on that, when he says how do you want to handle
18 WFO, you had plans well in advance?

19 A Oh, absolutely. Yes, yes.

20 Q Did you, did he, or anyone explain to you what triggered the decision to set
21 up the SIOC?

22 A No. No. I don't even think I -- not trying to be flippant, I don't even think
23 I really cared at that strategic level. I was just -- I just cared about WFO and making sure
24 we could staff with the MPD JOC. I really wasn't concerned with the SIOC at this
25 strategic big picture level.

1 Q And just so you're aware, the SIOC was set up -- this is the next exhibit, 14 --

2 A Okay, 14.

3 Q -- on the day before January 5th at 16:00 at the direction of Mr. Bowdich.

4 A That makes sense because it's a Bureau -- it's a Hoover Building watch floor.

5 Q Did you have any sense of whether that timing of the day -- setting up the
6 SIOC the day before, did that impact you at all or you're more focused on --

7 A No, I don't think that impacted us, no, on the SIOC. No.

8 Q I asked you briefly at the very beginning about the guardians that were being
9 requested. Were you aware or did you have any discussions with Mr. D'Antuono or
10 anyone about who was assessing these guardians and synthesizing them, reviewing them
11 in aggregate?

12 A Look, WFO has an intel section. I don't recall having a specific conversation
13 about guardians, but I would often -- I mean, my -- I kind of parked myself right next to all
14 the intel people where I sat at WFO just because I like consuming intel in my former
15 career, but I don't remember a specific conversation about guardians with Mr.
16 D'Antuono. No.

17 Q Okay. We learned from a briefing with the Bureau that was set up, that,
18 essentially, the guardians that were collected were not viewed in aggregate until the SIOC
19 was set up January 5th.

20 A Okay.

21 Q Do you have any independent memory of that or --

22 A I don't. I don't. But it may make sense, if guardians are fused from all
23 districts, then that would be a strategic SIOC-level fusion. So, theoretically, it makes
24 sense, but I don't recall any conversations about that.

25 Q Would it be surprising to you that it wasn't viewed or synthesized in

1 aggregate until the day before the event?

2 A I mean, you would think that all of that was being fused, yeah, before
3 24 hours -- more than 24 hours before the event, yes. I mean, if you are -- if you could,
4 again, go back in time, of course.

5 Q And we learn, as I mentioned, we spoke to Mr. Bowdich, that it was his -- he
6 stated that the WFO folks would be responsible for reviewing the guardians related to
7 January 6th.

8 A Okay.

9 Q So I'm trying to understand, if it's viewed in aggregate in January 5th at the
10 SIOC, what, if anything, was occurring at WFO command post in terms of these
11 guardians?

12 A Look, I never had a direct -- I never had a conversation, I remember, with
13 Steve about the guardians or his intel staff, so I can't opine on that. But, look, if
14 guardians -- if the guardians are open on local targets, then yeah, it makes sense for WFO
15 to assess those. They should've been -- if they were open, it's open in real time. It
16 should be assessed in real time. So if it's open on December 14th, it should be assessed.
17 You don't want them in the queue just stacking up and then assessing them right before
18 an event.

19 But, again, now I'm just opining, you know, what I think theoretically should
20 happen. But I don't know directly what happened related to guardians, WFO or SIOC.

21 BY [REDACTED]:

22 Q Well, it sounds like the system's set up to be very focused on geography.
23 And this is an event where geography stretches across the country. You've got people
24 coming from all over. So the action that's contemplated is in Washington, but the
25 person and the source of the guardian might be in Albuquerque.

1 A You raised a great point. You could oversaturate and overload WFO,
2 because you have people traveling from Pensacola, Florida, and, you know, Sioux City,
3 Iowa, shouldn't that field office assess the guardian in real time and then push critical red
4 flag guardians to WFO once they get in their district? You can't shove it all off on WFO
5 or else they'll overload and nothing will happen.

6 Q That is precisely the right question as to who's best positioned to vet that
7 information.

8 A Yes.

9 Q Does it all get shifted to WFO because that's the location of the event, or
10 should it be done out in the field? Sounds like your view is that --

11 A Where the target resides. My dispositive question would be where the
12 guardian is open. If that target resides in Sioux City, Iowa, then Sioux City field office
13 should open it. And then if he's traveling into the District, that information should be
14 passed to WFO.

15 Q Is that because the people in the office where the guardian is opened are
16 best positioned to --

17 A Absolutely.

18 Q -- greatest frame of reference about that guy?

19 A Oh, yeah. Because you got agents that know Sioux City. They know the
20 atmospherics. They know the groups. WFO is not going to know about specific gangs
21 on the east side of Cleveland or ET group in, you know, Canton, Ohio.

22 Q So much of it's contextual in associations?

23 A Yes, sir.

24 Q Okay.

25 A Yes.

1 Q That makes sense.

2 BY [REDACTED]:

3 Q So just another -- to add another point in the consideration of the guardians,
4 it was told during this briefing that, on December 27th, the guardian hash tag cert unrest
5 was pushed out to the 56 field offices. And it sounds like any threat or anything related
6 to the January 6th event was marked with this tag and then pushed up into the system.

7 Does that change your view because it was then related to one event rather than
8 where the target resides?

9 A I think it's the same problem. It just comes down to manpower and
10 oversaturation. You can't have WFO dealing with 1,100 guardians, not when they're
11 dealing with 500 arrests at the same time. So it's just not feasible.

12 Q Who other than WFO should have been responsible, in your view, just in
13 your experience of dealing with DOJ?

14 A The other field offices. If Miami's opening up a guardian on Proud Boys
15 from Fort Lauderdale, then they should run the guardian, and then pass that information
16 to WFO if that target then goes into the District.

17 Q And that would be accurate if it's in terms of kind of moving towards an
18 investigation. But just in terms of a collection of data points as a threat, how would --

19 A I think, personally, that should be assessed by head -- that shouldn't be
20 WFO. Now you're building a big mosaic of different actors across the United States
21 converging on one target point. So headquarters has to deal with that at a strategic
22 level. WFO is going to get overloaded. They don't have the manpower and resources
23 to do that. And if they're tasked with it, it's never going to get done.

24 Q In your experience, would the domestic terrorism operations section be
25 better positioned to kind of view that mosaic?

1 A Oh, yeah. Definitely. Yeah. I mean, that's my personal opinion.

2 Q That was helpful. Thank you.

3 I think we're on January 5th. We can push through the 5th and maybe take a
4 break before the 6th?

5 A Sure. Whatever you guys want.

6 Q Sounds like you came back from Michigan on the night of the 4th or on the
7 5th?

8 A No, I was here on the 5th. I can't --

9 [REDACTED]. How'd the pitching go?

10 Mr. Sherwin. I think he won.

11 [REDACTED]. Good.

12 BY [REDACTED]:

13 Q So just talk us through January 5th. Obviously, there were a number of
14 arrests that day I don't want to get into the specifics of, but what was your kind of threat
15 picture for that particular day?

16 A Most of my emphasis -- and, again, this is all off raw memory -- I just
17 remember I was really focused on numbers and what are the metrics with like
18 what are -- you can do data analytics with Airbnbs and hotels and ingress of travel. I just
19 remember speaking to Steve in like, what are the numbers, man, how are the numbers
20 looking. And obviously, then you saw a plus-up because people are coming into the
21 District. People are bringing -- some individuals were arrested with weapons, so -- and
22 I -- I don't remember off memory how many arrests we had the day before.

23 But yeah. I mean, more people come into a confined area, you're going to have
24 friction, and then we had friction starting on the 5th.

25 Q We can look at exhibit 17 where it's a January 6th email talking about the

1 night before --

2 A Okay.

3 Q -- to Mr. Donoghue and David Burns, with your update at 10:19. It says:
4 Gentlemen, we had eight total arrests last night, three of those involved illegal possession
5 of firearms, two involved assaults of police officers, and the remaining were simple
6 assault battery charges.

7 Ms. Loeb. So we think those emails speak for themselves. I don't know if
8 there's any further details --

9 [REDACTED]. Well, there's a question at the end of this.

10 BY [REDACTED]:

11 Q "We anticipate a spike in activity today/night, but all good at the moment.
12 All the best Mike."

13 These arrests going in, was there -- I know there was an event of speakers on
14 January 5th. Was this something that you all had prepared for? We spent a lot of time
15 talking about January 6th preparations, but for the 5th itself.

16 A I think not saying a buffer was built in, but we wanted to make sure we're
17 prepared for the ingress of people. So it wasn't surprising that there were arrests on the
18 5th, if that answers your question.

19 Q And then it says -- there's an additional question from Mr. Rosen about
20 insight into crowds and hotel bookings. And, again, the estimates as of the 6th were still
21 trending under 10,000.

22 A Yeah. Based upon I think what I just talked about, data analytics with
23 Airbnb and hotels, you know, you can make a rough assessment. And, yeah, like I think I
24 said, he was fixated on numbers, I just know, and I would get my numbers from speaking
25 to my partners, you know, at the Bureau. And I think the data analytics -- yeah, push

1 updates throughout the day. So, yeah, this tracks to what my memory was at that time.

2 Absolutely.

3 Q Do you at WFO or the command post have any contact with the Secret
4 Service?

5 A Oh, absolutely. Yes. There was a Secret -- the Secret Service is an
6 important representative at the WFO watch floor. So, oh, yeah. We're directly
7 communicating with them.

