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

DEPOSITION OF: KEN KLUKOWSKI

Friday, June 10, 2022
Washington, D.C.

The deposition in the above matter was held in room 5480, O'Neill House Office
Building, commencing at 10:27 a.m.
Appearances:

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

 SENIOR ADMINISTRATIVE ASSISTANT
 SENIOR INVESTIGATIVE COUNSEL
 PROFESSIONAL STAFF MEMBER

For the WITNESS:

 PAUL BROTHERS
 EDDIE GREIM
Let's go on the record.

All right. This is a resumed deposition of Mr. Ken Klukowski, conducted by the House Select Committee to Investigate the January 6th Attack on the U.S. Capitol pursuant to House Resolution 503.

At this time, Mr. Klukowski, could you please reintroduce yourself?

The Witness. My name is Kenneth Allen Klukowski.

And, Counsel, first in the room, why don't you introduce yourself.

Mr. Brothers. Yeah. Paul Brothers with Graves Garrett.

Excellent. And we do have counsel joining on the Webex platform as well. If you could please introduce yourself.

Mr. Greim. Eddie Greim from Graves Garrett, dialing in from Kansas City, Missouri.

Great. I'd like to just thank you all for being here in person and virtually.

So we have met before, and the same rules are going to govern, but I do want to go over some of them again just to remind you.

This is going to be a staff-led interview like before. Members do have the opportunity to join, and if they do, we'll try to announce their presence so you know that they're there.

My name is I'm a senior investigative counsel for the select committee. And with me in the room today is a professional staff member for the committee.

Under the House deposition rules, neither committee members nor staff can discuss the substance of the testimony you provide today unless the committee approves
its release. And you and your attorney will have an opportunity to review the transcript afterwards.

I understand that you have reviewed the existing transcript from last time. So we'll make that opportunity available for the future transcript from today.

There is an official reporter transcribing the record of the deposition. Please wait until each question is completed before you begin your response, and we'll try to wait until your response is complete before we ask our next question. And, of course, the stenographer can't record nonverbal responses, such as shaking your head, so please do answer with an audible, verbal response.

Like before, we ask that you provide complete answers based on your best recollection. And if the question is not clear, please ask for clarification. If you don't know the answer, please simply say so, but you may only refuse to answer a question to preserve a privilege recognized by the select committee.

And if you do refuse to answer a question based on a privilege, then staff can either proceed with the deposition or seek a ruling from the chairman on the objection. And if the chairman overrules such an objection, you would be required to answer the question.

I do want to remind you that it's unlawful to deliberately provide false information to Congress. And since this deposition is under oath, providing false information could result in criminal penalties for perjury or providing false statements.

Do you understand all of that that we went over?

The Witness. Yes, sir.

All right. Very good. Thank you.

At this time, I'd ask that you stand and raise your right hand to be resworn.

The Reporter. Mr. Klukowski, do you swear or affirm under the penalty of
perjury that the testimony you’re about to give in this deposition shall be the truth, the whole truth, and nothing but the truth?

The Witness. I do.

The Reporter. Thank you.

And then, if at any time you need any breaks or would like to consult with your counsel, please just let us know, we’re happy to do so.

And just as a reminder, this is being recorded through the Webex platform and also this camera. So if you do need to consult, we’ll figure out a way to do that, because this doesn’t stop recording.

All right. At this point, I understand that either you, Mr. Greim, or you, Mr. Brothers, would like to make preliminary remarks.

Mr. Brothers. Yes. We’d just like to note for the record before we begin the resumed deposition, at the beginning of this deposition some months ago, Mr. Klukowski raised numerous objections. I will not recite them for the record again, but the objections include, but aren’t limited to, matters dealing with the composition of the committee, the authorization of the committee to issue a subpoena for Mr. Klukowski’s deposition testimony based on the composition issues, whether the subpoena is supported by a legislative purpose and a pertinent committee function.

There were also numerous objections raised in Mr. Klukowski’s document production. And we preserve all of those objections and are not waiving any of them by appearing to resume the deposition today. And we also continue to preserve all constitutional and common law privileges.

Thank you for that. Your objections are noted. And I’ll just, for the record, and simplicity, hopefully, also incorporate, in addition to what you said, the objections that are reflected in the transcript from December 15th, which is the first time
Mr. Brothers. That would be great.

EXAMINATION

Q Okay. So this is going to be a more targeted deposition than last time.

There's a few issues we wanted to bring you back to discuss.

The first I'll start with is going back to Mr. Jeffrey Bossert Clark. And we understand that you began working for him on December 15th at the Department of Justice.

A That is my recollection.

Q Okay. Do you know whether Mr. Clark ever communicated with Rudy Giuliani?

A I do not recall ever being told one way or the other on that. So I have no recollection of anything responsive to that.

Q Did he ever tell you anything that suggested he was in touch with Mr. Giuliani or anybody from his legal team?

A Not that I recall.

Q Did Mr. Clark ever tell you about communications or meetings he had with Sidney Powell?

A Not that I recall.

Q Did Mr. Clark ever tell you about any communications or meetings he had with Jenna Ellis?

A Not that I recall.

Q Did he tell you about any communications or meetings he had with Bernie
Kerik, Katherine Friess, or Cleta Mitchell, any of those?

A What were those names again?

Q Yeah, sure. Bernie Kerik?

A Not that I recall.

Q Katherine Friess or Friess?

A Not that I recall.

Q Cleta Mitchell?

A Not that I recall.

Q Okay. Did Mr. Clark ever tell you he had meetings or communications with anybody associated with the President’s campaign? Or what was left over from the campaign at that December through January period?

A Could you clarify? It's -- that's -- that's -- you say anyone affiliated with the campaign?

Q That's correct. Who was representing the President in his personal capacity or on behalf of the campaign in the period from December 15th up and through January the 20th. Do you remember Mr. Clark saying that he had been in touch with anybody like that?

A I do not recall any conversation in which he mentioned a name that I either knew or that he represented to me was someone representing the campaign.

Q Did he say -- did Mr. Clark say to you that he had been in touch with representatives from the President's campaign or his individual counsel -- the President's individual counsel?

A I do not recall any conversation that was characterized in words similar to what you just said.

Q Okay. Other than the President or White House staff, do you remember
Mr. Clark saying anything to you indicating that he had been in touch with -- well, I'll
rephrase that later as we go through some of this.

Did Mr. Clark ever tell you about communications or meetings he had with Mark
Meadows?

A Not that I recall.

Q Okay. And when we last met, we asked you about communications or
meetings that you had with those people, but it was limited to January. Did you have
any meetings or communications with Rudy Giuliani between the election, November
3rd, and January 20th?

A Not that I recall.

Q How about Sidney Powell?

A Not that I recall.

Q Jenna Ellis? Same period.

A Not that I recall.

Q Cleta Mitchell? That same period.

A And, again, we're asking conversations, or can you repeat the question in
full?

Q Yeah, sure. And I'm looking for communications.

A Right.

Q So whether in person, over the phone, over email, text message, any
communications with those people I've listed. And I'm happy to do so again.

A Not that I recall.

Q Okay. Did you ever have any conversations, communications, meetings
with Jeff Clark about John Eastman?

A Not that I recall.
Q: You're pausing there. Is there --

A: No. I'm just -- I'm trying to think through carefully each -- you know, each aspect of what you're saying.

Q: Okay.

A: I'm being deliberative and careful to try and be precise in my answers.

Q: Very good. I appreciate that.

A: And this is all -- this is all in the distant past, and I'm trying -- so there are names I have not thought about in a long time, and I want to take a moment to think if I could recall anything.

Q: Okay. Understood. And take all the time you need, and we appreciate your being deliberate and careful.

Did Mr. Clarke ever tell you that he spoke with John Eastman at any point during the post-election period, so between November 3rd and January 20th?

A: It's -- before we go that to my previous answers regarding those individuals, if I was in like a large group setting, it might've have been in the same room with someone and might have said hi to them. I might not recall that exchange, but it's -- so I wanted to make clear, I'm not saying that -- I can't say I was never in the same place as any of them. I just -- I don't recall any conversations with those individuals.

Q: Okay.

A: With each -- with each of those individuals.

Q: That we just listed?

A: That's right. I mean, there were large campaign-related events and whatnot, and I don't know necessarily who was in the room each time or whether I might've said hello to someone as I passed by them. I do not recall any conversations.

Q: Understood. So to --
A: So can you repeat the question we're on now?