8 Q Were they pushing numbers in terms of the crowd expectation?

9 A I don't remember what they pushed specifically. Most of the critical
10 information we would need generally from Secret Service is what is the -- what is the
11 threat picture around the White House. That's their main concern, you know, with the
12 Bureau and Treasury, but --

13 Q I'm just -- and I ask because their estimates going into the 6th are vastly
14 different from what the Bureau had --

15 A Okay.

16 Q -- which goes back to that information sharing problem that we just talked
17 about.

18 A Yeah. I don't remember what their estimates were. I don't recall. But if
19 there's a dichotomy, I'm not surprised.

20 Q It was closer from 20 to 45.

21 A Okay. Okay.

22 Q Was that ever conveyed to you?

23 A I don't recall, but I'm not saying I didn't get an email or a report about that.

24 But, again, my main partner was always the Bureau just because -- look, we work closely
25 with the Secret Service, but their mandate's limited, right? The Bureau's mandate is

1 extremely wide. That's why they're our main partner. But, again, I don't recall a
2 specific email, but perhaps I did get an email report from them about that.

3 Q And apart from these arrests, did anything stand out to you in terms of
4 January 5th that made you -- anyone, the Bureau or U.S. Attorney's Office, pivot or
5 change course or plus -- what's the phrase?

6 A Plus up.

7 Q -- plus up for the 6th?

8 A I mean, yeah. I mean, there -- yeah, there were arrests on the 4th and 5th
9 that were trending towards what we thought, that there's -- yeah, there could be a
10 confrontation. I don't think anyone envisioned the confrontation that -- you know, the
11 breach. But definitely this was not going to be like a 4th of July weekend where, you
12 know, we had like 20 arrests.

13 Q Did it manifest in any different action taken by law enforcement, though, the
14 4th and the 5th?

15 A Look, again, I wasn't in direct communication with Capitol Police, but I don't
16 recall ever Steve telling me -- I guess it's an absence of what I heard. I never recall MPD
17 partners or Steve D'Antuono or Ashan from the ATF, who I spoke to all the time, that CP is
18 requesting additional assets or MPD needs more resources. So no.

19 [REDACTED]. We talked before, Mr. Sherwin, about the preparation for a sort of
20 breach of a Federal asset event versus a protester on protester event.

21 Leading up to the event, did the assessment, in your view, of which of these we
22 were dealing with -- we're dealing with both -- but the relative assessment change as you
23 got closer?

24 Mr. Sherwin. I think -- I, again, viewing the -- remembering my view of the intel,
25 having never looked at anything other than last night looking at some of these emails, I

1 still think the primary objective was mitigating protester on protester violence, and the
2 secondary objective was protecting institutional protections.

3 [REDACTED]: All the way up to the morning of the 6th?

4 Mr. Sherwin. That's my -- yes. That's my belief still as I sit here this morning.

5 [REDACTED]: Okay.

6 [REDACTED]: So the end of the 5th, though, did you feel WFO, U.S. Attorney's
7 Office were adequately prepared going into the 6th?

8 Mr. Sherwin. Yeah. I mean, my people were good. We were able to cater to
9 MPD and WFO. And, yeah, we were prepared as far as in terms of manpower and
10 resources.

11 [REDACTED]: Did you feel that you had an accurate threat picture going into
12 the day?

13 Mr. Sherwin. I mean, look, your data is only as good as what you're getting, and
14 we believe that -- yeah, we believe that we were prepared for what was going to happen
15 on the 6th. I'm just being candid. Yes.

16 [REDACTED]: We can take a short break now or go through. Whatever you
17 prefer.

18 Mr. Sherwin. What time is it now?

19 [REDACTED]: Noon. We're going to start with January 6th, the day of.

20 Mr. Sherwin. So let's take five.

21 [REDACTED]: Great.

22 [Recess.]

23 BY [REDACTED]:

24 Q Mr. Sherwin, I think we can start with January 6th, the day of, your way into
25 work, and when you got to the office and kind of your expectations through the day, and

1 the inflection points, we'll talk through.

2 A Sure.

3 Q That morning, did you go straight to the U.S. Attorney's Office or did you go
4 to the command post at WFO?

5 A I think I went right to my office. I'm sure I spoke to Steve in the morning,
6 D'Antuono. Look, I knew it wasn't going to be a normal day, so that's why the day
7 before I planned with ██████████ to do role patrols with the MPD. I don't even recall when
8 I got in the office. I guess you could check my badging records. But at some point in
9 the morning, ██████████ met me in front of our building. I know I got there before
10 because I was coordinating meeting him in front of the building, and then we got in our
11 patrol car and starting doing patrols. So I just don't recall the time in the morning that
12 was.

13 Q And I think you said ██████████ was your crim chief?

14 A No. ██████████ was in charge of superior court.

15 Q Okay.

16 A And he's critical because superior court is the engine of the office, especially
17 with most arrests in the street, assaults, gun cases are all superior court. That's why I
18 wanted to be with ██████████ And I don't think anyone else is at the office at that time. I
19 think everyone else was at home. I think it was quiet when I got in the office, but ██████████
20 ██████████ met me in front of the building. And then we went out on patrols.

21 Q With MPD or with the Bureau?

22 A Correct. Correct. MPD, not the Bureau. I wanted to be with the police.

23 Q Do you remember what time that you started that the morning?

24 A I don't. Sorry. That's why -- I can't -- again, I wish I -- I don't have my
25 work phone or anything. It'll be in the work phone my calls with ██████████.

1 Q I know you mentioned that you went to Black Lives Matter Plaza. Was that
2 part of your morning patrolling?

3 A Oh, yeah. For sure. That's one of the first locations we went to, because
4 we were like, let's check it out. That's where the inflection points, the main inflection
5 point's going to be. I personally just remember being surprised. I was like, wow, this is
6 eerily quiet. This is odd. Where is the -- where's the protester-counterprotester
7 violence? Are they just going to slowly roll up? But that still sticks out in my mind how
8 like BLM Plaza was empty.

9 Q When did you start noticing the crowds and where?

10 A That morning especially. I mean, first we were doing role patrols, and then
11 we got out of the car, the MPD police cruiser, and were walking through the crowds with
12 MPD, me and [REDACTED].

13 Q Would that be at the Ellipse?

14 A Even before the Ellipse. When we were near the African American
15 Museum, I think we parked near there and then started walking around and then up
16 towards the Ellipse. And you could see the crowds geometrically increasing. Like, the
17 numbers were low. The numbers were like 5,000 to under 10,000. But then as the
18 late morning built up -- I think maybe one of the gaps in intelligence was we were
19 monitoring just from an overall picture like air flights and Greyhound bus and hotels, but
20 maybe there was an underestimation of numbers because a lot of people poured in that
21 morning. I think that -- that may have thrown a curveball. And I remember just -- you
22 know, just the cars and the buses and the caravans. Like, that morning, you could see
23 the crowd plussing up very quickly throughout the morning.

24 Q Was there anything that stood out to you about the crowd itself that you
25 were seeing?

1 A No. Actually, it was kind of interesting, because there's a dichotomy from
2 what you saw in the morning and early afternoon to what happened later. Like, it was
3 almost -- I mean, I described it to you before, like a carnival atmosphere. It was kind of
4 surreal. There was like people selling T-shirts and popcorn. Like, literally, I think I saw
5 a cotton candy vendor. It was ridiculous. And a lot of like hooting and hollering, but
6 no -- there was no violence per se. There was no like -- there were no assaults. I didn't
7 see anyone throwing stuff at cops.

8 Actually, if anything, even the police officers I was with, like, some -- some -- I
9 won't say protesters -- some of the people there were like high-fiving the police. They
10 weren't throwing things at us or throwing things at the police.

11 So the morning was -- would be characterized as a plus-up in numbers very
12 quickly. Very boisterous crowd, but not violent, and friendly -- believe it or not, friendly
13 to the police, actually. That's what I personally observed. I mean, I was with MPD
14 officers that were like getting high-fived with like people in the crowd.

15 Obviously, things changed, but that was the dichotomy of what happened that
16 day.

17 Q How long were you out there for?

18 A Hours. I mean, I don't remember the time. Again, I wish I had my work
19 phone. I'm sure the data's on there somewhere, but --

20 Q When did you start to notice a shift in kind of the mood of the crowd?

21 A So we were in the crowd. We were doing patrols. There were a
22 couple -- a couple things got -- stroked my attention. That's why I'm glad we were in the
23 crowd. I remember some of the police officers called me over to a couple people
24 because they were confiscating uppers, rifle uppers, and that's when I got a little, like, this
25 isn't good. I was like, these guys are f'ing idiots because they're walking around with an

1 upper, which is not a rifle. An upper is just a barrel and a bolt. It's not a lower
2 receiver. If you just have an upper on a sling, it looks like a rifle, but -- and it looks -- you
3 look menacing, but it's not.

4 So the cops are like, Mike, can we arrest them for having possession of a firearm?
5 I was like, no, because it doesn't meet the definition. But confiscate the thing, like a
6 brass knuckle and, like, take it from them because, I was like, these guys are going to, like,
7 get -- they're going to get shot or they're going to create chaos, because it looked like
8 they were walking around with automatic weapons, and it was like an AR15 upper. So I
9 was like, take it from these guys, just confiscate them.

10 And that was the first thing that got my attention, that some of these fools were
11 walking around. And, I mean, if I'm a cop, you know, that would be really dangerous.
12 And there were a lot of spurious intelligence reports about people in trees and in
13 buildings with rifles. They were all discounted. They never came to fruition, but there
14 were a lot of -- I remember reports -- even right where I was, there was like a report of a
15 dude in a tree, right near the tree where I was with MPD, and it wasn't. It was just like a
16 branch. But, in general, again, there was not violence towards authority or the police at
17 that point.

18 The speeches take place. Even before the speeches were done, the patrols
19 happen. And I told -- I forgot what deputy police chief I was with. And it'll come to
20 me, but right now I can't remember his name. He's like, Mike, do you want to get back
21 in the car? I was like, no. Because I started walking towards, if you're familiar with the
22 Capitol and the U.S. Attorney's Office, towards -- if you go towards the Capitol, which is
23 east -- east to the northeast is the U.S. Attorney's Office. So I start walking back towards
24 the U.S. Attorney's Office, and that's when I personally saw, like, the crowds getting more
25 rowdy. And that's when I start seeing people climb up on the scaffolding that was set

1 up for the inauguration. Then I knew, it was like, this isn't going to -- nothing good's
2 going to come from here. Because all those dudes need to be arrested for trespass,
3 because you know you can't climb up the scaffolding because the ropes were there.

4 And at that point, I wasn't thinking of, like, breach of the Capitol. I was like,
5 these guys are going to kill each other because the thing's going to fall and kill a hundred
6 people. But then you could see the crowds getting more boisterous, and then I went
7 right to the U.S. Attorney's Office. And, frankly, I don't recall who I spoke to first.
8 Maybe it was [REDACTED], maybe it was Steve D'Antuono. Again, it's going to be on my
9 work phone records. But it was like total chaos after that.

10 I remember my first assistant told me about somebody being shot in the Capitol.
11 That was the, you know, the Ashli Babbitt shooting. And it was just complete fog of war
12 right when I got back to the office.

1

2 [12:16 p.m.]

3 BY [REDACTED]:

4 Q So let's just go from before you went back to the office --

5 A Sure.

6 Q -- at the time you see this -- the folks up on the scaffolding. Had the
7 speeches begun at that point?

8 A Yeah. The speeches already started, but they didn't -- I didn't stick around
9 for speeches. Like, we started leaving, because the -- the patrol -- I was with the deputy
10 police chief, who is like: Let's get out of here. So not get out of here because it was
11 getting violent. Just like, okay, we're not going to sit and listen to speeches. Let's just
12 patrol more.

13 And I think after that is when -- when I started walking back is when the deputy
14 police chief said: Hey, Mike, come over here. These guys were just detained with two
15 uppers. Can we charge them with having an assault rifle?

16 And -- so I was with them for, I think, 10 or 15 minutes, because I took pictures.
17 We sent it to the ATF, and I was like: No, we can't charge them. Just confiscate the
18 uppers.

19 And then I walked towards -- east towards my office. And that's when I saw, like,
20 people climbing the scaffolding. The scaffolding is big. You could see people climbing
21 it and putting, like, flags on it, you know: F antifa or F the President.

22 And I was like: This is going to go bad fast. And that's when I, like, went right
23 to my office and then, you know, spoke to D'Antuono, [REDACTED] you know.

24 Q Do you remember if you were in the area when President Trump's speech
25 began?

1 A Oh, yeah. We were on the Ellipse. I've even -- look, I remember hearing
2 in the background speakers, and I'm also positive we heard his voice. But, you know,
3 I -- I don't remember exactly the content of what was said.

4 Q Do you remember if there -- it sounds like, in the morning time, where you
5 described this kind of carnival atmosphere --

6 A Yeah.

7 Q -- is that before the speeches began?

8 A Yeah. I think that was before, where all the -- I just remember all the -- it
9 was, like, weird because we saw the vendors, like -- it was like you take your kids there,
10 you know, to get a T-shirt and popcorn. Literally, there were, like, popcorn vendors.

11 Q -- and it would have been the outer end if it's right at the American
12 Museum?

13 A Exactly. That's where a lot of those tables were set up with T-shirts and
14 food, exactly, yep.

15 Q So, just to give some of the timeline here of the rally, the speeches began
16 around 11. President Trump's speech began around noon. So, using that as a
17 guideline, do you think you got out to that area -- again, the outer area by the
18 museum -- before 11 if you were there for a few hours?

19 A Probably, yeah, I believe so.

20 Q Okay.

21 A I believe so. Again, I don't have a tick-tock of my events, but yes.

22 BY ██████████:

23 Q Did it seem to you, Mr. Sherwin, that there were people that were
24 purposefully staying out of the area by the Ellipse through which you had to go through a
25 magnetometer --

1 A Oh, yeah, yeah.

2 Q -- who were paying attention to the speeches, but --

3 A Oh, yeah.

4 Q But purposefully outside of the metal detectors?

5 A Oh, yeah. I was talking to [REDACTED] and even I was looking at some -- look,
6 there is different -- we knew from intel that different groups would have different
7 markers and, like, specific groups were -- and this is open source. This isn't -- this isn't
8 classified. It's been reported. Like the Proud Boys, their cars --

9 Ms. Loeb. So we would object to discussion of specific groups.

10 Mr. Sherwin. Got it. All right. I'll honor DOJ's request.

11 BY [REDACTED]:

12 Q Okay. I guess the question is sort of relative crowd size --

13 A Yes.

14 Q It may be hard for you to tell from your vantage point, but more people
15 outside of the permitted event or the event through which you had to go through security
16 to get to --

17 A There was just a lot of people.

18 Q Yeah.

19 A But there were definitely some people outside that looked like they were
20 teched up that --

21 Q Yeah.

22 A -- aren't going to go to a carnival. I'll put it that way.

23 Q Okay. When you say "teched up," you mean wearing --

24 A Yeah. Like I'm back in --

25 Q Yeah.

1 A -- Kabul or Baghdad, like, you know, I've got my Kevlar vest, and I've got my
2 gear. You know, you don't need that in D.C. I need that when I'm in Kabul. And
3 there were dudes wearing that stuff. And I --

4 Q Yeah.

5 A -- homed in them immediately.

6 Q Uh-huh.

7 A Like those aren't dudes -- you know, those are guys I would want to keep an
8 eye out on.

9 Q Right. And those guys, the ones that were teched up, they were outside of
10 the --

11 A That I recall, yes. I'm not saying that there -- some weren't inside.

12 Q Sure.

13 A I just remember them being on the outer perimeters, yes.

14 Q All right. And did the crowd stretch to the Washington Monument, or even
15 beyond, or --

16 A I think the stragglers -- again, I --

17 Q Yeah.

18 A -- wasn't in a helicopter. It was just I was right in the crowd, so it was hard
19 to get a perspective.

20 Q I see.

21 A It was broad, though. It was very broad.

22 BY ██████████:

23 Q It's been described kind of that there was the mags, and there was a crowd
24 that went through the mags, but there was kind of like a chokehold of folks that stayed
25 out of the mags. Is that kind of accurate as to what you saw?

1 A In general, yes. Yeah, exactly, but -- from my perspective, that seems to
2 comport, yes.

3 Q Did you notice any flags or any insignia?

4 A Oh, yeah. Oh, all kinds. Yeah. Of all the usual suspects we were
5 tracking, 100 percent.

6 Q What do you mean by the usual suspects?

7 A I mean, the groups that we anticipated being there were there from, you
8 know, flags with Q to Proud Boys to Three Percenters and Oath Keepers. And you saw
9 badges on the tech gear, on the Kevlar, Three Percenter -- I saw personally Three
10 Percenter patches to Oath Keeper patches on the Kevlar, so --

11 Q And were those predominantly from the folks outside of the mags, or --

12 A I believe so, but I -- again, I wasn't really focused on that. I was just focused
13 on the targets or the individuals, not the -- not where they were in terms of a
14 magnetometer or --

15 Q When -- if you're outside now, during Mr. Trump's speech -- and, again, just
16 timelinewise, he starts around noon, and then he goes until after 1 o'clock.

17 Do you remember if you made your way back to the U.S. Attorney's Office during
18 that time, or after his speech?

19 A I believe it's definitely that window, because we did not stay for the
20 speeches. And that's when I started walking back with the police, and I got pulled into
21 that street corner by those two uppers as I was walking back to the U.S. Attorney's Office.

22 I remember there was still like -- there was still people speaking, so it probably
23 must have been in that noon to 1 window if I had a guess.

24 Q And then did you see -- I'm getting a little confused about your logistics here.
25 So did you see --

1 A Sure.

2 Q Were you walking towards the Capitol or --

3 A Oh, yeah.

4 Q Okay.

5 A Yeah. No, I'm walking towards the Capitol near the U.S. Attorney's Office.

6 That's in the north, like, east --

7 Q Was it -- were there people walking towards the Capitol --

8 A Oh, yeah.

9 Q -- during that time?

10 A Yeah. Yeah. You could see crowds shifting. I'm not saying massive
11 amounts of people, but you definitely saw crowds peeling off for the Ellipse and going
12 towards the Capitol, yeah. Definitely.

13 Q During the speech?

14 A Yeah. In that window.

15 Q Uh-huh.

16 A In that window. So, if -- if my recollections are correct, if I'm starting to
17 walk back to the U.S. Attorney's Office and that window noon to 1, then, yeah, I mean, I
18 saw people going towards the Capitol at that time.

19 Q So --

20 A Not a lot, but I definitely saw people going in that direction.

21 Q Do you remember any kind of the phrases obviously that we know now from
22 Mr. Trump's speech, about "I'll go with you to the Capitol," or did you hear the crowd, any
23 chants of "hang Mike Pence" or anything distinctive about what you heard?

24 A I don't remember -- I don't remember any speeches, and I don't remember
25 anything from the crowd. I just remember visual. I don't remember anything audio,

1 so --

2 Q And who were you walking with still now towards --

3 A I was still with [REDACTED] at the time, and then with -- and several police
4 officers --

5 Q Okay.

6 A -- because this is when we're dealing with that upper situation, so yes.
7 Those are the individuals I was with.

8 Q Where were you when you became aware of the pipe bomb at the DNC or
9 the --

10 A I think -- that's a good question. I believe when I get back to the
11 U.S. Attorney's Office, because the trigger point was these people climbing the
12 scaffolding. That's when there was this -- I get barraged with the shooting and the pipe
13 bomb and individuals with incendiary devices and vehicles near the -- that's as -- this is
14 total chaos of war, like 80 to 100 intel reports all poured in directly from Steve or from my
15 first assistant or crim -- there was total fog of war, yes.