Q: Yes, of course. So my question now is, did Mr. Clark ever tell you that he spoke with John Eastman in the post-election periods? And when I say spoke, electronically, in person, over the phone, or otherwise.

A: Not that I recall.

Q: When we last met, we did discuss with you your interactions with John Eastman. I will say that you withheld, as your counsel has represented last time, and this time again, and throughout the period, that you withheld a number of documents on attorney-client, First Amendment privilege claims.

Did you, Mr. Klukowski, review those claims before asserting them to the committee?

Mr. Greim. I'm going to -- I'm going to object here. I mean, I think it's inappropriate to ask a witness about, you know, his interaction with counsel and the preparation that went into positions that we take.

Okay. And to be clear, I'm not going to ask about any communications with counsel that he had.

I just want to make sure, Mr. Klukowski, did you review your documents and ultimately decide and agree with the decisions to produce or withhold certain documents on objection grounds?

Mr. Greim. You know, I think I -- I understand the -- I understand the question, but I don't think it's appropriate to try to tease out -- I mean, I think the relevance would be to show that there was a difference between the witness and counsel, and I just don't think that's an appropriate question here.

I mean, I think we will just stipulate that the positions that we took are the positions we took.
Understood. And to the extent they’re any different, that’s what I want to understand. Some of these objections, I just want to make sure that Mr. Klukowski ultimately, his production to the committee is his, and so I want to make sure that he looked at what was provided and understands the nature of what was in his possession.

And ultimately, again, the First Amendment objection, in particular, is something that is uniquely situated to Mr. Klukowski.

Mr. Greim. Okay. I’m just -- I’m not sure that answers -- I’m not sure that answers our concern, though. I mean, you know, it’s one thing at a deposition when counsel, you know, instructs someone not to answer as privileged, and then you turn to the witness and say, you know, do you agree with that, that it’s privileged.

But I just don’t -- I mean, maybe there’s a different way, you know, to say, you know, did he review the entire set of materials that were given to counsel. I’m just trying to think -- I’m just trying to think how to get to the -- I’ll step back. Maybe I’ll -- maybe just ask the question again. I’m sorry.

Yeah, sure. And I’ll ask it again, and we can work through this as we move along.

But we received privilege logs based on First Amendment objections as well as attorney-client objections, and so I just want to know, Mr. Klukowski, did you review those objections before the documents were provided to the select committee?

Mr. Greim. Yeah. And I think, guys -- I think I will object, because this is going to the means by which we -- I mean, you know, whether he reviewed it or not is going to reveal the way that we communicate with our client and sort of the process we go through in making the production.

Okay.
Mr. Greim. I think you could ask him whether he stands by those, but I think to then probe where he reviewed them himself or not is going too far.

Okay. I’m fine with that.

Do you stand by the objections that you have submitted to the select committee in the First Amendment privilege logs and attorney-client privilege logs?

The Witness. Yes, I do.

Okay. And we’re going to go through some of those. The logs, for your benefit, are included in the binder as exhibit No. 22 and 23.

And, Eddie -- Mr. Greim, for your purposes, exhibit No. 22 is the attorney-client privilege log. Exhibit No. 23 is the First Amendment privilege log that you provided to us.

Mr. Greim. Okay. I didn’t see those in either of the boxes. I mean, I’m sure I can pull them up in my system, but --

Yeah, these are documents that you provided --

Mr. Greim. -- this is not a matter we talked about or that we [inaudible], so --

These are the documents you produced to us, so we did not re-produce them to you today.

Mr. Greim. Yeah, I understand that, but it’s going to take some time. I mean, I don’t have all this stuff, you know, quickly at hand. I’m going to go into an online file that I can access from where I am now.

That’s fine. We’re not going to go through this line by line.

BY [name]

Q Just for purposes, we are going to recall back to it, so your knowledge of what these exhibits are hopefully will help.

But if we do go to exhibit No. 24, this is an email that was produced to us, I’ll
represent to you, as part of ongoing litigation, and it was produced over certain
attorney-client work product and other objections.

The first thing I'll ask you is -- one person on this is Chuck DeVore. Do you know
who Chuck DeVore is?

A  Not to my recollection.

Q  So the day after the election, on November 4th -- it's at the bottom of this
e-mail -- John Eastman wrote to Chuck DeVore, saying, I'm on a plane to Philly, can't call,
but can do email.

And then Chuck DeVore responds, November 4th at 7:25 p.m., says, If Biden ends
up 270 to 268, consider this. Of the 270 electors, 171 are in States that allow faithless
electors. I believe that's 55 in California where there is a penalty, but you can do it
anyway. Decent odds he loses one, especially if he starts deteriorating in the coming
weeks under the stress.

Mr. Eastman then responds one email further up the chain on November 4th, at
7:12 p.m., saying, So throws it to the House. How likely one of our Rep delegations goes
south on us. Lots of never Trumpers there.

Mr. DeVore then, moving up one, responds November 4th at 6:13 p.m., saying,
We may be up to 27. Iowa went from 3 to 1 Dem and might go 3 to 1 Rep.

Republican, I'm assuming.

And then Mr. Eastman, at the very top of this email chain, on Friday, November
6th, says to Mr. DeVore, I'm in a conference but can do email. Already been in touch
with Ken Klukowski on the legislative override for violations of existing State law option.

John.

Do you recall Mr. Eastman reaching out to you in this period, so before November
6th and after the election, about what he calls the State legislature override?
A recall communicating with Dr. Eastman in the days following the election. I'm not sure exactly what dates.

Q Okay. And tell us about the communications you had with this, that's reflected in this email, the legislature override.

Mr. Greim. Okay. Now, at this point, we're going to jump in. And I understand you're probably asking about a period of which we've been very clear that Mr. Klukowski was counsel on the campaign. You may be trying to argue for some sort of subject matter waiver.

And what we can do, is we can -- you know, Mr. Klukowski can testify as to whether, you know, he was, in fact, in touch with Eastman about the subject in this email. But we are not going to use this, the fact that this email was pried loose in this other litigation, to have Mr. Klukowski testify now to everything he spoke with Mr. Eastman about, you know, while he was in the midst of working on the campaign. We just -- we can't do that.

And what's -- if you could just, please, clearly put the basis of the objection on the record.

Mr. Greim. Attorney-client privilege.

Q And is it your understanding that Mr. Eastman was working for the campaign between November 4th and November 6th, Mr. Klukowski?

A My understanding was, when I was working as a volunteer attorney on the campaign, that my communications with Dr. Eastman during that window were when he would also have been providing legal advice to a client or prospective client, in evaluating potential legal issues and whether he would engage on the matter.

Q And his client being the campaign or Mr. Trump individually as a candidate
for President?

A I was -- I can't speak to Dr. Eastman's state of mind. For my part, I was
representing the President's campaign.

Q But you're suggesting here that you're on the same legal team, is that right,
with Dr. Eastman at this period between November 4th and November 6th?

A What I'm saying is that any communications I would've had on that subject
matter during that window would have been of a nature that, as a practicing attorney, I
have with other attorneys numerous times in terms of I'm working on a matter and want
to consult with another attorney who may or may not formally join the campaign, but it is
a consultation in contemplation of potential representation of anticipated litigation.

Q Okay. So your objection is noted. I will go back to one thing that
Mr. Greim raised, which was, do you remember talking to Mr. Eastman about this
legislative override that's referenced in the email that I'm showing you as exhibit No. 24,
between November 4th and November 6th?

A I do recall conversations about identifying potential legal issues that could be
raised in litigation as part of a post-election challenge.

Q Okay. And that's somewhat different than this legislative override which
would be about electors and the legislative -- based on the context of this email -- a State
legislature's authority to choose electors. So do you remember discussing that, the
legislative override that involves a legislature, a State legislature choosing its own
electors, with Dr. Eastman in this period between November 4th and November 6th?

A In some of -- I was working on the campaign in Pennsylvania. To the best
of my recollection, in the public filings that were made in that Pennsylvania litigation, it
included a discussion of the Electors Clause.

Q Do you dispute --
A In the litigation.

Q I'm sorry.

Do you dispute that you had this conversation that Dr. Eastman references in his email of November 6th?

A The way he characterizes it are his words, not mine. In the litigation that was filed, I believe it was in the middle district of Pennsylvania, in the days following this timestamp, it did include, to the best of my recollection, included substantive material regarding the meaning of the Article II Electors Clause and the role of State legislatures.

Q Outside of litigation, this email at exhibit 24 doesn't reference litigation. Did this come up outside of litigation? I don't want to get into your discussions about litigation.

A I do not recall having -- I do not recall having conversations with Dr. Eastman during this window where what I was talking about was not litigation or potential litigation.

Q So then, there wouldn't be conversations about going directly to State legislatures and asking them to choose their own electors is what you're saying. Is that correct?

Mr. Greim. Well, and here's where I'm going to jump in, okay, because, you know, he can answer whether he had this discussion. I guess the problem, though, that's coming out here is we don't know what John Eastman means here.

And so I'm afraid that by continuing to probe, did he mean this, did he mean that, did you have a conversation about this or that, it's becoming a wedge to ask about other, you know, discussions other than what he's referencing.

Okay. The way I just understood Mr. Klukowski's answer was that he did not have conversations in this period, November 4th through November 6th, or
didn't recall having conversations with John Eastman about the legislative override
option, outside of the litigation context, in which case there would be no privileged
communications, so to speak. Is that correct? Is my understanding correct?

The Witness. I do not recall conversations on that subject matter that were
unconnected to existing or anticipated litigation.

Okay.

The Witness. I do not recall them.

Who's Coleman Hopkins?

Coleman Hopkins is a gentleman who, I believe, served in the White House
and who I believe, to the best of my understanding and belief, was also volunteering with
the campaign.

You say that you believe and to the best of your understanding. He says
that, Our mutual friend, Ken Klukowski. Is that not an accurate description of your
relationship, was a friendship with Mr. Hopkins?

Mr. Hopkins and I were not particularly close, but it was certainly a friendly
relationship.

And he said that you introduced Mr. Eastman -- excuse me -- Dr. Eastman to
Mr. Hopkins. Is that correct?

Mr. Brothers. Objection. Misstates the evidence.

All right. So what it says, Our mutual friend, Ken Klukowski, I added him to
the email, shared your email with me and suggested you as a potential resource.

Did you share your email with Mr. -- or excuse me -- Dr. Eastman's email address with Mr. Hopkins and suggest Dr. Eastman to Mr. Hopkins as a potential resource, as it says?

A I believe I shared Dr. Eastman's email with Mr. Hopkins.

Q Why?

A I do not recall the -- the conversations I was having with Mr. Hopkins at the time. I see how this email -- I see how this email describes -- describes it. Dr. Eastman is both a Ph.D. and a lawyer. He has expertise in statistical analysis, or at least that is my understanding.

I do not recall exactly what the conversation would've been in the context in which his name would've come up.

Q Did Dr. Eastman ask you to introduce him to somebody in the White House?

A Not that I recall.

Q Do you remember any reason that you would've had this thought to introduce Dr. Eastman to Mr. Hopkins?

Mr. Greim. I'm going to object here again. Suggesting to the witness that he did introduce him to Mr. Hopkins.

I'm sorry. Connect him with Mr. Hopkins. That's fair.

The Witness. Could you repeat the question?

Mr. George. I'd be happy to.

Q Do you have any recollection of why you chose to connect Dr. Eastman with Mr. Hopkins around November 10th?

A I do not recall.
Q Is Mr. Hopkins an attorney?

A I do not know.

Q So you withheld this document, I understand, as an attorney-client privilege document. I believe it's on your attorney-client privilege log in an entry on page 4, dated November 10th at 4:37 p.m.

It says the sender is another attorney, slash, professional, to another attorney, copying you. And the reason for the -- I think the time difference is 1 hour, based on time zones.

Mr. Brothers. One moment, You're getting -- again, if we would've had this in advance, we would've been more prepared for these questions, but because you elected not to do that, we're going to need some time for you to point us to the exact line. So if you could help with that, I'd appreciate it.

Of course. And we did provide, obviously, the documents in advance, understanding you had the documents that you withheld, as well as the privilege logs, for some time since our original engagement. But this is on page 4 of the attorney-client privilege log.


Which is exhibit No. 22.

The Witness. Page 4, line what?

And it's an entry dated November 10th at 4:37 p.m.

The Witness. 4:37 p.m. That would've been sender. So the sender would've been Mr. Hopkins and the recipient would've been Dr. Eastman.

I will give you an opportunity, after this deposition as well, to go back through and confirm. It sounds like, to the best of my understanding, Mr. Hopkins is not an attorney. And this is helpful if there are other documents as well that are
relevant and that are being withheld.

Mr. Greim. You know, I'm going to -- I'm going to jump in here. I've been trying
to pull up my own electronic version of this, and I'll -- this is my own fault because I'm not
used to the complexity of our files on the system.

I can see our transmittal emails and I can see a draft, but I cannot see the final log.

So I'm going to go mute and call my paralegal to try to help me find this on our own
system. Because right now, I'm not able to follow along with the questions. So just 1
second.

And we'll put it up on the screen for you as well, Mr. Greim.

So this is page 4 of exhibit No. 22, and we'd be looking at the entry for November
the 10th at 4:37 p.m.

I think you're on mute, Mr. Greim, if you're speaking.

Mr. Greim. Sorry. I was, yeah.

Okay. So 4:37, the very, very middle column, can we just scroll so I can see what
that says?

Of course.

The justification column?

Mr. Greim. No. It's the two in front -- actually, I'm going to pull up my draft
log. I bet the categories are the same.

That's a different witness.

While you're pulling that up, Mr. Greim, what I'll ask is for
Mr. Klukowski to just tell us about your conversations with Mr. Coleman, the White
House employee of Presidential Personnel, in the lead-up to the introduction -- or excuse
me -- connection with Dr. Eastman.

Mr. Greim. And I'm just going to caution the witness here that, you know,
discussions with a nonlawyer can be privileged. And so if they're logistical, that's fine.
If they're about what some other lawyer has tasked Mr. Coleman to do, then, you know -- and conveying legal issues, then those are privileged. And so that's the best I can do.

Go ahead, Mr. Klukowski.

The Witness. I regarded Mr. Hopkins as an agent of the campaign.

Q Why is that?

A He was actively working with the litigation.

Q Did you know him to be a volunteer for the campaign?

A It was my impression that he was volunteering time with the campaign.

Q Based on what?

A Based on there were campaign activities that he was involved with in a way indistinguishable from other volunteers.

Q And as a volunteer, you perceived him as an agent such that the attorney-client privilege could apply based on your discussions?

A For the --

Mr. Brothers. I'm going to object to asking the witness about his opinion as to the application of the attorney-client privilege. Once again, you're wandering into the area that could implicate discussions between Mr. Greim and I and Mr. Klukowski.

I think if you want to discuss the basis for privilege objections, that's something that's appropriate for counsel to engage in, not something that's appropriate to put this witness on the spot about.

Mr. Klukowski's understanding of Mr. Hopkins and his role, I think,
goes directly to a claim. I’m not asking for any privileged communications between Mr. Klukowski and Mr. Hopkins or Mr. Klukowski and you guys.

Mr. Brothers. No. That’s correct. But you are doing one thing. You’re going beyond asking him about his impression of Mr. Coleman’s role. He answered that question.

Now you are inserting legal analysis by asking Mr. Klukowski if that impression to him would satisfy the legal requirements of attorney-client privilege. That is where I’m drawing the line.

And he did assert that in his privilege log, that he was speaking with Mr. Coleman -- Mr. Hopkins, who is described as another attorney, slash, professional.

So I’m trying to understand that.

Mr. Brothers. The log is -- again, we’re getting back into this. We’re not going to get into conver- -- we’re not going to get into testimony under oath between you and Mr. Klukowski about the privilege log, the analysis that went behind the privilege log, when decisions were made about the privilege log.

I’m not asking for that information. I’m asking for Mr. Klukowski’s understanding of Mr. Hopkins’ role on the campaign.

Mr. Greim. Okay. I think that's fair. I think that question's fair. Sorry to jump in.

The Witness. Sure. The conversations I’m referring to where I was under the impression that he was acting as a volunteer, those were conversations about the ongoing aspects of ongoing litigation.

In theory, you could have a conversation with anybody about litigation, right? Doesn’t have to be somebody who’s part of the campaign necessarily.

Would you agree with that?
The Witness. Would I agree that it's possible for one person to have a conversation with another person about litigation that is not part of a campaign? Yes, I think that's a correct statement.

I do want to be careful here. I mean, we want to respect your assertions, but it is helpful to understand Mr. Hopkins and who he is and his role as a professional or an attorney, as well as his role on the campaign. So that is something that I will follow up with Mr. Brothers and Mr. Greim about afterwards.

If we could go to exhibit No. 26, please. And this is one, Mr. Greim, that you should have from the -- what we gave you today.