16 Q So let's just go through -- the timeline I'll provide for you is the --

17 A Sure.

18 Q The DNC pipe bomb was found around 1:17.

19 A That -- okay. Makes sense.

20 Q The RNC, a little bit after that. The shooting of Ms. Babbitt was at 2:40.

21 A That makes sense. So --

22 Q So I'm going to -- from what you just said, I take it you're back at the
23 U.S. Attorney's Office --

24 A Oh, yeah.

25 Q -- for that series of events?

1 A Oh, yeah. Yes. I -- yes. That's why I'm saying -- look -- and I think my
2 memory is correct that, once I get back, because I didn't have a good strategic perspective
3 of what was happening other than I saw, you know, all these people climbing the
4 scaffolding. When I get back to my office is when I get barraged with all this, and now
5 it's all linked together. But that timing seems to be accurate.

6 I think a Ashan from the ATF called me, because we were very close and worked
7 together all summer. ATF had primary. I spoke to him all the time about the
8 incendiaries -- the pipe bombs -- both pipe bombs. And then I believe my first assistant
9 or crim chief told me about Babbitt, which was shocking. I was, like, I couldn't
10 believe -- someone would have got inside the Capitol was shocking just personally to me.

11 And then it was just chaos with other individuals, intel about shooters in trees,
12 and shooters in buildings, and --

13 Ms. Loeb. And just a reminder that Mr. Sherwin's authorization ends at 2 p.m.
14 on January 6th.

15 BY [REDACTED]:

16 Q Did you leave the U.S. Attorney's Office at any time, or did you --

17 A The only time I left, I'm sure I went back and forth to WFO, and I knew I went
18 to Capitol Police headquarters, but I -- you can check on badge records. I think I slept
19 there overnight. I'm almost positive.

20 Q And did you become aware that Mr. Benedict had gone to the Capitol?

21 A Oh, yeah. Yeah. I know. Yeah, because that was a crime scene,
22 so -- and I know -- I can't remember what Steve's situation was. I mean, it was such
23 chaos talking to the MPD, too. But, yeah, I mean, there were, like, multiple crime
24 scenes at once within a huge crime scene, so it was really chaotic.

25 Q So did you ever go to the Capitol. I know Mr. Benedict did, Mr. Donoghue

1 did --

2 A That's correct.

3 Q -- and Mr. Bowdich? Did you ever --

4 A I did not, just because I thought it -- I didn't want to make it look like a
5 tourism type of situation going to active crime scenes. And then, later, I think the next
6 day or 48 hours --

7 Mr. Gardner. Well, where we checked is beyond the scope of the authorization.

8 [REDACTED]. Later that what he did?

9 Mr. Gardner. Correct. After 2 p.m. on January 6th, as referenced in our
10 authorization letter.

11 [REDACTED]. I really -- we're going to move past 2 o'clock. We have to in
12 terms of coordination that occurred afterwards, so if you --

13 Ms. Loeb. No. The Department strongly objects to that, and I thought that was
14 agreed upon before this interview.

15 [REDACTED]. I don't know how it ends at 2 o'clock on January 6th.

16 Ms. Loeb. Well, it turns from planning and preparation to the events of January
17 6th, which the Department authorized him to talk about, to the most largest, most
18 complex prosecution in American history.

19 Mr. Sherwin is here of his own accord, and the Department has authorized a
20 certain scope of the -- of his testimony. And you've had that letter, did not raise
21 objections with us about the ending date of 2 p.m. on that day. I feel like it would have
22 been appropriate if you all had a significant problem with that scoping, for us to have
23 discussed it in advance of Mr. Sherwin's interview.

24 [REDACTED]. So I'm going to ask Mr. Sherwin about his full day, and not get
25 into any questions about any specific --

1 Ms. Loeb. And that absolutely far beyond what the Department has agreed to in
2 this, and we would like to go off the record and have a conversation.

3 [REDACTED]. If Mr. Sherwin wants to talk about it --

4 Mr. Sherwin. Can I -- look, I don't want to intrude upon DO -- can I let you guys
5 discuss this, and I'll come back in the room, see if you can resolve this?

6 Ms. Loeb. Yeah, absolutely.

7 Mr. Sherwin. Would that be okay? Can you give me 5 minutes and --

8 [REDACTED]. Sure.

9 Mr. Sherwin. I would like it resolved. I don't want to --

10 [REDACTED]. Sure. Thanks, Mr. Sherwin.

11 Mr. Sherwin. Thanks.

12 [Discussion off the record.]

13 Ms. Loeb. And so the agreement is that you will describe your scope --

14 [REDACTED]. I'm going to question now, thank you.

15 Ms. Loeb. -- of questions, and then we'll be able to talk with Mr. Sherwin about
16 our views of the scope?

17 [REDACTED]. Yeah.

18 So, Mr. Sherwin, as DOJ counsel is relying on the letter where they have told us
19 that they have picked the time of 2 o'clock, where they believe it has shift from a protest
20 to criminal prosecutions, I respect that, and I assured them, as I'm assuring you, I have no
21 intention to ask about any criminal prosecutions and how your role obviously shifted as
22 the chief prosecutor in the District.

23 What is important to the committee and part of our mandate is what coordination
24 was happening that you were aware of during this critical time period between 2 p.m.
25 and 5:20, until the National Guard arrive, and then the preparations begin to clear the

1 Capitol.

2 If you have any information about who you were in touch with, any conversations
3 you had with the mayor, Chief Contee, Mr. D'Antuono --

4 Mr. Sherwin. Sure.

5 [REDACTED]: -- or any other officials in the interagency capacity about those
6 high-level --

7 Mr. Sherwin. Sure.

8 [REDACTED]: -- decisions that were occurring that has nothing to do with --

9 Mr. Sherwin. Got it.

10 [REDACTED]: -- strategy or criminal prosecutions that might have been
11 brought to your attention as far as arrests, the committee would appreciate your answers
12 on that.

13 Mr. Sherwin. Yes.

14 [REDACTED]: And now I will step out and you can go off the record and
15 discuss that.

16 Mr. Sherwin. Okay.

17 [REDACTED]: Thank you.

18 Mr. Sherwin. No problem.

19 [REDACTED]: Obviously, it's your choice whether you want to answer these
20 questions. Thanks, Mr. Sherwin.

21 Mr. Sherwin. Sure. Sure.

22 [Discussion off the record.]

1

2 [REDACTED]: We're back on the record.

3 I see Representative Aguilar has joined us. Good afternoon, sir.

4 BY [REDACTED]:

5 Q And I think we ended with me asking your -- kind of the timeframe after you
6 went back to the U.S. Attorney's Office. Did you -- and I think you did say you went back
7 to WFO and the command post.

8 Sorry. You have to say yes.

9 A Sure. Yes. Yes. Correct. Correct.

10 Q And if you could just talk through if you had any conversations with
11 Chief Contee, the mayor, any interagency interactions during this time period.

12 A Sure. So the caveat being that it was -- there was total chaos. I mean --

13 Q Sure.

14 A -- there was a flood of calls and people running to my office, making sure
15 where my people were, because I had people out there that were in patrols, so, I mean,
16 that was my main concern. What are my concerns with my people?

17 So, look, I had no calls that I remember with anyone at DOD or National Guard
18 after that time. I did have calls with people in the ATF and the Bureau, of course, Steve,
19 and then Ashan. And my main concern was cordoning off areas where there were
20 potential crime scenes and making sure we could preserve evidence if we're going to
21 move forward with any cases.

22 That was my main concern and my marching orders, so that and making sure my
23 people were okay that were out on the street, everyone was accounted for, and then
24 making sure we had the duty stations plussed up because I knew the cases were going to
25 start coming in. So we had to set up an architecture to deal with those cases.

1 Q And I appreciate and understand that's your focus given that you're -- given
2 your role.

3 Did you at any moment make an inquiry or were curious as to when the National
4 Guard would be arriving?

5 A I -- I mean, I'm sure that was -- I would personally want to know that because
6 it was chaos there, like where were the assets? But I don't recall being in the mix with
7 those conversations.

8 Q And how were you receiving your information at this time?

9 A Oh, everything but pigeon. I mean, phone calls. Mostly phone calls and
10 people running into my office. I -- I don't even remember actually -- I would love to see
11 my emails from back then. I -- if I got emails, I would like to see how many I responded
12 to. Probably not a lot, because most of the time, I was running next door to WFO or at
13 Capitol Police or, like, in intake or MPD, so --

14 Q So can you just kind of talk through why you went to both? You went to
15 WFO. What was the scene there --

16 A Sure.

17 Q -- versus what was going on at Capitol Police?

18 A Just -- I mean, I can't even articulate in detail. Just it was chaos. I mean,
19 look, it was just plain and simple. I mean, it was a chaotic event. People -- very few
20 people knew what was going on, I think, in terms of, you know, coverage with different
21 ingress areas. I didn't -- I just remember it being very chaotic without any specific detail.
22 Just extreme chaos.

23 Q At WFO, did you see, or at any point, did you see Mr. Bowdich or
24 Mr. Donoghue that day?

25 A I don't think I saw Rich at all that day or that whole week, actually. I think

1 he may have called me a -- I could probably count on one hand how many times he called
2 me. Maybe Mr. Bowdich, I saw at WFO. I don't think he called me at all. The
3 Director did not call me. So --

4 Q At WFO, was Mr. D'Antuono still there?

5 A Oh, yeah, or he was plussed. I mean, we spoke -- I know we spoke several
6 times via phone and in person, but he was running around like me.

7 Q What about at Capitol Police headquarters?

8 A I spoke to no -- I did speak to Capitol Police headquarters directly, because I
9 went over there with my criminal chief and first assistant later in the afternoon, because,
10 directly, we needed to -- again, in just general, architecture with -- we'd, like, talk about
11 posturing for intake of cases.