Mr. Greim. Yep. Thank you, sir.

Q This is an email, again, produced in ongoing litigation over -- that involved claims of various privileges and work product from somebody named Samuel Dewey to you and Mr. Eastman. The subject is simply forward, and the attachment is Bognet.docx.

So who is Mr. Dewey?

A Mr. Dewey is an attorney who was doing volunteer work with the campaign.

Q At this point on November 17th, I understand your period of dedicated volunteer to the campaign was over. Is that correct?

A I'm not sure exactly which date. I was on two different types of leave. First I took dedicated leave to work on the campaign, both before and after election day. Then coming back from the campaign, and I was put on leave. So I was again on leave from the White House.

I do not recall -- I do not recall the date on which my leave ended and I was back on duty, though even after that point, I continued to volunteer when I was
outside what I referred to in my previous testimony as Hatch Act territory.

Q  Okay.

A  Such as on private property, outside business hours, unless I took a lunch break, et cetera.

Q  I don't want to get in -- based on your assertions, this is a document that's on your log as being withheld as legal strategy. I don't want to get into that legal strategy, but Bognet, can you just tell me what Bognet is? And if you can do so without revealing legal strategy.

A  Yes. Bognet was a Federal lawsuit that raised Elections Clause issues. It was being actively litigated at that time.

Q  Understood.

A  I believe out of the State of Pennsylvania.

Q  Okay.

A  So the jurisdiction that I had worked in primarily as a -- as a volunteer attorney.

Q  Were you involved in that litigation as counsel of record?

A  Bognet?

Q  Yes.

A  Not to my recollection.

Q  Were you involved in any litigation as counsel of record in Pennsylvania?

A  Counsel of record? Not to my recollection. Not that I recall.

Q  If we go to exhibit 27 -- we are moving through these rather efficiently, so hopefully we won't be here all too long.

But exhibit 27 is an email from Mr. Eastman to you on November the 9th. The subject is motion to intervene, and the attachment is, quote, Texas v. Pennsylvania, et al.,
dash, Trump motion to intervene.pdf.

If you go to 28, that is the attachment to the email in exhibit 27. And it looks like a motion of Donald J. Trump, President of the United States, to intervene in his personal capacity in the Texas v. Pennsylvania lawsuit with counsel of record John C. Eastman.

Did you discuss Texas v. Pennsylvania with Professor Eastman around this time, December the 9th, 2020?

A I do not recall conversations with Dr. Eastman on that case.

Q This lawsuit raises a number of issues, but did you have any role in Texas v. Pennsylvania either with Dr. Eastman or any of the other plaintiffs, including the State of Texas?

A Not that I recall.

Q Had you discussed with Professor Eastman the idea of filing suit to four State legislators to select electors before the election in November?

A Did I have a conversation with Dr. Eastman prior to November 3rd?

Q Correct.

A Not that I recall.

Q Did you have a conversation with anybody about filing suit to four State legislators to select electors before the election, so before you were a volunteer for the campaign?

A Not that I recall.

Q If we go to page 17 of this lawsuit -- or at least the attachment -- in the prayer for relief --

A I’m sorry, could you repeat where I am?

Q Of course. Page 17. And the page numbers are at the top of this document.
A: Yes. Yes. Thank you.

Q: Sure.

A: I'm there. Yes, I'm there.

Q: All right. So in the prayer for relief, B, it says, Declare that any electoral college votes cast by such electors appointed in the defendant States -- Pennsylvania, George, Michigan, and Wisconsin -- are in violation of the Electors Clause and cannot be counted.

So my question is, had you discussed the idea of filing suit to, quote, declare that any electoral college votes, end quote, in States that Trump might lose, before the election? Did you have that discussion before the election?

A: Not that I recall.

Q: This relief, particularly in D, which is at the bottom of page 17, If any of the defendant States have already appointed electors to the electoral college using the 2020 election results, direct that such States' legislatures, pursuant to statute in the Constitution, have the authority to appoint a new set of electors in a manner that does not violate the Electors Clause or to appoint no electors at all.

That is somewhat similar to the letter that you drafted for Mr. Clark on December the 28th and that we covered in your last deposition. Did you discuss the December 28th letter that you drafted with John Eastman?

A: Not that I recall, nor would I say that the two are similar.

You're referring there, if I am correct in understanding, that you're referring to a letter for Jeff Clark that was after December 14th?

Q: Correct, yeah. So in our last meeting, we discussed the December 28th letter that you drafted for Mr. Jeffrey Clark while at the Department of Justice as a proof of concept letter to the State of Georgia, asking them to look into election-related issues.
A Yeah. Rather than call that similar, I would characterize that as fundamentally different.

Q Okay. And, obviously, this document and that document will speak for itself. I'm not here to necessarily argue with you on the merits of that, Mr. Klukowski. Did you speak to anybody that you knew to be affiliated with the Trump campaign or Trump campaign legal team about the December 28th letter that you drafted for Mr. Clark?

A Not that I recall.

Q Do you know if Mr. Clark did?

A Not that I recall. Not that I know of. Not that I can recall knowing of.

Q Do you know whether Mr. Clark ever discussed filing Texas v. Pennsylvania or the relief in Texas v. Pennsylvania with Dr. Eastman?

A I have no recollection of any reference being told to me about that.

Q We understand that Mr. Eastman and Mr. Clark may have had at least one conversation or communication in very early January, perhaps as early as January 1st or the 2nd. Do you remember Mr. Clark ever telling you about communications that he had with Dr. Eastman?

A I do not recall being told of any such communication.

Q If we can go to exhibit No. 29, please. And just for timeline purposes, the email we just looked at where Mr. Eastman sent you Texas v. Pennsylvania motion to intervene, that was at 8:33 Mountain Standard Time, and exhibit No. 29 looks to be December the 9th, same day, at 8:37 UTC minus 7.

A Yeah. So both in the evening.

Q The subject of this email in exhibit No. 29 is legislator T -- excuse me -- legislators TPs with an attachment, Congress TPs Trump electors. That attachment
is at exhibit No. 30.

A Yes, I see it.

Q Why did you send this to Dr. Eastman?

A I do not recall -- I don’t recall why it was sent. I do -- I do see it.

Q Do you remember sending it to Dr. Eastman?

A I do not recall sending it to him. I see -- I see the email record. I do not recall sending that email, but I do see the record of it here.

Q Do you remember talking to Dr. Eastman around this time when -- around the time he sends you a motion to intervene in Texas v. Pennsylvania and around the same time that you then sent to him these legislators TPs with the attachment in 30?

A I had a number of conversations with a number of individuals. I do not, sitting here in, what is this, June of 2022, I don’t recall which -- which dates certain conversations or points may have been made or discussed -- or topics discussed.

Q Fair enough. Do you ever remember talking to Dr. Eastman about this document that you sent, or the ideas conveyed in this document, lobbyists TPs?

A I do not recall specific conversations, though I do see the substance of the document in front of me.

Q Okay. So let’s look at the substance of it. Why did you draft this document -- or did you draft this document?

A I recall writing something similar to this.

Q Why?

Mr. Greim. And I’m going to jump in here. This -- the problem is this: This is a document over which we would be asserting privilege. Obviously, it’s been produced by Eastman. And so we’re prepared to talk about the substance of the document, in other words, you know, what has been waived, which is what’s in the document, but I
think we are not prepared to go beyond in terms of, you know, why it was produced, who requested it, what his own thoughts and beliefs are, and other conversations that are like the document.

And so while we recognize that you have it now, it is privileged, and I think the questions need to be limited to the document and what’s in it.

Well, we’re going to explore some of those privileges in just a minute, Mr. Greim, and point taken.

Q So you said you remember drafting a document like this?

A Yes.

Q Does this look like the document that you drafted?

A Yes.

Q In the summary points, this talks about Article II of the Constitution, making legislatures the final authority on Presidential electors, State law makers appoint electors, Congress accepts them.

In the second paragraph, below the summary points is a very short paragraph. It says, Republican legislatures should do likewise and summon Trump electors to vote on December 14th. On January 6th, Republicans in Congress should fight to count those elector certificates.