12 Q Sure.

13 A We need to coordinate with them, and there was such chaos, we just had to
14 walk over there and talk to them. So I went over there with my first assistant,
15 [REDACTED] late in the day. I remember it was dark, man. It was like 8 or 9 o'clock at
16 night --

17 Q Okay.

18 A And it was still extreme chaos all over the place.

19 Q Do you remember who you spoke to at Capitol Police?

20 A I can't remember. It was a senior -- it was not the chief of Capitol Police.
21 It was one of his senior advisers, and we were in a conference room, and we were just
22 talking about we have to get assets in place to start dealing with cases.

23 Q Did you at any point -- again, I understand what your focus is -- were you or
24 did you become aware of any of the tweets that the former President was putting out.

25 Ms. Loeb. Object to questions about that.

1 [REDACTED]. About the tweet of the President?

2 Ms. Loeb. I don't think that we -- we are not comfortable with Mr. Sherwin
3 talking about information input. You said you wanted to ask him about movements,
4 about who he spoke to at -- in the interagency.

5 [REDACTED]. I understand that. I'm asking about whether there was any
6 impact of learning this information. And I think that that has nothing to do with ongoing
7 cases.

8 BY [REDACTED]:

9 Q Mr. Sherwin?

10 A I think I could give you a simple answer. I was not looking at Twitter at all
11 that day, so I have no idea if he was tweeting or Lady Gaga. It didn't matter. So I have
12 no visibility of what anyone was tweeting --

13 Q Great.

14 A -- at that time.

15 Q Were you aware of any of the statements in terms of not issuing a statement
16 to leave the Capitol?

17 A I -- I wasn't paying attention to any of that. It was more just the chaos and
18 dealing with just the influx of cases. I wasn't looking at the social media scheme or what
19 the messaging was at that time.

20 Q Got it.

21 We did have -- and I provided you a number of call lists that --

22 A Yes.

23 Q -- Mr. Rosen provided us.

24 A Okay.

25 Q And it looks like -- and obviously I'm not going to ask you about each of these

1 calls.

2 A Sure.

3 Q It looks like there is 12:40, 1:09.

4 A Yep.

5 Q 1:17, it looks -- and, again, this is what he testified to, which might be
6 confusing about his --

7 A Yeah.

8 Q His -- his own memory --

9 A Sure.

10 Q -- was that you were at the Ellipse at 1:17. It seemed that the crowd size
11 didn't appear to be unexpected and the conduct so far is okay. And his memory was, at
12 the 2:33 call, which is obviously after the Capitol had been breached, that you were
13 walking up Constitution Avenue, but that sounds to me kind of inconsistent with what
14 your memory is, which is just --

15 A I mean, I don't remember the tick-tock, but, again --

16 Q Right.

17 A -- it's easy to just pull my badging records and GLO. I mean --

18 Q Yeah.

19 A -- I was at the office. I have to badge in with security, so, I mean -- but I
20 don't -- like I testified earlier, I don't remember my tick-tock. It was such a chaotic time.
21 So I can't pin the calls, where my GLO location was when the AG called me.

22 Q No problem.

23 So, as far as the rest of your day, then -- I know you said you spent the night there
24 at the office.

25 A Yes.

1 Q Was there any efforts in terms of -- do you remember being on any
2 interagency calls in the evening time?

3 A No, I don't remember being on any interagency calls. I just
4 remember -- the main points that stick out are going to Capitol Police headquarters and
5 getting our architecture ready for the cases, and the broad determination was it wasn't
6 going to meet the mark. We had to flex the WFO, and that was what we were focused
7 on.

8 Q I'm sorry. It didn't meet the mark to what?

9 A With -- we didn't think it had the capacity to -- that location didn't -- wasn't
10 the proper location to set up the architecture to prosecute incoming cases, so we moved
11 to WFO.

12 Q I see. So not at Capitol Police?

13 A Correct.

14 Q To WFO?

15 A And that's why we were there. We had this -- and I just remember being in
16 the nuts and bolts, how are we going to do these cases? I don't remember any
17 interagency -- maybe I was invited. Again, I don't even remember checking a lot of
18 emails. I was almost welded to the hip of my first assistant crim chief from that early
19 evening through the very late night.

20 Q Do you remember -- and forgive me if I asked -- if you spoke to the mayor
21 during this time period?

22 A I don't think I did. I don't think I did, no. No.

23 Q It sounds like you were with your chief partner --

24 A Yes.

25 Q -- Steve D'Antuono, as well as the MPD folks.

1 A Yes.

2 Q Did anyone reach out to you as far as congressional Members or --

3 A No.

4 Q -- staff?

5 A No.

6 Q Anyone from the White House --

7 A No one.

8 Q -- in terms of official --

9 A No. No White House called, no. Negative.

10 Q And, just generally speaking, in these numerous calls with Mr. Rosen, were
11 you giving updates of what you saw and kind of the architecture that you were putting in
12 place?

13 A Yeah. Probably -- yeah. I mean, I'm sure they were -- what did you hear
14 about the shooting? What did you, you know, hear about breach of the Capitol? I
15 mean, I was just telling him what -- most of my information at that point was CNN in my
16 office. You know, I was -- you know -- and people just coming in with -- that the initial
17 stages of cases that were coming in without getting into any detail, but that was --

18 Q Right.

19 A -- our --

20 Q And that's kind of the -- there is some of these emails from [REDACTED] during
21 the day. Were you relying on any of those --

22 A No. I don't even remember reading his emails anymore. I mean, I'm not
23 trying to denigrate --

24 Q I understand.

25 A -- the -- but they had, like -- I was dealing with, like, putting out fire after fire,

1 and they're looking at big, strategic overview, you know, at the SIOC, NSD. I doubt I
2 even opened his emails. I don't remember.

3 Q And, again, understanding your focus is on putting towards the structure, did
4 you have any moment to pause during this over 3 hours while this chaos continued as far
5 as what efforts could be taken to quell the violence?

6 A No. More -- I mean, at that point, I mean, that was total deferring to, you
7 know, the powers that -- way up my chain of command, you know, what they're -- you
8 know, I'm not in charge of resources or moving resources. I just know that there was
9 chaos.

10 I know that there were Federal assets going there to clear. There was chaos
11 because some individuals -- you know, they -- it was a very chaotic situation because of
12 the footprint of the Capitol, and -- and the efforts to clear the Capitol for the recount, so I
13 just know it was way above my chain of command, and I wasn't privy to any of those
14 conversations.

15 Q Did you -- and I understand that.

16 A Yeah.

17 Q Did you, as Michael Sherwin, as a background in military, have any moment
18 to pause to think, where is the National Guard, or concerned about the arrival of the
19 National Guard?

20 A Personally, I mean, I didn't think of that specifically, you know, where is the
21 National Guard? I wasn't looking at that specific tick-tock. I just knew it was, like,
22 the -- I mean, there was already -- it wasn't time even to Monday morning quarterback,
23 because there was already a breach. So it was just Federal assets were just being
24 plussed up, poured into that region, and -- and we kind of just took a -- you know, I'm not
25 saying we're spectators at that point. But, at that point, we're not getting in the way of

1 law enforcement. We're, like, all right, you guys do your job, and you bring us the cases.

2 So I just know that there were -- again, way above my chain of command. I know
3 those calls were happening, but I wasn't privy to any of those.

4 Q All right. One of the things that's been public and what we've learned is
5 that the MPD had a very quick response time that day.

6 A Yeah.

7 Q Did you have any kind of visibility into what their preparations were
8 coordinationwise? And the big picture here is, once the breach happened, the Capitol
9 Police was obviously getting flooded. By all accounts, MPD was able to arrive literally --

10 A Oh, yeah.

11 Q -- within 20 minutes.

12 A Oh, yeah, because, first of all, I mean, Capitol Police are excellent at what
13 they do. They're used to dealing with these situations, and they were -- I don't know the
14 geographic location of the National Guard, where they were stationed. But Capitol
15 Police were obviously do doing all types of street patrols anyways.

16 I mean, I was with them doing street patrols around the Capitol, so they were
17 geolocated there to assist at a moment's notice. And those guys went right into the
18 breach. I mean, in peril of their -- sometimes their lives.

19 Ms. Loeb. Mr. Sherwin, did you mean MPD?

20 Mr. Sherwin. MPD. Sorry. Yes.

21 Ms. Loeb. Sorry. He said Capitol Police. Just --

22 Mr. Sherwin. Okay. I'm sorry. I'm sorry. Yes, MPD.

23 So, yeah, they moved very quickly and, like, didn't hesitate to get right into the
24 fray.

25 BY [REDACTED]:

1 Q Did you have any conversations with Chief Contee or -- it would have been
2 Chief Contee at that time, you mentioned had left, in terms of what their posture was in
3 terms of the officers? Was it all hands on deck? Did they have a number of more --

4 A Oh, I'm sure -- I mean, I know I had a conversation, but I don't remember
5 those details. But, yeah, it was all hands on deck. It was like they had a -- they had to
6 support the CP lines, and -- and, again, I don't know who gave the authorization for them
7 to step onto their territory. I wasn't privy to those authorizations. But I know that,
8 when they cleared, that they were there, like, immediately.

9 Q And visually, from what you saw in the morning time until you went back to
10 your office, did you see the presence of Capitol Police at the points where you were
11 walking at the --

12 A I don't remember. I just remember huge mass of MPD presence. I don't
13 remember much Capitol Police presence at all. But, again, I wasn't focused on that, but
14 no. I mean, MPD all over the place. I don't remember seeing much National Guard.
15 Maybe at a couple checkpoints, but I don't remember seeing any Capitol Police really.
16 Maybe a couple guys, you know, on the perimeter when the scaffolding was being, you
17 know, climbed.