What is it that you’re saying here, if you could just boil it down to --

A Sure. The "likewise" refers to the previous paragraph, the one we skipped over there. And it was to say that the relationship of -- of sections reflected in Federal law, in that this accepts, as a premise, that this is a document built on the premise that 3 U.S.C. Section 1 says that States can choose -- State legislatures can choose to participate in a national election day the same day that Members of Congress are chosen; in that that
is the general -- that is the general and typical framework through which the legislature appoints electors for the electoral college in a Presidential election; in that the following section of Federal law, 3 U.S.C. Section 2 is Congress’ recognizing the reality, not conveying the power, because it’s not theirs, but to recognize that Article II empowers State legislatures that if the election process -- if a State chooses to participate in a national election day, and if the framework for that day fails on election day to produce a result, then legislatures can, if they don't want to be opted out, to miss their chance to participate in the electoral college, that then they can appoint electors in a manner that they see fit; in that this is what was reflected in various opinions in Bush v. Gore, which was decided at this time, making reference to the historical fact that the Republican legislature was debating a form of legislation, I believe but not sure, that it was a joint resolution or a concurrent resolution, where the legislature was -- would've passed a joint measure saying that the election had failed in Florida in November of 2000, and that it was the legislature's determination that George W. Bush of Texas had -- was the lawful winner of the States, I believe it was 25 electoral college votes, while that legislation or resolution -- whatever the proper term would be for it -- while that measure was being debated, that's when the Supreme Court handed down Bush v. Gore. And so the legislative action then became -- became moot. It was never brought then for a final vote.

And so in the following paragraph, the one that you referenced, it says that Republican legislatures, so a legislature acting in official session on a majority vote basis, a majoritarian basis, could, in advance of December 14, because Article II specifies that Congress picks the day when electors are appointed, and that under 3 U.S.C. 7, that date would've been December 14 in 2020, that legislatures could pass the same kind of joint measure, summoning Trump electors to actually be appointed on December 14, if -- if the
legislature determined that because of the irregularities and violations of State election
law in the numbers reflected in the subsequent paragraphs, that in each of those States it
was, in fact, a failed election, and, therefore, that the legislature would have the option of
shifting from the 3 U.S.C. Section 1 framework, to the 3 U.S.C. Section 2 framework, so
long as they acted by the day specified in 3 U.S.C. Section 7, which, again, is December
14th.

Q Okay. Do you recall working on this document or a document like this
before -- well, let me rephrase that.

When, to the best of your recollection, did you begin working on this document?

A I'm thinking through whether that is -- I'm thinking, processing through
whether that is envelope information.

Mr. Greim. As am I. As am I.

You know, I think it's fair -- I think the problem is this. That question is trying to
understand the campaign's legal strategy. I think it's fair -- I think it's fair to ask when
this document was prepared. I think asking about how long it took to prepare it, when
did it start, how many drafts did it go through, I think that is not appropriate because
we're trying to get at the campaign's legal strategy.

So this document obviously was produced to us in litigation. You
can tell that from -- well, I'll just represent that to you.

I'll also say that this was not included on your attorney-client privilege log. It was
included on your First Amendment log. So there has been no assertion, at least as far as
withholding this document from the committee, on the basis of any kind of
attorney-client or work product privilege, and that makes sense particularly to the
committee in light of the fact that we received it through separate litigation where it did
not protect the document as well.
Mr. Greim. Well, but we are asserting attorney-client privilege. I mean, obviously, it's been produced because -- I don't know this, but I think a judge in California found that there's a crime fraud exception. I'm not sure if that's where this was produced, but --

It was not.

Mr. Greim. Okay. Okay. Well, nonetheless, I mean, this is a -- this is a document produced by the campaign, and I -- we can tell you that, and we assert the attorney-client privilege.

Q Do you agree with what Mr. Greim just said?
A I don't know any aspect of that that I disagree with.

Q Okay. Some of the theory in here, and what you just explained in this document, is similar to the letter that you drafted for Mr. Clark on December the 28th. Do you agree with that?
A No.

Q In what ways are they different?
A December 14th. Congress sets the day by which electors are to be appointed. December 28 is after December 14th.

Q And both of those, both letter and the document we just looked at, talk about State legislatures having the authority to choose their own electors. Do you agree with that?
A My recollection of the December 28 letter was the authority of legislatures to convene, not whether on December 28 they had power to appoint electors after December 14.
[11:28 a.m.]

Q I will say this. The letter is at exhibit No. 2 in your binder we went over at length. On page 3, it does say that "we," meaning the Department of Justice, "share with you," in this letter, meaning the State of Georgia, "our view that the Georgia General Assembly has implied authority under the Constitution of the United States to call itself into special session for the limited purpose of considering issues pertaining to the appointment of Presidential electors."

A Which paragraph?

Q That's page 3, the bottom paragraph.

A Yes. That paragraph does not say they still had the authority to appoint new electors. It's saying they have the authority to convene to discuss the appointment of electors. That would include electors that were already appointed and could not be changed.

Q Okay. If we go to page 5, this letter that you drafted says, middle paragraph, "The Georgia General Assembly accordingly must have inherent authority granted by the U.S. Constitution to come into session to appoint electors regardless of any purported limit imposed by the State constitution or State statute requiring the Governor's approval."

Do you agree that I just read that correctly?

A Yes. And that's consistent with what I said, because I'm referring to there's no mention there to the Federal Constitution or the Federal Constitution empowering Congress to set a date beyond which electors cannot be appointed. That's only a reference to State statutes and State constitutions.
Q Do you see on the second line it says U.S. Constitution?
A No. Authority granted by the U.S. Constitution to come into session to appoint electors and that that is not limited -- that appointment process is not limited by State statutes or by State constitutions, yes.
Q So this document, as well as the document we were looking at before, does talk about State legislatures' authority to choose their own electors, correct, under the U.S. Constitution?
A It refers to their authority through the date specified by Congress, which in 2020 was December 14 --
Q Okay.
A -- to appoint electors.
Q Okay.
A -- either through the national election process, if they're under 3 USC 1, or if that becomes a failed election under 3 USC 2.
If there is a failed election, then through December 14, through the date set by 3 USC 7, they have authority to directly appoint rather than forego participation in the electoral college for that cycle.
Q When we met the first time, you discussed the process by which you were selected to join the Department of Justice.
Did conversations about State legislatures and their powers to choose electors come up at any point during your process of being selected to join the Department of Justice?
A Not that I recall.
Q It could have, though, or you just don't recall it?
A I do not -- normally in deposition I like to stay with "not that I recall." I will
categorically say I have no recollection, no inkling that there was any sort of conversation prior to the time that I was on leave and an attorney with the campaign.

Q Okay. And I appreciate that. And, of course, in deposition you are under oath. So if there is something that you do recall, you would have to tell us.

A Absolutely. So it's my standard formulation is "not that I recall," but I'm trying to be as emphatic as I can in terms of -- the first conversation I recall about my going to the Justice Department was July of 2020, the first conversation I had in terms of formally pursuing it.

The first conversation I had with DOJ personnel being interviewed to come over to the Department, that was in September. I believe the date of the interview was -- and that process started while Mr. Hunt, Joseph Hunt, who goes by Jody Hunt, was the assistant attorney general in charge of the Civil Division.

I believe by the time I was interviewed, it was September 10th, I believe it was Camellia Delaplane, if I'm recalling her name correctly, and no conversation of this nature came up at any point in that process.

Q Okay. So like I said before, you withheld this document on the basis of the First Amendment. It's not on the attorney-client log to the best as I can tell. And in your comments you said that this is an email regarding electors clause in democracy, parentheses, (no discussion of Vice President or Congress' role).

A Which communication are we speaking about now? Which document?

Q Thank you for clarifying. It's the document attached at exhibit No. 30.

A Okay. So we're on 30 now.

Yes. Okay. Go ahead.

Q And this, of course, does talk about Congress, and it says, "On January 6th, Republicans in Congress should fight to count those elector certificates."
A Right. Elector certificates that were appointed on December 14 that the legislature appointed through joint legislative action on December 14.

Q. So you do agree this document involves the discussion of Congress' role on January 6th? And I'll just refer back to the second paragraph there, right in the middle, it says, "On January 6th, Republicans in Congress should fight to count those elector certificates."

Mr. Greim. I mean, counsel, the document says what it says, and you can ask the witness to agree that it says those words. But you've heard the context in which this was drafted. This is not about alternate electors. This is not about the issues that arose later on where people began to talk about the role of Congress.

Mr. Greim. Well, I'm trying to understand what is the point about what the document represents or what it doesn't. I mean, it says what it says. Why does that have a special -- I guess I'm missing the relevance of it.

Yeah. I mean, if Mr. Klukowski's objection to the select committee getting this is a First Amendment assertion with the justification that it doesn't include a discussion of the Vice President or Congress' role, issues that are core to the select committee's investigation, we just want to make sure that he understands that this document does, in fact, include that and that we would ask for a careful look of other documents being withheld on that justification.

Mr. Klukowski. Congress' role in what? I just want to make sure I --
This is your assertion of the First Amendment privilege. It says, "No discussion of Congress' role." And it does, in fact, include the sentence, "On January 6th, Republicans in Congress should fight to count those elector certificates."

Mr. Klukowski. And that would have been responsive to what? When the committee put the role of Congress on the table, what was that referring to, alternate electors?

I mean, if you're asking about the relevance, that's for the committee to determine. I'm just trying to understand the basis for your withholding.

Mr. Greim. Yeah, I'll just jump in here.

I mean, I understand -- thank you, [inaudible] -- I understand the last point you made. However, this is not -- the question of Congress' role came into play when it turned out that legislatures did not call anyone back, did not call electors in, and there were no alternate electors that were chosen in that manner.

And so this is prospective, this is before December 14th had come and gone, and this is about a role that Republicans in Congress could have had, but ultimately did not.

I mean, so I don't think this is -- I understand it has the words Republicans in Congress on January 6th, I understand that, but it's not relating to the situation that actually occurred, that was actually presented, and that the committee's actually investigating. So I think we have a disagreement on that.

I hear what you said. The committee's investigation obviously is not entirely public. And so I will say that the committee's determination of relevance is different than what your understanding seems to be, Mr. Greim. So I'm just trying to make sure that I understand the basis for withholding in the First Amendment context, particularly this document that's now been produced to the committee.

But that's something I'm happy to take up with you and Mr. Brothers afterwards.
as well to understand these assertions.

Mr. Greim. Okay. I mean, I can't say it any better than I just did. But in our view, this is not -- I mean, this is describing a scenario that never took place.

And so I just don't -- I don't understand how that's within the purview of what the -- the committee's investigating what did take place. I'm sorry. I'm wasting time.

Go on ahead.

No. That's okay. I do want to get on the record your objection to talking about this, though. Is it a relevance objection that you're making?

Mr. Greim. No. I mean, I'm addressing -- I mean, look, we've said that he can talk about what's in the memo. You've got it, we've said he can talk about it.

My objection is moving beyond the memo, and the objection is attorney-client privilege and First Amendment objection.

And so everything we were just talking about was one prong of your attempt to show relevance to get around the First Amendment privilege.

And I'm not --

Mr. Greim. But you can go fully into what's talked about in this memo.

I'm not trying to show relevance. At this point, we've talked about this memo. I'm trying to understand the withholdings from the select committee of relevant documents, particularly where the explanation is that there's no mention of Congress.

But that is something I'd be happy to address with you after this as well.

BY

Q Did you ever show this document to Jeffrey Clark?

A Not that I recall.

Q Did you ever discuss the contents of this document or the theories in this
document with Jeffrey Clark?

A  Not that I recall. My conversations with Mr. Clark that I can recall are all after December 14, after that memo would have become moot.

Q  And your conversations about this included your discussion about the letter you drafted on December 28th for Mr. Clark, the Georgia letter.

A  If I understand your question correctly, yes, I do not recall any mention of this memo pertaining to what could happen on December 14. I recall no mention of that in any discussion that we had on December 28th.

Q  One of the things that Mr. Greim just mentioned is this idea about alternate electors meeting and casting votes in States that President Trump had lost.

Were you aware of that effort to have alternate electors, the Republican electors, meet and cast votes in any State that Trump had lost?

A  Electors that had not been appointed by the legislature?

Q  Correct.

A  No, I do not recall any conversation up to that time on that.

Q  Up to what time?

A  It is, as I referenced in my -- the first part of this deposition, on the previous date, I did become aware at some point later in December that, in fact, on December 14, which was then in the past, that individuals had gotten together and executed papers that they claimed were electoral college certificates, but I became aware of that at some date in the future.

I had no knowledge, I don't recall any conversation or recall having any awareness of that either before December 14 or on December 14. It was some point after December 14.

Q  Do you remember ever discussing those alternate electors after
December 14th with John Eastman?

A Not that I recall. I do not recall discussing those.

Q Do you remember discussing those alternate electors after December 14th with Jeff Clark?

A Give me a moment. I’m thinking through conversations here.

Q Of course. Take your time.

A I do believe at some point in the day on December 28 I did discuss with him what had happened in Hawaii in 1960 that we discussed in the first part of my conversation. So it would have been relevant -- it would have been relevant to that conversation point at that time, that Hawaii -- and I understand DOJ has waived all privilege regarding -- I can just answer.

Acknowledged the historical fact about it and that, if I recall correctly, and I'm trying to be as forthcoming as I can, if I recall correctly, that I had found no case law support to support the effectiveness of what had been done in 1960.

So it had happened as a historical fact and that Vice President Nixon had not objected to it, but that there was -- but that I did not identify any legal authority saying that those pieces of paper would have any constitutional empowerment.

Q What was Jeff Clark's reaction to that?

A I don't recall if he reacted at all.

Q Do you remember --

A Nor do I recall precisely how I phrased it, if it’s -- if it’s -- you know, it’s we just spent a few seconds on Hawaii. I don’t recall what my word choice was and I don’t recall anything about the substance of his reaction or whether he reacted at all.

Q Did Jeff Clark ever mention anything to you about using -- let me start over.

Did Jeff Clark ever mention anything to you about the fact that these alternate
slates of electors might be used on January the 6th even if a legislature or a court hadn’t ratified or adopted them?

A Not that I recall. Can you repeat it again, because I want to make sure I’m listening to every aspect of what you’re saying? I’m saying not that I recall, but ask it again.

Q Okay. And I’ll try to do my best to repeat it.

But do you recall any conversations with Jeff Clark about using or anybody using these alternate slates of electors on January 6th even if they had not been ratified by a State legislature or adopted by a court?

A I do not recall such an exchange.

Q How about any use of the alternate slate of electors on January 6th? Do you have any conversations with Jeff Clark about that?

A Not that I recall.

Q Did you discuss after December 15th, when you started at the Department of Justice, alternate electors with anybody from the President’s campaign or personal legal team?

A Discussed the idea that alternate electors could be inserted into the mix and impact? Not that I recall.

Q Just relevant at all, that somehow these alternate slates of electors --

A Would be relevant to the outcome of the 2020 election?

Q Correct.

A Not that I recall.

Q So you don’t remember having conversations with anybody from the President’s personal legal team or campaign legal team about alternate electors after?

A Not that I recall.
Q: Okay. I'll go to exhibit No. 31. This is a December 28th email, again, produced to us in litigation over — that included claims of various privileges and work product assertions.

This is from a person named Edward Corrigan and Connie Hair, copying both you and Mr. Eastman, from Ken Blackwell. This subject is, "VP briefing on January 6th, 2021, meeting."

First, I'll ask you, who is Ed Corrigan?

A: Ed Corrigan is, to the best of my knowledge, a private citizen who works here in Washington, D.C.

Q: Do you have any kind of friendly or professional relationship with Mr. Corrigan?

A: I would say that we are friends.

Q: Did you work on issues related to the November 2020 election together?

A: I do not recall working with Mr. Corrigan on the election.

Q: And Connie Hair, we went over last time, is Mr. Gohmert's chief of staff, at least at the time. Is that correct? That's what you understood?

A: Yes. Correct. That was and is my understanding.

Q: John Eastman, we've been talking about him.

And who's Mr. Blackwell?

A: Mr. Blackwell is a friend of mine and a former elected official and former presidentially appointed official, previous administrations.

Q: In this email Mr. Blackwell says, "As I stated last week, I believe the Vice President and his staff would benefit greatly from a briefing by John and Ken."

Did you have a conversation in the week before this email with any of these participants about briefing the Vice President?
A: I do not recall having a conversation with any of these individuals about briefing the Vice President.

Q: Do you remember Mr. Blackwell saying anything about the Vice President's role on January the 6th at any point after December 15th?

A: I do not recall conversations with Ambassador Blackwell on that topic.

Q: And conversations, to be clear, would include any communications, meetings, text messages, phone calls. You don’t remember any of those things with Mr. Blackwell about the Vice President?

A: I see this email right here and I do not recall any communications other than this email. I don’t recall being consulted beforehand about this. I do not recall any subsequent action that took place.

I will say emphatically, even though I’m saying not that I recall, I do not recall ever briefing the Vice President or members of his -- or, like, his legal counsel or chief of staff or, you know -- I do not recall any such briefing or meeting taking place.