18 Q When you say that you saw huge presence of MPD, were they on the
19 perimeter? I --

20 A Exactly.

21 Q Okay.

22 A Patrolling the streets around the Capitol, at chokepoint intersections, but
23 not actually on the Capitol Police grass, if that makes sense.

24 Q Right. And can you just explain why that is, just that kind of --

25 A Look, I don't know the details, like the rules of engagement or -- that's

1 probably the wrong word -- whatever sharing agreement they have, but MPD was
2 flooding the street at chokepoints to ensure that they could push people in different
3 directions. When I saw the scaffolding -- this -- I could only tell you my personal
4 perspective. I don't know --

5 Q Uh-huh.

6 A -- what happened behind or behind any other barriers, but I didn't -- at the
7 point when the action started heating up, climbed scaffolding and everything else, there
8 were no MPD officers on -- I didn't see them in front of doors at the Capitol or on grass.
9 They were still in the -- doing street -- you know, at chokepoints. I believe the only
10 people I saw on Capitol grounds were the Capitol Police officers, and just very few of
11 those that I could see.

12 Q Okay. I want to turn to exhibit 23, which is a briefing you provided to --

13 A Sure.

14 Q -- Members --

15 A Sure.

16 Q -- on January 12th.

17 A Okay. Yep. Vaguely remember this.

18 Q Much of what you said is redacted.

19 A Right.

20 Q And obviously I don't want to talk about any ongoing cases. I'm wondering
21 about what your visibility was into the aspect of the sharing of intelligence, which is
22 something we've obviously asked you about.

23 A Sure.

24 Q One thing that struck me was the -- this is page 14 --

25 A Sure.

1 Q -- of that, Ms. Sanborn states in the middle of the paragraph there -- I think
2 you -- you kicked the question to her: Do you want to take that? And she's back on
3 the line, and she says: Despite the information that we were seeing, whether it was
4 aspirational or intelligence, we were constantly, via the JTTF construct, trying to flag
5 information that we thought would be valuable to our partners. And so, again, our
6 biggest challenge is really trying to figure out and ferret that --

7 A Yeah.

8 Q -- intention.

9 A Yeah.

10 Q Did you see that or have any insight into what was being shared with
11 partners, as Ms. Sanborn states?

12 A I mean, look, I flipped it to her because they -- they produce intel. They
13 push it. That's why I thought it was appropriate for them to answer.

14 And, look, yes, I saw some products pushed to -- through the JTTF construct.
15 And I'm sure there were other informal channels in which intelligence was shared with
16 the local partners. But I didn't have -- I don't have visibility into all of those intel
17 pipelines and reporting structures. So, you know, I guess -- I can't speak on behalf of
18 Ms. Sanborn, but --

19 Q But, apart from the January 5th Norfolk report --

20 A Yes.

21 Q -- was there any -- and that -- I don't believe the Bureau refers to as a
22 finished product, but, in any event, it was a situational incident report?

23 A That's correct. SIR, yes.

24 Q Did you see anything else other than that one piece from the Norfolk,
25 Virginia, office?

1 A From that office.

2 Q Correct. Or entirely in terms of --

3 A Look, I can just speak personally. What did I see? I mean, yeah. I mean,
4 there were other intel reports. Some were unvetted, raw intelligence from -- we -- we
5 already covered some of these exhibits that you mentioned.

6 Q Yes.

7 A SITE, and also other postings, and some chat groups with violence.

8 Q But you don't have any visibility of that was shared with partners?

9 A I don't know. Correct.

10 Q Okay.

11 A I don't know what -- I can't speak on behalf of what the Bureau did with all
12 that.

13 Q Right.

14 A Correct.

15 Q And just the one kind of threat assessment that we're aware of -- obviously
16 there was no joint intelligence bulletin issued --

17 A Yes.

18 Q -- about January 6th. The one kind of assessment that we've seen is from
19 the Capitol Police. There was a January 3rd special assessment that was reported in the
20 press where it stated explicitly that the Capitol itself is a target.

21 Were you aware of that in real time at all?

22 A I don't recall getting that. I mean, I don't know if you have the
23 communication. I don't recall getting that report. I don't know who that was shared
24 with, if that was directly shared with me.

25 Q I -- and I don't know. I'm not trying to --

1 A No. No. I understand -- I know you're not trying to catch me in a --

2 Q Uh-huh.

3 A In a corner.

4 Look, there was a lot of vague intelligence reporting about taking back our House,
5 you know: "Stop the steal," we need to take back our House by force, you know, by
6 hook or crook, you know, those types of things.

7 But, in terms of -- there was a lot of that reporting, I think, a lot of those postings.
8 The Norfolk report speaks for itself. I think in more detail. I'm not telling you anything
9 that hasn't probably been testified to that's more actionable.

10 But I guess that's a question for, I guess, others to discern whether -- look, what is
11 actionable intelligence? It's a very -- you ask a hundred people, you get a hundred
12 different answers. Was there anything specific saying we're going to rally at this
13 location, we're going to breach this wall or this window at 1400 with team A, and team B
14 is going to be behind? No, I don't think that intel was there. Was there other general
15 intel? Yeah, there was.

16 So it's -- it's -- it's hard to -- it's really hard to Monday morning quarterback. Can
17 we learn from it? Absolutely. Were there gaps in intelligence? Absolutely. But it's
18 not an easy fix.

19 Q Right. And I think that's one of the challenges of what was -- the example
20 you gave was, you know, was there a specific lull? Was there a specific time? No.
21 However, there was many posts with the tunnels --

22 A You're right.

23 Q -- of the Capitol itself --

24 A You're right, yes.

25 Q -- in social media that was -- that had gone forth. That's something --

1 A Yes.

2 Q -- that the Bureau had.

3 A Yes.

4 Q And many posts about, you know, take back the House, as you said.

5 So how -- as we move towards the recommendations part --

6 A Sure.

7 Q -- the last part of our interview --

8 A Sure.

9 Q -- do you have, given your vast experience, kind of some insight into how to
10 deal with those challenges?

11 A Look, I may have addressed this earlier and that I think leveraging social
12 media is a new phenomenon, and maybe the Bureau needs to learn how to better
13 leverage it. I think there is -- I'm not going to say an arrogance, but I think there is a
14 type of institutional arrogance that we don't -- I don't need to rely upon this guy's Twitter
15 feed for intel. We have our sources. We know what's going to go on.

16 This is unvetted, unverified, where I think the Bureau has to plus up and better
17 discern how to use social media and how to join up with partners like that, because
18 sometimes that's incredibly good intelligence, even though it's not coming from a Bureau
19 undercover or a Bureau source.

20 And I think it's just a function of how social media has just grown. And that's a
21 gap that probably needs to be addressed by the Bureau.

22 Q And, when you say "partner up," is that to kind of wade through the volume
23 that's out there to discern what's intentional versus aspirational?

24 A Or just to get the information. Look, I mean, you could even see in
25 the -- like the Ukraine, there is some really good intelligence derived from outside open

1 sources about tracking oligarchs or tracking flights of people that we don't have visibility
2 into.

3 I mean, I think we have to better posture ourselves to work with either these
4 public interest groups or even just one-offs that are doing this on their own, tracking
5 some of these separatist groups or more violent groups. There is some good -- there is
6 some good civilian, you know, entities, and people that are -- that have really good
7 information.

8 Again, I think broadly speaking, there is an institutional arrogance that we don't
9 need that because we're the Bureau or we're DHS and we have paid sources. So
10 I'm -- look, the Bureau does a very good job. It's incredibly difficult, but can they
11 improve? Absolutely. And can they improve liaisoning with social media and these
12 kind of individuals that are doing a good job of tracking some of these groups? I think
13 absolutely.

14 Q Do you see any difference -- there was a recent article that the Rolling Stone
15 published about the differences of monitoring that occurred in the summer versus for
16 January 6th. I don't know if you're familiar with that.

17 A I'm not familiar with that.

18 Q It talked about -- oh, what -- I don't need to show you this right now. It
19 talked about the social media SOMEX data --

20 A Okay.

21 Q -- and that kind of analysis --

22 A All right. All right.

23 Q -- and their conclusion -- and I just want your response to it -- is that it wasn't
24 as -- I'll leave it as they weren't as forward leaning for January 6th in terms of the
25 monitoring of open sources as they were for the Black Lives Matter protests in the

1 summer.

2 A Yeah. I don't -- look, again, I can only speak for the District. I don't
3 remember a huge robust push of intel related to antifa or BLM, like targeting packages
4 or -- I don't -- I didn't see a dichotomy in the D.C. U.S. Attorney's Office or -- and working
5 with WFO.

6 I didn't see a spike in reporting or intel over the summer that died off going into
7 January 6th. I think the principles I kind of articulated is across the board, where I think
8 we just need better monitoring of any group that has a violent tendency and work better
9 with those, you know, kind of civilian groups.

10 Q And I appreciate that. One thing that I think others have drawn the
11 distinction between the summer and January 6th is that obviously there were violent
12 incidents for days on end during the summer --

13 A Yes.

14 Q -- versus this kind of cooked off in hours, as one witness put it.

15 A Uh-huh.

16 Q So that data driven from the social media posts wasn't as necessary in terms
17 of going into an event, because there were actual incidents that were happening. Is that
18 fair?

19 A Yeah, that's -- yeah, that's interesting, yeah, perspective. That's fair.
20 That's --

21 Q But I'm wondering, when you say the challenge of monitoring, how do you
22 get through the First Amendment concerns that many -- that we've heard as a mantra
23 from law enforcement as --

24 A Oh, yeah.

25 Q -- these are First Amendment protests, that they're U.S. citizens, so there is

1 this -- not so much a hesitation, but that's a challenge in terms of assessing it as a threat?

2 A Oh, yeah. I mean, look, these are questions that have -- go back decades,
3 you know, with monitoring some of these militia groups, and it's a very sticky situation.
4 The Bureau is in a very precarious situation, because you have to predicate a case
5 obviously based upon thin type of reasonableness, and not even a probable cause
6 standard.

7 And where is the line between, you know, distrust and angst and anger at your
8 government to outright, you know, violence inflicted upon government officials? And
9 it's -- I think we have to look at it carefully where we draw that line, because it can
10 implicate significant First Amendment issues. So you have to have some type of criminal
11 basis, and we have to, you know, look at that carefully going forward with a lot of these
12 groups.

13 You know, some groups have violent members. Some people joining these
14 groups and have -- just want to voice their concerns about disagreement with how the
15 government is or COVID restrictions, but -- but it's -- it's not -- it's not an easy question.

16 Q Do you think that -- one thing that's been discussed about the role of the
17 Bureau versus DHS I&A, which is one thing we didn't talk about, but did you have any
18 interactions with DHS I&A and the products that they were putting out?

19 A I did not, no. No.

20 Q And why -- why is that?

21 A Just because, if -- it would have been fed to me through the JTTF or through
22 the Bureau if it was, I think, a critical product. I don't recall -- perhaps, again, looking
23 through my emails, whatever, I may have got a product or had a communication with
24 that. I don't recall that sticking out, though.

25 Q One -- one inquiry of the committee is whether DHS I&A is better designed

1 to create these threat assessments. Obviously the joint intelligence bulletin is between
2 the Bureau and DHS --

3 A Yeah.

4 Q -- but there are a number of threat assessments that are done for collecting
5 information for the purpose of issuing an assessment versus criminal prosecution, which
6 is --

7 A Yeah.

8 Q -- what the Bureau is designed for.

9 A Uh-huh.

10 Q Do you see that difference there and the challenges there?

11 A Sure. Sure. Sure. No, I do. But the question is, how do you get the
12 information? How does DHS get the information? Is it just open-source review, or
13 sometimes you have to get more significant information through subpoenas or, you
14 know, other types of process?

15 But you have to -- we have to caution ourselves against you can't task too many
16 agencies. You get redundancy again and, you know, inefficiencies. You know, who is
17 going to be the lead on these things? I don't know if DHS is the answer, frankly, you
18 know?

19 Q Right. I think that one question is whether an agency, such as DHS I&A,
20 which is not tasked with prosecution, but solely looking at that open-source information,
21 should be, you know, kind of --

22 A Yeah. Yeah.

23 Q -- given more resources --

24 A Yeah.

25 Q -- to make those assessments, because they don't have to be concerned

1 about --

2 A Yeah. Yeah.

3 Q -- is this leading to an investigation?

4 A Yeah.

5 Q Is it leading to an arrest?

6 A Yeah. The only problem I have with that is you reach the rubicon of this is a
7 dangerous group, and they're planning something, okay, now they -- this group has to be
8 apprehended. They're not going to do it. The Bureau is going to do it? Who is going
9 to do it?

10 And then, if they do it, did DHS gather information in violation of the law, which
11 most likely will happen if they're not really thinking of criminal process? And then a
12 whole case could be jeopardized because a DHS agent wasn't following proper Bureau
13 protocol in collecting information.

14 So it's very tricky, because DHS isn't just gathering intel for reports. You're
15 gathering intel to have an idea of the geography, and also what you could do to thwart
16 a -- an actor that may inflict violence, and that's -- it's -- you can't divorce the criminal
17 from the intelligence gathering. And I think that's why the Bureau has to remain the
18 lead personally in that endeavor, if that that makes sense. I don't know --

19 Q No, it does.

20 A Okay.

21 Q And it's obviously a complex question, but it leads to some of these things in
22 terms of, if you work back from why was there not a joint intelligence bulletin issued
23 about January 6th, the common response is it wasn't actual, it wasn't specific --

24 A Yeah.

25 Q -- it wasn't investigatory.

1 A Yeah.

2 Q So should there be an agency that is looking for all those non -- just as data
3 points --

4 A Yeah. Yeah.

5 Q -- right, just seeing this mosaic of information --

6 A Yeah.

7 Q -- that's out there from across the country?

8 A Yeah. Yeah. I still think it's the Bureau, but I think they have to be -- and
9 I'm not saying that just because of DOJ -- you know, long-time DOJ guy. I just think they
10 have to recalibrate how they do that, and -- and what manpower is needed, and working
11 maybe in conjunction with DHS. But, if you remove the Bureau, it's very dangerous,
12 because I just personally see a litany of cases being screwed up -- pardon my French -- if
13 DHS is on the lead, you know, doing those types of -- those types -- that type of reporting
14 or tracking.

15 Q Do you think it's a resource issue within the Bureau in terms of pursuing
16 DT -- domestic terrorism cases?

17 A You know, it's probably a -- look, it always comes down to money and
18 manpower, but sometimes that just doesn't solve the problem. It has to be -- before
19 money and manpower is thrown at the problem, I think you need to articulate what their
20 mandate is and who they report to and who they're responsible to report to.

21 And maybe that has to be re-looked at. Maybe there has to be someone -- it's
22 not the deputy director. Maybe it's another assistant deputy director for
23 counterterrorism domestic.

24 I don't even like the distinction between domestic terrorism and international
25 terrorism. I mean, it's -- by virtue of social media and how you could move crypto

1 moneys, I mean, there is such a close connection now between U.S. DT groups and
2 foreign groups, even with a lot of the militia groups we saw recently, that it essentially
3 just comes down to tracking these people and doing it properly, and then reporting up a
4 proper chain of command.

5 So I don't think it's only money and resources. It's how is the Bureau going to
6 put this piece in their puzzle, and who are they going to report to, and what's their
7 mandate.

8 Q And that mandate, it's laid out in the DIOG in terms of -- again, Mr. Bowdich
9 referred to that as the bible in terms of how they open cases.

10 A Yeah.

11 Q Do you think that -- how does it impact that there is more of a challenge in
12 opening these domestic terrorism cases versus IT --

13 A Well, I mean, look, it's not a mystery. Sometimes agents are loathe to open
14 up a DT case because of the First Amendment issues. I mean, that's not -- you open up a
15 case on AQAP or ISIS with foreign actors operating out of Libya or Syria, I mean, big deal.
16 You don't have to worry about constitutional protections. It's much easier to get a FISA
17 or a T III.

18 With U.S. personnel, you know, there is a pucker factor where, you know, some
19 people are joining this organization for legitimate political discourse, but, also, some
20 people are joining it because they want to, you know, extract violence on people. And I
21 think there is a hesitation -- and I'm not saying there shouldn't be to some degree -- of
22 opening cases on some -- some militia groups because of legitimate First Amendment,
23 you know, concerns.

24 Q And there are additional steps because of that U.S. citizen nexus obviously?

25 A Oh, yeah. For sure. Sure.

1 Q Do you think that, if that was taken out, that there would be
2 more -- obviously there is incredibly talented agents across the Bureau that would be
3 more inclined to go into kind of these domestic terrorism cases versus pursuing the
4 al-Qaidas and AQAP?

5 A Yeah. I mean, look, I think -- just -- I -- look, agents, I think, are
6 more -- look, international terrorism is looked at more sexy. I mean, I don't want to
7 sound ridiculous, but it's just true. You know, you're assigned to an international
8 terrorism squad; it looks more prestigious or sexy. You know, I'm going after, you know,
9 ISIS or al-Qaida AP, than going after, you know, the Michigan militia in Plymouth,
10 Michigan.

11 I mean, I'm just being honest. I mean, it has this cache -- now, there also -- there
12 is good agents that work -- very good agents that work DT cases, but, you know, I think
13 there is just this label that, you know, DT cases are relegated as less sexy, so you get less,
14 you know, sophisticated agents working those cases.

15 That's not the case, but I'm just saying I think that's a -- maybe with younger
16 agents, they have that -- that view, and then -- then throw into that, oh, these cases are
17 more difficult. You could risk your career because, you know, First Amendment issues.
18 So, you know, it's easier -- it's more sexy, and it's easier to work an international case
19 than domestic.

20 Q And I, having been in the U.S. Attorney's Office, agree with that, but how do
21 you change that culturally?

22 A You bring good cases. I mean, it's as simple as that. Bring good cases, win
23 good cases, and they will come. You'll get the right agents, so --

24 Q I just want to make sure that I've kind of gone through much of what we
25 discussed earlier --

1 A Sure.

2 Q -- informally. If there is anything -- we spoke a lot about the intelligence
3 aspect of it, of the challenges, the challenges of the National Capital Region.

4 What do you think -- and I'll start with DOJ. What do you think DOJ could have
5 done better, if anything?

6 A Just in general, my perspective was, having lived through 2020 and then
7 January 2021, in general, I think there is a lot of confusion about the interplay between
8 DOD and DOJ, and there is probably still confusion as we sit here today. And there was
9 a hell of a lot of confusion in the summer of 2020 and a hell of a lot of confusion on
10 January 6th. And I don't know if there is any less confusion now.

11 That has to be resolved. How you work together? Who is the final
12 decisionmaker in a critical situation like that? And, I mean, that's way above my pay
13 grade as a U.S. attorney, but that is something I just saw from the outside looking in, just
14 seemed to be a lot of chaos and confusion.

15 Q Did you experience that chaos and confusion during the summer?

16 A Yeah. I mean, that was -- I'm not saying to the same extent as January 6th,
17 but, look, there was -- there were -- look, you had National Guard troops in the summer.
18 You had also Active Duty U.S. troops that were on, like, ready reserve in some areas.