Q: Do you remember ever hearing after December 15th about the idea that somebody should brief the Vice President about what could happen on January the 6th?

A: So many people were saying so many things in the media and in news reports and in rooms with bunches of people where I might be at some point. I do not recall that point being made at any given point.

Q: Okay. So this email, in the first sentence it says, "As stated last week, I believe the Vice President and his staff would benefit greatly from a briefing by John and Ken."

You don’t remember anything about conversations --

A: Yeah.

Q: -- about briefing the Vice President with you and John Eastman?
A In whatever communication is being referenced in that first clause where it says, "As stated last week," I have no recollection of anything happening. I mean, this is December 28. So I have no recollection of anything in whatever that window would be, December whatever to whatever. What that's referencing there, I have no recollection about what that would be.

Q Did you ever speak to John Eastman about him potentially briefing the Vice President or after briefing the Vice President what he discussed?

A I do not -- I'll answer those as separate questions. I do not recall anything pertaining to the former, nor do I recall him ever telling me that he briefed the Vice President.

Q Mr. Blackwell said in the next line, "As I also mentioned, make sure we don't overexpose Ken given his new position." At that point, you had only a week or two before joining the Department of Justice.

Do you know what Ken Blackwell's concerns were with you and your new position?

A I do not know. It is -- I do not know. I don't know what he is referring there. I had made known in my friend circles, which would include Ambassador Blackwell, that I was looking forward to joining the Department and that once I was there I would be in a fundamentally different role. I saw myself as a straight G-man and just seeking to get some respectable DOJ litigation credentials under my belt before I went on to the private market in January 20 looking for a job.

So I had told everyone that I thought I was moving on from campaign-related activity, because I was going to keep my head down and focus on my government job.

I don't recall specific conversations, but I said them to so many people so many times that I would be confident that the ambassador was in at least one of those
conversations.

Q Do you know why Mr. Blackwell would suggest that you and John Eastman brief the Vice President?

A I do not. I do not know. Ambassador Blackwell has frequently recommended me for, like, my Federal judicial clerkship. He was one of my recommenders for that. So he is -- he has frequently recommended me for things.

He and I did publish a law review article more than a decade prior, Yale Law and Policy Review, about voting rights. And he and I had worked on election law issues through the years. And we had done so both as legal academic scholars and in active litigation.

So I believe he regards me -- he has described me to other people as an election law expert and as a constitutional law expert. So that that is -- that is the background. But I don't know with regards to this specific assertion. So I'm obviously trying to be as forthcoming as I can.

Q Do you know why he would recommend you to talk about the Vice President? And the context of this to me suggests it's about the joint session. Obviously, it doesn't state that. But what about your qualifications makes you the person to brief a Vice President?

A I do not know and I do not recall sharing my views with him regarding what the Vice President could do on January 6th. I do not know exactly -- I did not know at the time what Dr. Eastman's views were of it, the views that were later -- that later came to light in that memo that we discussed in my earlier deposition.

If he was aware of both of our views -- and, again, I don't recall having a conversation with him on it -- but if he was aware of both of our views, then he would have known that we had very different views regarding January 6th. So I don't know if
he would have wanted the Vice President to hear different perspectives.

Q. And when you say very different views, what do you mean?

A. I know it came up earlier in my deposition that I expressed -- that I did not express support for what Dr. Eastman said in his memo and that I had explained the positions I had pressed or that I was supportive of with the Department of Justice in terms of filing a motion to dismiss in litigation that was seeking to implement something in that vein.

So I've recounted the historical facts of my activities related to those things that I've been cleared to do.

To go from that to discussing what my personal views are on the underlying legal issues, I would see that more as asking for my expert opinion than asking a fact question.

Q. You just said that perhaps the Vice President might benefit from having different views between you and John Eastman, and so I guess I'm trying to understand --

A. No, no. You had asked me why Ambassador Blackwell might have mentioned my name.

Q. Right.

A. And I made clear that I didn't recall even conversations and that I was trying to be as forthcoming as possible in terms of teeing up. But it's -- for that matter I shouldn't even -- I shouldn't speculate regarding -- I guess it's -- I'm trying to be helpful, but it's, I guess, if I'm a fact witness, I just won't -- I won't speculate.

Q. Okay.

Mr. Greim. And I let the witness go on at great length. You know, the committee's here for facts and not speculation. So you've said it yourself. I'll pass back out.

BY
Q Did Ms. Hair -- I guess -- let me start over.

Did you ever talk to Ms. Hair about sensitivities about your situation with the Department of Justice and being able to do things like briefing the Vice President?

A Well, those are two separate questions. Let's break those out.

I have no recollection of anything pertaining to the Vice President. I referenced in my earlier conversation that I wasn't sure what I spoke with her about on the phone record that we saw on December 28. And I told you that while I couldn't recall the exact conversation, that I would be -- that to the best of my recollection the substance was that now that I know there is litigation here with the United States as an adverse party, that I should not be communicating about this.

And so I don't recall if that was a, "You can't be calling me on this. I can't be answering your questions. Don't email me things. Make sure I'm not copied on things. I can't have any part of this." I don't know what was conveyed in that phone call.

But I do know that was the fact of the matter, is that I'm now seeing that I had just -- I was seeing something indicating to me that I was in an adverse position and so I just shouldn't be having communications on this.

I do not recall what I conveyed or how I conveyed it.

Q So this email is on the same date as the email you received from Ms. Hair --

A Yes.

Q -- about Gohmert v. Pence?

A Yes.

Q Was there any connection between what's being suggested in this email and Ms. Hair sending the Gohmert v. Pence lawsuit to you?

A Not that I know of. Not to my knowledge.

Q Were you surprised by this? I mean, somebody's suggesting to you that
you're going to brief the Vice President and it sounds like you wanted nothing to do with that. Do you remember being surprised or pushing back?

A I recall being surprised when I saw the email. I don't recall whether I responded at all or if it was I just need to be totally, you know, I need to be a hole in the water on this. I can't remember that I responded at all. I could well have just been, "I'm not even going to reply to say stop. It's just nothing. And if someone calls me, tell them we can't have this phone conversation, get off the phone."

So I do not recall responding on this.

Q You said you were surprised, though. What specifically do you recall being surprised about?

A I'm surprised, given that I would be at the Department of Justice, that it's just -- that's just not the kind of thing that I saw as consistent with the role I was having for our limited remaining weeks in the administration, that I was just being a straight G-man lawyer, and that for me things pertaining to the 2020 election were just for me that they were done, that it was -- that I have a job description now and I had a full plate, and that there was not a role to be in ongoing efforts regarding the aftermath of the 2020 election, that that wasn't what I was doing -- with the glaring item there of Mr. Clark having tasked me with helping in the drafting of a letter to write out points on that subject matter that he dictated be written. But that that was nothing that I volunteered for or that I was voluntarily engaging in.

Q So --

Mr. Greim. I'm sorry to jump in here, but we've been going -- I know we've had some discussions with counsel, but we have been going now for quite a while straight. Can we take just a short break to let the witness walk around and drink
some water, go to the bathroom, or are you, like, almost done?

Mr. Greim. Okay.

Q. I do want to draw your attention, in front of you is a transcript of your prior testimony.

And, Mr. Greim, for your benefit, I believe you still have access to it, but I'll also read the portion that I want to ask Mr. Klukowski about.

If you turn to page 118, starting on line 23. This is a conversation that we were having about Ms. Hair. And you said, starting on line 23, "When we do see each other it's, 'Hi, how it's going?' And it's genuine. But we're not, like, in regular communication or work on things."

So my question for you is, this is now the second email from the 28th about the election -- or seemingly about the election, at least on its face -- that you received from Ms. Hair. And to a layperson it could suggest that you were, in fact, working on things together. So --

A. One moment. Let me --

Q. Yeah.

A. Stand by one moment. I'll let you know when I've reviewed this. I'll let you know as soon as I'm done. It looks like we went on at great length on this.

Okay. I think -- we went on for quite some length, and I think I've got the exchange in terms of the prior part of the deposition.

Go ahead, sir.

Q. Okay. So if we look at page 118 of your prior deposition transcript, lines
23, talking about Ms. Hair, you said, "When we do see each other it's, 'Hi, how's it going.' And it's genuine. But we are not, like, in regular communication or work together on things."

A Yes.

Q So my question for you in light of that is that on December 28th we know of at least these two emails that included Ms. Hair about the election in particular. So were you working on issues related to the election with Ms. Hair?