19 I mean, these were, you know, complicated issues, and, like, who is the final, you
20 know, authority with activating those ready active guys that are on an airstrip in
21 Savannah, Georgia? I mean, I think it's something that maybe there is an active chain of
22 command for that, but I don't think it's studied or briefed, you know, as frequently as it
23 needs to be.

24 Q And that need for the -- a final decisionmaker, did you feel that was absent
25 on January 6th?

1 A I just think that there was -- I think there is -- when things go bad, there is
2 a -- there is the tendency for human nature to point fingers, and it's easy to, you know,
3 say we didn't move because that person didn't invite us, or, you know, they didn't come
4 here because they didn't call us and said they were going to come.

5 So I just think there is -- there was a lot of failures of leadership, I think, and the
6 chain of command has to be better defined, and there should be accountability, too.

7 And that should be studied before an event happens. That should be studied
8 now in a peaceful time, you know, how to address it, and not just some BS tabletop
9 exercise, like a real-world scenario involving the Attorney General, involving the Secretary
10 of Defense, like, you know, National Guard and maybe U.S. Attorney's Offices do tabletop
11 joint terrorism task force exercises.

12 But does the AG do an exercise like that? Like, I don't think so. I don't know.
13 I was never really a member of OAG. I mean, maybe those exercises should be done.
14 Do we do exercises with SecDef and the AG on these scenarios? Maybe they need to be
15 done. So it just appeared to be a lot of confusion in 2020 and 2021 from the outside
16 looking in.

17 Q When you say "failures of leadership," what -- are you talking agency-wide,
18 or up to the -- up to the --

19 A I think all -- everyone. There was a lot of -- a lot of people dropped the ball
20 in a lot of places. There was some good actors. There were some actors that I think,
21 you know, did drop the ball. So --

22 Q Well, who? Who would you say would drop the ball?

23 A Just, look, I mean, obviously there were intelligence gaps failures. I'm not
24 going to label -- we have a huge intelligence agency domestically, so it's not just -- you
25 can't just blame it on the Bureau or DHS or Capitol Police. I mean, I just think that -- that

1 there have to be improvements, and there can be improvements. Like I just said,
2 integrating better maybe civilian actors or social media, you know -- people that follow
3 social media or integrating -- looping them into the all-source intelligence.

4 You know, was this properly gamed out, you know, before the 6th with the Capitol
5 Police and with the National Guard and with, you know, Federal and local law
6 enforcement assets? So --

7 Q So, just in terms of that piece, in terms of the intelligence community, do
8 you think there would have been an impact if there had been a joint intelligence bulletin
9 issued by DHS and FBI about January 6th?

10 A I don't -- it couldn't have hurt. Let me say that. It couldn't have hurt. It
11 could only -- would have only improved things, I think.

12 Q And one of the things that we talked about briefly was this DOD, DOJ, who
13 was the lead kind of coordinator there?

14 A Yeah.

15 Q Who do you think in a -- should be a lead coordinator in that kind of
16 situation where there are multiple agencies involved?

17 A Look, when you're talking about -- just, again, me speaking as a civilian,
18 when you're talking about troops, like with AR-15s and Kevlar, I don't care if it's National
19 Guard or DOD, like, that has to come from the SecDef or the President. I mean, it
20 should not -- the DAG should not be -- I don't think a DAG or an AG should be directing
21 National Guard troops or Active -- Active military troops. It's just -- it's -- it -- I don't
22 think the Constitution allows it, and I don't think it should happen. That has to be
23 clearly mandated by, you know, the SecDef. That has to be their call.

24 Q So what's your response to, if the -- if the Department of Defense is in
25 charge of something in response to a civil disturbance protest, that that's essentially

1 militarizing what their role is, right? I mean --

2 A You're right. That's why, I mean, it's -- I'm not a student of the Constitution
3 or how to militarize the police or the military or how to, you know, politicize or, you
4 know, federalize the -- those assets. But I just don't think it's been studied enough and
5 exercised enough how to -- to flex to that scenario.

1

2 [1:26 p.m.]

3 BY [REDACTED]:

4 Q But in the summer, didn't it -- you know, in the big picture, there was
5 coordination?

6 A Oh, yes.

7 Q And that coordination, by most accounts, was by Mr. Barr. So it wasn't
8 directing the National Guard, but certainly coordinating it?

9 A It was. Look, I know he was in direct communication with Esper frequently.
10 So yes. Yes.

11 [REDACTED]. Do you have anything else?

12 [REDACTED]. Did you ask about the Mayor?

13 [REDACTED]. No. Go ahead.

14 [REDACTED]. One idea that's been proposed, and I'd be curious, given your
15 position as the U.S. Attorney in D.C., is whether the Mayor should have the same
16 authority as Governors do around the country, with respect to the National Guard.

17 In D.C., as you know, the Mayor does not have the authority. The Guard isn't an
18 asset that she controls, much like Governor Hogan or Governor Northam did. Do you
19 have a sense as to whether that would help?

20 Mr. Sherwin. I haven't studied the prompts. I can't answer that. I was never
21 a member of the National Guard, so my -- I'm still unclear about exactly how the National
22 Guard operates.

23 [REDACTED]. Okay.

24 Mr. Sherwin. I'm not qualified to answer that.

25 [REDACTED]. I appreciate that.

1 Mr. Sherwin. Sure.

2 ██████████. Do you have any insight into the -- again, a coordination
3 question -- how the inauguration is deemed an NSSE event and how that coordination
4 happens? There's been a discussion whether the joint session should be deemed an
5 NSSE event, which would place the Secret Service in charge of coordinating with all these
6 multiple agencies.

7 Mr. Sherwin. That would -- I mean -- I have to think of that -- the first question
8 is, are they the appropriate agency? I don't know if they are for that, you know. The
9 inauguration is tied, obviously, to the office of the -- you know, it's the flavor of the Office
10 of the President. You think of Secret Service. You know, you think of what happened
11 on January 6th. It seems -- I'm not saying it's too big for them, but I don't know if it's the
12 proper agency to lead that coordination. They should be a member of it, but I don't
13 know if they should lead it.

14 ██████████. And I just want to make sure we're clear. It sounds like you're
15 not sure who should lead it or maybe the -- if -- or if the National Guard is involved, that
16 you think DOD should lead it.

17 Mr. Sherwin. I mean, it should be a joint venture between DOJ -- or a tri-venture
18 between -- because it's D.C. obviously. Look, the engine of law enforcement is MPD, like
19 it or not. They have the manpower. They have the skill. They have the know-how.
20 So it's a triad between MPD, which is a critical player, Federal resources, obviously, and
21 then, you know, DOD. So -- and then how do you properly ensure those people all
22 interact together.

23 BY ██████████:

24 Q You haven't mentioned DHS at all in that calculus.

25 A I mean, most of my -- I don't. I mean, most of my -- most of my -- as a line

1 prosecutor for over a decade, almost all my cases were with the Bureau.

2 Q Yeah. Cases are different from aggregate.

3 A They are. They are. They are. That's why, you know, I've -- in terms of
4 being a supervisor, I didn't have a lot of -- obviously, I worked with them, but my main
5 partner as the U.S. Attorney in D.C. was, by virtue of geography, two were right next
6 door, 80 percent of our cases are the Bureau.

7 Q Yes.

8 A But you're right, from a policy perspective, I'm not trying to discount them or
9 belittle them. But, yeah, they have to have a role. I just don't know if they are the
10 ones to properly lead that charge.

11 [REDACTED]. And we talked through the threat assessment versus --

12 [REDACTED]. No need to duplicate.

13 [REDACTED]. I think that kind of ends our -- my questions for you. But in
14 terms of, look, you were in a unique position from the summer on to the 6th, if you have
15 any recommendations as far as how to prevent this from happening, apart from what we
16 just discussed, your intel recommendations, as well as the coordination piece. Anything
17 else that we should have asked you that we did not ask you?

18 Mr. Sherwin. No. I mean, I think we covered a lot of territory. Yeah, I think
19 we covered everything I really think is relevant. And I think I gave all of my
20 recommendations. It was just -- look, it was a crazy -- it was a crazy year and it was a
21 crazy several months in the wake of what happened. But we obviously need to learn
22 from it. That's for dam sure. And I'm hopeful we can. We can.

23 So if there's a fair assessment of what happened and a nonpolitical assessment,
24 and I'm hopeful the committee's going to do that, because we have a lot to learn, putting
25 politics aside, which is a sad state of how things are now. I'm confident that the

1 committee is going to be able to make real recommendations to ensure this doesn't
2 happen again.

3 And, look, is this going to happen again? Probably. But then the question is
4 how do you react to it. And I'm hopeful, as a country, we'll be able to do a better job
5 having indications before it happens and then dealing with it in the wake of it happening.
6 So -- but I appreciate your time, and I hope this was helpful.

7 [REDACTED]. It was very helpful.

8 I just want to make sure there's no one online.

9 [REDACTED]?

10 [REDACTED]. That's exactly our intention, right, is to do a sober, credible, fair
11 assessment of what happened, right, because you've got to start with facts, right, and
12 truth about what happened, and then learn from that, so that the next time, as you're
13 right will inevitably arise, we've somehow incorporated -- we collectively incorporated
14 the lessons learned. That is precisely our intention. I'll tell you, we're trying our best
15 to achieve that goal. But we couldn't do it without people like you who are willing to
16 come forward. So we really appreciate it.

17 Mr. Sherwin. Of course. You guys -- look, you guys have a tough job, so I
18 respect what you guys have to do. And anything you need in the future, please let me
19 know.

20 [REDACTED]. Thank you.

21 [REDACTED]. Thank you.

22 Okay, great. Thank you so much for your time, Mr. Sherwin.

23 And we're off the record.

24 [Whereupon, at 1:31 p.m., the interview was adjourned.]

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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