A Not that I recall.

Q Do these emails, seeing them, this, and the fact that you got the Gohmert v. Pence lawsuit from her the same day and you discussed at length your communications with her on the 28th, refresh your recollection as to what you were doing with Mrs. Hair around that time?

A No. I do not believe I was doing -- to the best of my recollection, I had not seen Mrs. Hair during any of my time at DOJ. I'm not sure how long it had been even prior to that since I had seen her.

Q And you said you weren't in regular communication. So were both of these kind of news to you, out of the blue, all of a sudden Ms. Hair pops up twice in one day?

A To the best of my recollection, yes.

Now, obviously, that's not -- those are not two isolated things. Someone mentioned my name to her. So, I mean, it's -- there's content from the communication we just looked at indicating that there were other conversations going on, conversations that I have no recollection being a part of.

Q When you spoke to Ms. Hair on the 28th, did she raise this idea about somebody briefing the Vice President, potentially you?

A Not that I recall.
Q Were you ever, in fact, asked to brief the Vice President?

A Not that I recall.

Q Do you think that’s something you’d remember, if you had to brief the Vice President about something?

A I’m trying not to speculate, but I think it’d be hard for me to forget being asked to brief someone of that high of rank.

Q Did you help prepare any materials or information that were used to brief the Vice President or intended for use to brief the Vice President?

A Not that I recall.

Q You mentioned earlier that Mr. Eastman may have had a differing view on it than you and, of course, he sent you on January the 3rd a short two-page memo that we discussed in the prior deposition. Do you recall receiving that from Mr. Eastman?

A I recall what we previously discussed a number of months ago about that, that’s reflected in the deposition here.

Q Okay. Fair enough. And were you at the time -- so this is now December 2020, January 2021 -- aware of Mr. Eastman’s views on what the Vice President could or couldn’t do at the joint session?

A I do not recall being aware of those views prior to seeing that memo. I recall being surprised by -- yeah.

Q And you have no recollection or understanding of why Mr. Blackwell would want -- suggest that you brief the Vice President with John Eastman, who eventually did brief the Vice President and said that he had the authority to not count certain electoral votes or even delay the session?

A No. I do not know and it would be speculation. All I know is the historical
pattern of how frequently he has recommended me -- recommended me for the
administration, recommended me for my clerkship, recommended me for an adjunct
faculty position -- there's a long list over the years of things that the ambassador has
recommended me for.

Q And when you say "he" and "the ambassador," you're referring to Mr.
Blackwell?
A Ambassador Blackwell, correct.
Q So do you recall having any conversations with John Eastman about the joint
session of Congress after December 15th, 2020?
A I do not recall any such conversation.

Q Do you remember discussing the joint session of Congress with any of these
people -- Edward Corrigan, Connie Hair, Ken Blackwell -- after December 15th, 2020?
A I do not recall such conversations.
Q So they could have happened, you just don't recall them?
A Someone like Mrs. Hair I don't see often. People like Ambassador
Blackwell and Mr. Corrigan, we're at the same Christmas parties, we're at the same
cocktail hours. I mean, we're together an awful lot of places. And at events of that
nature, upcoming big events are frequent topics of conversation.
I do not recall being part of any such conversation during that window.
Q Do you remember ever discussing with Ms. Hair Representative Gohmert
objecting at the joint session?
A I do not recall such a conversation.
Q Do you remember talking to Ms. Hair about any objections during the joint
session?
A I do not recall such a conversation.
Q Did you know in this period, around December 2020 and January 2021, that John Eastman was, in fact, going to brief the President or the Vice President about the joint session?

A I do not recall being told that regarding either POTUS or VPOTUS.

Q How about any White House staff, including the President's staff or the Vice President's staff?

A I do not recall being told about such a briefing.

Q And my question specifically would be whether you were told about the briefing or an intended briefing beforehand or after the fact of it occurring?

A Yeah, I do not recall any such conversation.

Q Originally, this document you withheld as being about an email regarding scheduling and logistics of a private meeting. Would you characterize a meeting with the Vice President to brief him as a private meeting?

A Well, it would not be a public meeting. So by principle of noninclusion, I think that -- I think someone could characterize the default alternative as a private meeting.

Q But a meeting with the Vice President, a meeting with a government official about the joint session of Congress, a public event, that's still in your mind a private meeting?

A It is not a public meeting.

Q Are you friendly with the Vice President?

A I have met the Vice President at points in the past. We do not have what I would call any sort of interpersonal relationship.

I don't even know if he would know my name if he were to see me. He might recognize a familiar face. I would not count on him to even remember my name.
I do just want to ask a couple more people.

If you want to take a quick, I think we maybe have 15 or 20 minutes left. So we can power through or take a quick break. It’s entirely up to you.

Mr. Greim. Well, why don’t we take a very quick break?

Sure. Absolutely. And just as a reminder before we go that this camera will stay on.

Mr. Brothers. Can take us back to that empty room?

That’s fine with me. And maybe we’ll reconvene then in 7 minutes, 12:30, or 10 minutes, 12:33?

Mr. Brothers. Let’s just do ten. I like round numbers.

We’ll go off the record.

[Recess.]

Let’s go back on the record. It’s 12:34, and we’re resuming the deposition of Mr. Ken Klukowski.

BY

Q Just a few follow-ups.

Are you familiar with a person named Ken Chezbro (ph) or Cheesebro (ph), depending on how you pronounce it?

A How is it spelled?

Q C-h-e-s-e-b-r-o.

A I have no recollection of ever seeing or hearing that name.

Q Okay. Do you know an individual named Mark Martin?

A Mark Martin?

Q Correct. Former North Carolina Supreme Court judge.

A I have no recollection of a person by that name.
Q  How about James Troupis, T-r-o-u-p-i-s?

A  I do not recall ever meeting a person by that name.

Q  Okay. Not necessarily meeting, but talked with them, communicated with them?

A  No. I am unaware of any communication I had with someone of that name, by that name.

Q  And just I'll represent to you that Mr. Chesebro is somebody who also was a lawyer doing work with the campaign in the post-election period. I believe he was based out of, at least for part of the time, Boston, Massachusetts. Does that refresh your recollection?

A  No. It -- no.

Q  Okay. Do you know who Ginni Thomas is?

A  Yes.

Q  Who do you know her to be?

A  Ginni Thomas is a prominent figure in the conservative movement and the wife of Justice Clarence Thomas.

Q  Did you have any communications with her after the election, November 3rd, 2020, up and through January 20th, 2021?

A  I do not recall any substantive communication. We end up at a lot of the same Christmas parties and whatnot. So I do not recall any conversations with her, but I could easily have seen her during that time and exchanged pleasantries at some sort of social event like a Christmas party. I have no recollection.

Q  Fair enough. And we're not so interested in those pleasantries.

A  Right. Absolutely. I just want to make clear I'm being very forthright with you in my answer.
Q. Yes. I appreciate that. So just for clarity in the record, do you recall ever having any conversations about the 2020 election with Ms. Thomas after the election?

A. I do not recall such a conversation.

Q. Do you remember any conversations you had with Ms. Thomas about the joint session of Congress?

A. I do not recall any such conversation.

Q. Earlier, before we broke, I asked you about any briefings that you’re aware of for the Vice President or the President. And just to be clear, did you ever discuss or communicate with any White House staff about the joint session of Congress?

A. Not that I recall.
[12:37 p.m.]

Q How about the Vice President's staff? Same question.

A Not that I recall.

Q And given your role, do you think you'd remember if you were to brief the White House staff or Vice President's staff about the Joint Session of Congress after the election?

A If it were a meeting in something like the Oval Office, I think I would recall something like that. It's -- it's -- I'm not going to speculate regarding my recollection, but certainly if it was something -- if it was the kind of moment you'd think you'd have a photographer present for to capture, that would be something I would expect to remember.

Q Is there anything that you've said today that you'd like to go back and change or amend before we break?

A Not that I think of at this time.

Okay. Is there anything else that you, Mr. Brothers, or you, Mr. Greim, would like to put on the record before we break?

Mr. Brothers. Nothing from me.

Mr. Greim. No.

Okay. Then at this time, we are going to leave the deposition open, subject to the call of the chair, in order to work through some of the objections that we've discussed today, and mainly those that were asserted on the privilege logs for First Amendment and attorney-client privilege reasons. But other than that, I think we're done, and we can go off the record.
Whereupon, at 12:39 p.m., the deposition was adjourned, subject to the call of the chair.]
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